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Conflicting Diplomatic Roles and Problems with International Court of Justice Principles

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Abstract

Diplomats occupy a central position in the management of international relations, yet their responsibilities often generate inherent tensions that complicate the execution of foreign policy. They are required to simultaneously defend national interests, negotiate agreements, promote trade and cooperation, gather political and economic intelligence, and protect the welfare of their nationals abroad. Within this complex international environment, the International Court of Justice (ICJ) and other international tribunals play an increasingly prominent role in the peaceful settlement of disputes. Consequently, safeguarding the independence of these institutions and their members has become critically important. This paper critically examines the effectiveness of the International Court of Justice by identifying and analysing the structural, legal, and political challenges that undermine its functioning. It highlights key issues relating to the Court's jurisdiction, political constraints, procedural weaknesses, challenges of legitimacy and representation, and gaps in its mandate. The study further explores how these problems affect global peace

and justice and considers potential reforms, practical solutions, and broader implications for global governance, demonstrating why strengthening the ICJ is essential for promoting fairness, accountability, and the rule of law in the international system.

Keywords: Diplomats, Conflicting Roles, International Court of Justice, International Law, Jurisdiction, Enforcement Challenges, Vienna Convention.

Introduction

The International Court of Justice (ICJ), with its seat at The Hague, was established as one of the principal organs of the United Nations (UN) to help materialise the fundamental objectives of the UN, that is, the maintenance of peace and a stable world order. One of the main purposes of the United Nations is to maintain international peace and security and, to that end, to bring about by peaceful means adjustment or settlement of international disputes which might lead to a breach of peace.

It was with this view that the UN charter created the ICJ as one of its six major organs. Article 2 (4) of the charter categorically prohibits the use or threat of force in international disputes. The natural corollary of this is the principle of pacific settlement of international disputes. Article 2(3) of the charter obligates the states to settle their disputes peacefully.

As an organ of the United Nations, the ICJ serves as one of the various methods of the peaceful settlement of disputes provided for in the charter. For judicial settlement of international disputes, the ICJ is the single most important forum. The recourse to arbitration or to the ICJ should be the only method and the sine qua non for peace in the community.

The ICJ remains a vital institution for promoting peaceful resolution of international disputes. However, its effectiveness is hampered by structural, political, and operational challenges. Addressing these problems requires global cooperation, legal reforms, increased transparency, and stronger enforcement mechanisms (Abbott, 2000). By adopting the recommended solutions, the ICJ can become a more reliable and powerful instrument of international justice.

Diplomacy and international adjudication remain two of the most important mechanisms for maintaining global order, preventing conflict, and managing interstate relations. Diplomats function as the principal agents of communication, negotiation, representation and conflict management between sovereign states. Their work is governed largely by the Vienna Convention on Diplomatic Relations 1961, which grants

privileges, immunities, and obligations, presentation, and conflict management between sovereign states (Alter, 2014).

This research work is governed largely by the Vienna Convention on Diplomatic Relations (1961), which grants privileges, immunities, and obligations intended to facilitate peaceful interaction among nations. Despite these legal frameworks, the diplomatic role is inherently complex and often conflict-ridden. Diplomats are simultaneously expected to defend national interests, uphold international norms, foster mutual cooperation, protect citizens abroad, and gather strategic information, including all responsibilities that can contradict one another in practice (Alford, 2010). These conflicting roles generate ethical, political, and legal dilemmas, particularly when national interests appear to diverge from the principles of international law or when diplomatic conduct is perceived as interference by host states.

Parallel to these challenges is the role of the International Court of Justice (ICJ), established as the principal judicial organ of the United Nations to adjudicate disputes between states and provide advisory opinions. Although the ICJ contributes significantly to the development of international law, its effectiveness is constrained by structural and procedural limitations.

The court's jurisdiction is based on state consent, its enforcement mechanisms are weak, and its procedures are often lengthy and resource intensive. Furthermore, the ICJ's inability to hear cases brought by individuals or non-state actors restricts its accessibility in a world where global issues increasingly affect private entities and communities. Consequently, while diplomats navigate conflicting expectations in representing their states, the ICJ faces obstacles in delivering binding and universally respected judgements (Alvarag, 2025). Understanding both the diplomatic conflicts and the limitations of ICJ principles is therefore essential for evaluating contemporary challenges in global governance and the rule of law.

Within the United Nations System, the ICJ occupies a unique position. Previous courts with somewhat similar aims, such as the Permanent Court of International Justice, were not organs of the League of Nations under whose auspices they were formed; their status was completely independent of the league covenant, and as such, they constituted separate international agreements. By contrast, the ICJ is a principal organ of the UN, and its status is an integral part of the UN charter (Barkin, 2006).

The charter has incorporated a distinct part for the ICJ; thus, the ICJ holds a unique position within the UN. There is an operational relationship between the ICJ and the Security Council, which are two complementary organs of the United Nations.

The United Nations General Assembly also has its constitutional role as regards the ICJ. The ICJ has been a permanently working forum that has adopted its own rules.

The trinity of the following documents forms the legal basis for the world court: (a) the UN charter, (b) the status of the court and (c) the rules of the court adopted on April 14, 1978, representing a major revision of prior rules of 1946 (Benrenisti, 2008).

It is of special interest to note that the position of the ICJ as one of the organs of the United Nations had in no way, as one might think, undermined the judicial character of the court. Rather, this had multiplied the sanctity and status of the ICJ. Since all other UN members are by agreement bound to respect the court. If the ICJ functioned outside the UN system, it would not have been the repository of trusts of such a great number of states as it is now.

The International Court of Justice consists of 15 judges under a president and a vice-president elected by fellow judges for three years with the possibility of being re-elected. Other judges hold office for nine years, five of whom are elected every three years to serve a nine-year term, the statute thus providing for continuity of experience in the court. No two judges may be nationals of the same state. The judges are elected by the General Assembly and the Security Council voting independently and simultaneously from a list of persons nominated by the "national groups" state in the Permanent Court of Arbitration who are themselves theoretically independent from governments, though not in practice since they are nominated by governments. Thus, the system of nomination may cautiously be called an "unsuccessful attempt to have independent judges nominated (Bark, 2004).

Nevertheless, this indirect nomination is plausible. Further, members of the ICJ who are not represented in the Permanent Court of Arbitration can play a role in this process since they may create national groups for this purpose.

Two criteria have evolved for the judges' election: (1) Individual Capacity Criterion and (2) Collective Qualification Criterion. The first one is personal to the judges. The judges are to be independent and elected regardless of their nationality from amongst persons of high moral character who possess the qualifications for appointment to the highest judicial offices in their respective countries or who are juris consults or recognised as competent in international law. The second criterion is that the judges should come from the main forms of civilisations and principal legal systems of the world (Chayes, 1993).

This principle deals with representativeness and the court and therefore has an impact on the court's popularity. In fact, from the very inception of the ICJ, issues concerning its composition have plagued it and have given rise to recurring concerns about the objectivity of judges and balance in the system as a whole. Some states have objections to the words "the main forms of civilisation" that figure in Article 9 of the charter: "Therefore, equity and forms of civilisation could be the basis of distribution of judges."

Independence of the Court and AD Hoc Judges: If the ICJ is to serve its purposes effectively, then it is vital that the states have confidence in it. Therefore, the status of the court reinforces the principle of judicial independence for the judges. The very fact that the judges are chosen based on their qualifications, not on the basis of their nationality, is one of the factors that ensures independence. The status of the Court goes far towards maintaining the independence of judges, which cannot be opposed. Article 20 provides that before taking up their duties, the judge must make a solemn declaration in open court that they will exercise their powers impartially and conscientiously (Frank, 1990).

No judge may exercise any political or administrative function or engage in any other occupation of a professional nature or act as an agent or advocate in any case in which he has previously taken part in any other capacity. The independence of the judges is further reinforced by the provisions regarding security of tenure; there is no future age, and a judge can be removed only by a unanimous decision of the fellow judges, on the ground that he has ceased to fulfil the required conditions. Further, judges are to be of all nations. And, while engaged in the business of the Court, the members enjoy diplomatic privileges. However, somewhat inconsistent with the intention to disregard nationality in the election, Article 3 of the statute entitled "either party" or "neither party" to choose "ad hoc" or "nation of judges" who sit for a particular case. Some observers see this practice as being an incentive to judges who may have more confidence in the court if there is a judge of their own choice sitting on the bench. But whatever may be the justification, it is undeniable that the practice is incompatible with the notion of impartiality and independence of the judiciary (Goshen 2008).

Law applied by the Court

The ICJ adjudicates upon a dispute according to international law. For the determination of correct rules of international law, the ICJ has been mandated by the Statute to apply the following:

i. International conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
ii. International custom, as evidence of general practice accepted as law;
iii. The general principles of law recognised by civilised nations, and
iv. Judicial decisions and the teachings of the most qualified scholars of the various nations. If the parties do not object, the court can decide a case on the basis of ex aequo et bona. Further, equity as a principle of law can also be applied. It was so decided by the court in the North Sea Continental Shelf Case (1969).

The Court is open to States only. It decides contentious cases and gives advisory opinions. A case before the court normally ends with a judgement, unless frustrated or withdrawn earlier. In deciding a case, the Court may, apart from deliberations and submissions by the states, invite assessors to sit with it for the consideration of that particular case. Unlike the judges, the ad hoc assessors are not entitled to vote. They are chosen by the court itself and not by the parties. The Court normally sits in plenary sessions, but it may form smaller units called chambers if the parties so request. The court now has an environmental chamber and forms annually a chamber of procedures (Goldsmith, 1999).

In discharging functions, it is assisted by the Registry, comprising a Registrar and Deputy Registrar and other officials and secretaries. The administrative functions are entrusted to the Registrar. When the decision of the court is taken by a majority vote, and in case of a tie, the president will exercise a casting vote for the interest of peace. Nine judges form a quorum.

According to this research work, having considered the judicial method of dispute resolution and a brief account of the ICJ, we now proceed to examine the jurisdiction of the Court.

Jurisdiction and Procedure of the ICJ

Since this research paper intends to address issues related to jurisdiction conflict, the diplomatic role, and the challenges faced by the ICJ, it is essential to examine and critically assess the current jurisdiction and procedures of the ICJ. It is necessary that we now take an explanatory and critical look at the existing jurisdiction and procedure of the ICJ.

Basis and Nature of Jurisdiction

The term *"jurisdiction"* etymologically refers to the authority and competence of a body or institution to act, issue orders, or determine matters brought before it. Broadly speaking, in relation to the International Court, the expression *"jurisdiction"* denotes the power of the Court to administer justice between litigating states and to decide cases submitted to it with binding legal force (Higgins, 1998).

The exercise of jurisdiction, or the administration of justice, entails a comprehensive judicial process accompanied by certain implied and necessary powers required to effectively "do justice". Accordingly, the Court may exercise inherent and incidental jurisdictions alongside its principal jurisdiction. For example, where the Court has jurisdiction to determine reparation, that jurisdiction necessarily extends to prescribing the terms, scope, and methods for assessing such reparation (Icoh, 1997).

Basis of Jurisdiction

This paper highlights the conflicting issues surrounding the principles governing the jurisdiction of the International Court of Justice (ICJ). Although the term *"jurisdiction"* is employed in different connotations, jurisdiction in relation to the ICJ is essentially a unitary concept, in the sense that the Court's jurisdiction is entirely consensual. As will be demonstrated, the conditions governing the exercise of this jurisdiction remain firmly within the domain of state consent. The Court may exercise jurisdiction over contentious cases only between states and solely on the basis of the consent of the parties concerned. Such consent constitutes the foundation of the court's jurisdiction.

It is widely acknowledged that no state may be compelled to submit its disputes to judicial settlement, whether before the court or through arbitration. This long-standing principle, which is deeply embedded in the Court's jurisdiction and reflected in Article 36 of the ICJ Statute, is grounded in international practice relating to the peaceful settlement of disputes and flows from the principle of the sovereign equality of states (Reisman, 1993).

The ICJ has consistently adhered to this principle in its jurisprudence. Indeed, the requirement of consent is so fundamental that, in certain circumstances, the consent of a third state whose legal interests are directly affected by the proceedings may also be necessary. In the absence of such consent, the Court may decline jurisdiction, as it did in the *Monetary Gold* case, notwithstanding the fact that all the formal parties to the dispute had accepted the Court's jurisdiction.

Nevertheless, the rigidity traditionally associated with the consensual basis of jurisdiction has been mitigated to some extent by developments in the Court's jurisprudence concerning the manner in which consent may be expressed. The World Court has clarified that consent may be either express or tacit. It need not take any particular form and may, in appropriate circumstances, be inferred from the conduct of states. Furthermore, consent is not required to be given prior to the institution of proceedings (Schachter, 1999).

Major Problems of the International Court of Justice

The ICJ remains a vital institution for promoting peaceful resolution of international disputes. However, its effectiveness is hampered by structural, political, and operational challenges. Addressing these problems requires global cooperation, legal reforms, increased transparency, and stronger enforcement mechanisms (Wenalt 1992).

By adopting the recommended solutions, the ICJ can become a more reliable and powerful instrument of international justice.

The major problems are:

i. Lack of compulsory jurisdiction: The ICJ cannot automatically hear cases involving states unless the states agree to submit to its jurisdiction. Many states do not accept the court's compulsory jurisdiction or provide reservations that limit it. This leads to selective participation and reduces the ICJ's effectiveness.

ii. State Consent Principle (Voluntary Compliance): Even after the ICJ issues judgements, compliance is voluntary. Some states refuse or delay implementation, especially when judgements conflict with national interest.

iii. Political influence and power politics: Major powers manipulate the ICJ work through political pressure, including influencing judge elections or using veto power in the UN Security Council to block enforcement.

iv. Slow judicial processes: ICJ cases often take many years to resolve due to complex procedures, a lack of deadlines and a limited number of judges.

v. Limited Access to the Courts: Only states can appear before the ICJ, an international organisation. W.I., corporations and individuals cannot bring cases, limiting the courts' relevance to global justice issues.

vi. Inadequate Enforcement Mechanisms: The ICJ cannot enforce its own judgements, relying instead on the UN Security Council, which is itself political and often deadlocked.

vii. Problem of limited subject matter jurisdiction: The ICJ focuses mainly on state-to-state disputes. It does not directly address human rights violations, terrorism, multinational corporations or environmental crimes.

viii. Challenges of Impartiality and Representation: Judges are elected by the UN General Assembly and UN Security Council. Political considerations often influence these elections, raising questions about regional balance and neutrality.

ix. Lack of binding precedent: The ICJ does not strictly follow precedent (stare decisis). This leads to inconsistent decisions.

x. Poor limited public awareness: Many citizens and even governments lack understanding of the ICJ's role, leading to low engagement and support (Zartman, 2000).

Jurisdictions under Treaty Causes

The second possibility envisaged in article 36(1) of the statute is where treaties or conventions in force counter jurisdiction on the court. It has become an international practice for states to include in bipartite or multipartite treaties what are known as "compulsory clauses" providing for referral of disputes arising hereunder to the ICJ for settlement (Berridsc 2015).

Accordingly, the parties that are signatories to such an agreement may institute proceedings against the other party by filing with the ICJ an application, or they may conclude another special agreement providing for the issue to be referred to the Court. The treaties or conventions that contain jurisdictional clauses are of two kinds:

i. Treaty for the General Settlement of Disputes
ii. Treaties primarily dealing with other matters that contain a provision for recourse to the ICJ, for instance, *UNCLOS* (Barton, 2019).

Absence of Genuine Compulsory Jurisdiction

One of the major deficiencies of the international legal system lies in the absence of compulsory jurisdiction for the International Court of Justice (ICJ). As has been observed, *"a determined campaign for compulsory jurisdiction of the international court, despite forceful and ingenious arguments advanced in its support, was largely defeated by the intransigent attitude of the major powers."* The vision of compulsory jurisdiction envisaged in 1920 has yet to be realised. Following Lauterpacht, it may be argued that all parties to the Statute of the ICJ can and indeed should be subjected to the Court's compulsory jurisdiction insofar as their disputes concern *legal* matters (Brownlie, 2008).

Voluntarism in international adjudication carries inherent risks and has resulted in an inconsistent system of dispute settlement. This voluntarist approach sits uneasily with the accepted principle of the graduated prohibition of the threat or use of force under Article 2 of the United Nations Charter. In this regard, Judge Nagendra Singh has observed that reliance on voluntary acceptance of jurisdiction undermines the coherence and effectiveness of the international legal order.

Learnt Judge Continues

To ban the use of force and not to provide for obligatory settlement, preferably judicial settlement, is virtually "to put the 'cart' before the horse", and once it is established at law that use of force is illegal, it stands to reason that there must be a compulsory settlement (Bull, 2002).

Therefore, compulsory jurisdiction, at least on a limited scale, can be introduced by amending Article 36(2) to make compulsory jurisdiction possible on some defined matters, for example, interpretation of treaties, border disputes, environmental disputes, etc., regardless of whether or not states have accepted the optional clause.

Another potential approach to enhancing the role of jurisdiction is to reduce the contentious distinctions between justifiable and non-justifiable disputes. It is believed that the court has jurisdiction only to address legal disputes. The terms 'legal disputes' or 'question' figure in Article 33 of the charter and Articles 36(2) and 65(1) of the statute. Given the significance of the issue, delineating clear boundaries between law and politics proves challenging. While the International Court of Justice (ICJ) acknowledges the existence of jurisdictional limitations, it is noteworthy that no dispute has ever been dismissed on the grounds of involving non-legal issues (Cases, 2008).

The Court maintained that to dismiss a case because the legal aspect is only one element of a political dispute would be to impose a far-reaching and unwarranted restriction upon the role of the Court. Taking into consideration the Court's limitations, it is clear that the Court can only assume jurisdiction related to adjudication. On the other hand, "legal disputes" should be liberally interpreted to mean those which are capable of judicial settlement by the application of existing and ascertainable rules of international law. The determination as to whether an issue is a legal or political one could rest with the ICJ instead of the state concerned, and this may go a long way in expanding the jurisdiction of the court (DIXTION, 2013).

Conjunction/Problem of representation and Composition

A fundamental question arises as to whether representation before the Court is directly linked to the core challenges facing the International Court of Justice (ICJ). Without confidence on the part of states and institutions in the Court's impartiality, the ICJ cannot command the authority necessary for effective adjudication. In this context, the system of *ad hoc* judges being at odds with the ideal of an impartial and permanent judiciary, calls for careful reconsideration. One possible reform would be to increase the number of permanent judges, particularly to enhance representation from developing Afro-Asian states, including those in the Middle East. A court that lacks adequate representativeness may find it difficult to fulfil its role in the peaceful settlement of disputes. Moreover, broad geographical representation is essential to ensure a balanced development and application of international law within the Court.

Furthermore, a single permanent world court located in The Hague, however impartial in practice, may not be sufficient to serve the needs of the global community. Pending broader procedural reforms, an expansion in the number of chambers and more

significantly, the establishment of regional benches of the Court under Article 26 of the Statute may provide a practical solution. Such measures would enhance accessibility for developing countries in Asia, Africa, and Latin America while minimising financial and logistical burdens (Dunne, 2020).

The effectiveness of the Court also depends on the extent to which parties make optimal use of the procedural mechanisms already available. Although the statute provides for the creation of chambers to deal with specific categories of cases, this option remained largely unused until the 1980s. In addition, the establishment of a specialised *Grand Chamber*, modelled on the European Court of Human Rights and mandated primarily to render advisory opinions, could be seriously considered. As early as 1920, the General Assembly, through a resolution, drew the attention of states to the possibility of making greater use of chambers (Evans, 2018).

Delay in the disposal of cases remains a persistent concern for court users, with some proceedings extending over several years. The advisory opinion procedure, in particular, can contribute to slowing the Court's work. Consequently, greater emphasis on innovative procedural techniques and practical measures to overcome procedural obstacles to recourse to the Court is required.

In recent years, the Court has undertaken important reforms, including amendments to its rules, the rationalisation of the Registry, the introduction of information technology, and a series of efficiency-orientated measures. These include requests to states to reduce the time gap between the conclusion of the written phase and the commencement of oral proceedings. Collectively, these reforms are intended to enhance the court's operational efficiency.

The role of the ICJ, alongside other international tribunals, has become increasingly complex and contested compared to previous decades. As a result, safeguards to protect the independence of these institutions and their members have assumed heightened importance. Such safeguards include the qualifications required of judges, their commitment to judicial responsibilities, and their methods of work. Equally significant are states' responses to judicial decisions particularly those of the parties to disputes and the broader contribution of judicial rulings to the clarification and progressive development of international law.

Conclusion

Diplomacy and international adjudication are two of the most important mechanisms for maintaining global order, preventing conflicts, and managing global interstate relations. Diplomats function as the principal agents of communication, negotiation, representation and conflict management between sovereign states.

Parallel to these challenges is the role of the International Court of Justice, established as the principal judicial organ of the United Nations to adjudicate disputes between states and provide advisory opinions.

Although the ICJ contributes significantly to the development of international law, its effectiveness is constrained by structural and procedural limitations. The Court's jurisdiction is based on state consent, its enforcement mechanism is weak, and its procedures are often lengthy and resource intensive.

Furthermore, the ICJ's inability to hear these cases brought by necessity to non-state actors restricts its accessibility in a world where global conflict increasingly affects private entities and communication. Consequently, while diplomats navigate conflicting expectations in representing their states, the ICJ faces obstacles in delivering binding and universally respected judgements.

However, the International Court of Justice (ICJ) remains one of the most important pillars of the global legal order, established to promote peaceful settlement of disputes and strengthen international law. Its ability to function effectively is significantly constrained by deep-rooted, structural, political, and procedural challenges. As a result, the ICJ often struggles to meet the expectations placed on it as the principal judicial organ of the United Nations.

Recommendations

Despite these challenges, the ICJ remains indispensable. Its jurisprudence continues to shape international law, influencing indispensable. Its jurisprudence continues to shape international law, influence diplomatic relations, and guide global government. The Court has contributed greatly to peaceful dispute resolution, territorial delimitations, interpretation of treaties and the promotion of international legal norms.

This therefore recommends the strengthening of its institutional framework, legal authority, and political independence to meet the complexities of modern international relations.

The Court needs comprehensive reforms, both internal and external; this must be pursued to ensure that the Court operates with greater efficiency, independence, legitimacy and enforceability. It also expands acceptance of compulsory jurisprudence, extends access to non-state actors and enhances public awareness and education.

The Court should develop regional enforcement and support mechanisms, promote consistency in jurisprudence, increase financial and administrative support and encourage dialogue between courts.

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