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Compulsory Jurisdiction of the International Court of Justice: A Key to Strengthen Rule of Law

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Abstract

This review article aims to evaluate the role of the "compulsory jurisdiction" of the "International Court of Justice" as a key to empowering the rule of law. to do so, the purpose for implementing "compulsory jurisdiction" and the way it had improved. The dispute settlement in ICJ has been discussed. In the literature review, the history of ICJ, issues in countering jurisdiction and ICJ, and the basis of ICJ jurisdiction have been discussed. The research method explains the reason for choosing exploratory design, objectives, approach, and secondary study. In the theoretical framework, the way formalist theory can be used for the judge's decision has been discussed. Further, in the results and discussion, the association between "compulsory jurisdiction" and ICJ, acceptance of ICJs, "compulsory jurisdiction", and the ways to improve global dispute settlement have been mentioned.

Keywords

ICJ, Compulsory Jurisdiction, PICJ, Judge, Formalist Theory, Dispute Settlement

INTRODUCTION

Background

The term "compulsory jurisdiction" is mainly associated with legal disputes. This simply means the jurisdiction that exists by the force of law. As per the "International Court of Justice", this topic is interpreted in the "Basis of the "court's jurisdiction" under the area "compulsory jurisdiction" in legal disputes" [1]. As per the statute, the capability of an "international tribunal" to order and eventually pressure states to contest any dispute before the ICJ is referred to as "compulsory jurisdiction". The "ICJ (ICJ)" is mainly responsible for removing disputes between different countries on different topics by following international rules and regulations [2]. The ICJ is the responsible organization that monitors the implementation of international law and intends to resolve international disputes as per pre-defined disputes.

The organization is responsible for maintaining international guidelines in every area, and that is why, sometimes, it should have the right to enforce rules and regulations on countries to handle specific situations. In this regard, "compulsory jurisdiction" provides that right to the ICJ [3]. The organization currently intends to impose this new guideline across the globe. The purpose is to establish a strong, lawful environment across the world.

Problem Statement and Rationale of the Study

In the background section, it is already stated that the purpose of establishing "compulsory jurisdiction" is to establish a better lawful environment across the globe. This is a new approach of the ICJ and it is not completely accepted by all nations [4].The purpose of this study is to examine the effectiveness of "compulsory jurisdiction" in strengthening the rule of law across the globe. However, the main problem in the process of implementation of this new legal framework is, that many nations have not positively accepted this rule till now [1]. For example, China has not accepted it till now and currently, the United Kingdom is the only country that has accepted it [1]. The rationale of this study is to highlight the positive as well as negative aspects of this new implementation in legal areas.

Aim and Objectives

Aim

The article attempts to investigate the effectiveness of "compulsory jurisdiction" in strengthening the rule of law.

Objectives

- To understand the positive and negative aspects of "compulsory jurisdiction" of ICJ
- To understand the benefits and necessities of implementation of "compulsory jurisdiction"
- To evaluate the challenges in implementing "compulsory jurisdiction" across the world studying cases of different countries

Significance of the study

From the background of the topic, it is understood that there are many positive impacts of implementing "compulsory jurisdiction" along with some adversities, and because of these adversities, many countries do not prefer to agree with the implementation of "compulsory jurisdiction" [3]. In such a scenario, this study analyses both the positive and negative impacts of this legal framework which may be helpful for countries to make data-driven and impactful decisions in this regard [1]. Overall, this study intends to

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facilitate the implementation of "compulsory jurisdiction" across the globe and that is the significance of this study.

LITERATURE REVIEW

History of the ICJ

The court building constituted the highest point of the long development methods for the Pacific agreement of global disputes, the origin of which can return to the classical period. Article 33 of the Charter of the UN arranges the following approaches for the Pacific agreement of disputes between different states – enquiry, negotiation, arbitration, conciliation, judicial settlement, and recourse to the regional arrangements, to which better offices need to be added [5]. However, the current history of global arbitration is identified as dating from the elite" treaty of 1794" between the USA and Great Britain. Later, the proceedings acted as an explanation of the efficiency of arbitration in the agreement of biggest disputes and it late throughout the future years of the 19th century to growth in different administrations, namely – a rapid growth in the exercise of inserting clauses in settlements giving for resources to arbitration in the occasion of dispute among parties. After this, "Article 14" of the "Covenant of the League of Nations" provided the "Council of the League" accountability for creating plans for the implementation of a permanent international justice court. It kept for the League Council to take the required action to provide impact to Article 14.

Figure 1: History of ICJ
(Source: Blair, 2020)

Issues Encountering the ICJ and Jurisdiction

The most significant issue encountering the ICJ widens on its jurisdiction. This is an essential condition for the application of "judicial authority." Wherever it is insufficient, a judicial embodiment cannot use the legislative binding "judicial authority" over a matter. The obligation of jurisdiction can be located in the foremost report of the "judicial trial." Jurisdiction is a strength by which the court and the officers take scrutiny and determine cases [6]. Whereas the judicial officer's deficit the particular authority, and try to take attention of, and determine upon any issue, will be stated as "null and void." In sequence for the "ICJ" to arbitrate a case, the "International Court" needs to determine the primary matter, both the problem of jurisdiction along the problem of admissibility.

The jurisdiction problems are those that in turn lead from either the tribunal having the authority and strength to consider the case given by the state; whereas, the problems of the tribunal deciding even if the case is adequate itself for deciding when to bring before the court [7]. Therefore, the problems of jurisdiction need to lead to any problems of admissibility as the problems of admissibility can only be issued in the jurisdiction of the court that has been arranged. "*Competence De La competence"* is a well-arranged principle of legislation, giving a tribunal the strength to decide in case it has the "judicial authority" to use jurisdiction in a provided matter. The ICJ is particularly strengthened to use this authority under "Article 36(6)" of the court status.

It explains that– in the occasion of a complaint, as to in case the tribunal has authority, the matter needs to be solved by the judgement of the tribunal. The ICJ uses this authority as a resolved "principle of judicial practice" along under the allowing status [8]. Once the primary objective has been issued, dependent on the judicial, the immediate consequence is that the hearings need to be suspended as long as the court takes an end decision on the complaint. Furthermore, a judicial issue may appear on a different basis. For instance, a participant state might be raising queries about the complaint by a user state to increase the level of jurisdiction under the obligation of the treaty, or in critical circumstances, the "respondent state" may be attempting to frustrate the decision of the dis-settlements to ignore political shame.

Irrespective of the justification, the responding state needs to improve its jurisdictional objectivity as soon as possible in the settlements by filing a primary objection. Through filing the complaint, the "respondent state" becomes the user state in the fresh and different proceeding, particularly in deciding the validity of the complaint [9]. Every decision needs a huge level of significance to the dispute. In case the complaint is upheld, the issue is automatically dissolved. The complaints based on admissibility are systematically secondary to the complaints premised on jurisdiction. For raising the complaints based on admissibility, the "respondent state" needs to have the consent of the "court's jurisdiction."

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Basis of International "court's jurisdiction"

The "court's jurisdiction" in constant proceedings is dependent on the approval of the nation to which it is required. The form where this consent is given decides how the complaint may be submitted at the court.

- Special agreement – "Article 36" of the status gives that the court's jurisdiction includes all cases that the applicants refer to [10]. These cases generally come to the court by information of the registry of a contract, called a special contract, ended by the parties, particularly for the purpose.

Figure 2: Basis of ICJ
(Source: Gill, and Ramachandran, 2021)

- Matters given for conventions and in treaties – Article 36 also gives that the "court's jurisdiction" consists of all the cases particularly given for "conventions and in treaties" in force. These cases are generally presented in front of the court by written applications. It is a unilateral contract that needs to indicate the dispute subject and the parties as clearly as possible, mentioning the amenities on which the candidate finds the jurisdiction [11].
- Necessary jurisdiction on legislative disputes – the law gives that a state might identify as a must, in connection to any other state, adopting a similar obligation, the "court's jurisdiction" in legislative disputes. These issues are presented in the court by hard-copy applications. The origin of legislative disputes in reference to which these "compulsory jurisdictions may be identified or recorded in Article 36.
- Judgement interpretation – Article 60 of the law states that in the situation of a dispute, to indicate the scope of a judgement, the court needs to interpret it at the request of any of the parties [12]. The request of this understanding may be created either by a special contract between the parties or by a request by the parties.

RESEARCH METHODS

Design and Approach

Research design is categorised into two classes – exploratory and conclusive [13]. In this context, ***exploratory*** design has been selected. The reason for this is that this design tries to explore particular areas of a study matter. It does not provide to concentrate on giving conclusive answers. With the help of this design, the importance of "compulsory jurisdiction" and the way it strengthens the law has been discussed. Contrarily, the use of the ***abduction*** approach is done here as this means to use the premises to create testable conclusions. Further, it aims to generalise communications between particulars and the general.

Inclusion/ exclusion criteria

Inclusion criteria recognise the population in a constant, valid, and reliable manner. Whereas, exclusion criteria consist of the characteristics that make the study ineligible [14]. In this context, only English language articles, published from 2019 to now have been considered. Contrarily, doctorate dissertations, articles before 2019, and other languages have been excluded from the study.

Study type

The type of study as per the nature of the research is categorised into two classes – descriptive and analytical [15]. Whereas, based on purpose, it is divided into applied and fundamental study. In this context, the implementation of ***applied*** research has been tried. This is due to the fact that it aims to highlight the way "compulsory jurisdiction" in the ICJ helps in strengthening the law. Furthermore, following this, the ***secondary*** study is implemented.

Sampling and data collection

In order to implement this research, the ***nonprobability*** sampling type is chosen. This is because the samples are created on a random basis, particularly focusing on the data that mentions the "compulsory jurisdiction" of the ICJ. In order to collect the data from different secondary sources, the use of ***Google Scholar, Academia, DRJI*** and so on has been chosen.

3.5 Data analysis

Lastly, for data analysis, ***qualitative*** data analysis is followed and the use of ***thematic*** analysis has been done. this is one of the best secondary methods for evaluating qualitative information that consists of reading through different data sets to identify patterns and create themes. This is an active way of reflexivity where the subjective experience of the researcher can be used to make the data applicable.

THEORETICAL FRAMEWORK

The art of jurisdiction decision-making is the main area of the international justice system – a few other public executives have the strength and influence to guide judges. Nonetheless, the procedure of the way judges make decisions has been confounded and inquired about by different scholars for centuries [16]. However, by combining different parts of the theories with practical perceptions of the international and local judges, the conclusion can be drawn based on the

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theory and its application. In this regard, the use of the ***Formalist theory*** has been done. Different from the realists, the formalists keep the perception that the opinion of every judge is compatible to be categorised into three parts. The equation includes – the regulations of law, R; the case facts, F; the judge's decision, D. This is manifested by the formula R*F= D. As highlighted by this equation, the formula of the formalist depends mainly on the existence of the legislation.

The rule of legislation, as implemented by the statutory authority, is the single portion of this formula that guides the decision of a judge. Once discovered, the rule is then carefully utilised in the case after the jurisdiction has investigated and decided on the relevant information [4]. Since the result is one displayed through the use of the mathematical equation, the result needs to be reached by any other jurisdiction utilising a similar equation under the same situation [17]. The formalists also depend heavily on the appearance and determination of the real information of the conference controversy prior to reaching the court. The implied assumption is that the process mentioned above a factual and legislative case evaluation is achieved, by shortcut and airtight way of deductive reasoning. The pharmacist does not forecast or compensate for judge jurisdiction imperfections or different factual situations that may not be acknowledged by a specific rule of legislation.

This procedure assumes that the information and the legislation or, indeed, compatible with the utmost autopsy and are not twisted. This theory also maintains that once the information has been decided, the jurisdiction will identify the appropriate rule of legislation and then make an appropriate decision. As mentioned, the formalist declares that judicial decisions are the items of two fixed factors – the information and the rule of legislation [18]. The decision of a judge is the outcome of the addition of these two factors. It is, thus, frequently predictable. Opposite to this perception, the realists condemn that this theory is an intellectual approach, that can be applied by an individual with knowledge of both the information and the legislation applicable to the specific case.

CONCEPTUAL FRAMEWORK

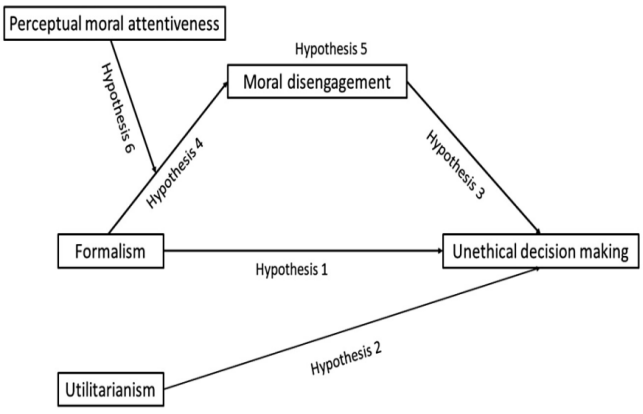

Figure 3: Formalist theory and legal decision-making (Source: Pavel, 2021)

6. RESULTS AND DISCUSSION

Association between "compulsory jurisdiction" and ICJ

In order to give a better differentiation of the success of voluntary jurisdiction under two different embodiments of the international court, the researchers first need to proceed with an explanation of the case highlighted in PCIG including "compulsory jurisdiction." For differentiation purposes, the researchers in the past had dependent on of very recent evaluation of the case of "compulsory jurisdiction" under ICJ sponsorship [19]. For evaluating the impact of "compulsory jurisdiction", on the result of the ICJ case, the totality of these complaints was categorised into 4 classes – class I– where the "respondent state" does not make any preliminary complaint; class II, where the preliminary objections were confirmed by the court; class III, where preliminary complaints were overruled by ICJ, yet merit to decisions backed up the submission of "respondent state" and the last category class IV, where the court validated the case of applicant state in on both complaint and merits.

Past investigations and the issuance of the ICJ cases made the fact clear that "compulsory jurisdiction" does not improve the rule of the court in class I, that would generally have been submitted to the court without "compulsory jurisdiction" and neither in class II, as in these situations, the court simply discovers its insufficient jurisdiction [20]. Thus, only III and IV cases give an investigation of the "compulsory jurisdiction" of the court. The registration for the ICJ in these classes is rather gloomy. Furthermore, resistance to the "compulsory jurisdiction" and decisions of the court in the current year seems to be more authorising than anticipated. A casual look at the CIG cases, on the contrary, highlights the success of the "compulsory jurisdiction" of the court throughout the interval time.

Acceptance of "compulsory jurisdiction" in ICJ

The system, dependent on what has been called from the period of the PCIJ, as the voluntary clause, has directed the making of state groups, whose position in connection to the court is differentiable, in a perception, to that of the residence of a nation in reference to the judicial courts [21]. Every state connecting with this class has a principal with the authority to be any one or more than one other state of the team at the court by filing a complaint. This is the reason declaration, to which objections might be attached, or called declarations of adoption of "compulsory jurisdiction" of ICJ. This acceptance that takes the shape of a unilateral act of the concerned state, is deposited with the UN Secretary-General and is basically signed by the past minister of the state or by the representative of the UN.

The implementation of the jurisdiction of the court on this approach is frequently complicated by the situations, attached to the adaptation of "compulsory jurisdiction," that are aimed to restrict their scope. The maximum of these declarations includes reservations, excluding the jurisdiction referring to different problems. At first, 44 states restricted their voluntary clause acceptance by using other dispute

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agreement mechanisms as decided between the parties [3]. Secondly, 35 states have restricted their acknowledgement to the jurisdiction of the court, mentioning that this acceptance only takes into consideration the disputes highlighted after the consent date was provided and the concerning environment after the date. In number 3, 28 states have restricted the aim of their voluntary clause acceptance by excluding situations, failing within their home jurisdiction under Article 2, of the UN charter.

	States accepting compulsory jurisdiction	States parties to the Statute
1925 (PCIJ)	23	36
1930	29	42
1935	42	49
1940	32	50
1945 (ICJ)	23	51
1950	35	61
1955	32	64
1960	39	85
1965	40	118
1970	46	129
1975	45	147
1980	47	157
1985	46	162
1990	53	162
1995	59	187
2000	63	189
2005	65	191
2010	66	192
2013	70	193
2018	73	193

Figure 4: Historical development of compulsory jurisdiction acceptance
(Source: Thirlway, 2022)

For instance, in 1933, ***"Anglo-Iranian Oil Co." in the "UK Vs. Iran" case,*** "compulsory jurisdiction" was used. At the start, 10 nations originally used such limitations in their acceptance of "compulsory jurisdiction". The ICJ confirmed the objection dependent on the reservation in the initial case and did not acknowledge it in the future case, since it sustains an opposition dependent on other external grounds. In these situations, a few members of the judicial courts expressed their perception that such limitations were different to the statute. Also, several states have taken this into consideration. Other ***case examples are: "Liechtenstein v. Guatemala", "Aerial Incident of 27 July 1955 (Israel v. Bulgaria)", "Aerial Incident of 10 August 1999 (Pakistan v. India)" and "Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)"***A situation of their acceptance stating that the judicial court does not have the authority unless all parties to a provided treaty may be impacted by the decision of the court or also the parties to the complaint at the court. It also indicates the need for "compulsory jurisdiction" acceptance.

Ways to improve international dispute settlement

Improved state agreement to the "compulsory jurisdiction" of the ICJ and compliance with its determination would empower the rule of legislation, as senior UN officials manifested in the security council throughout the debate revolving around the rule of legislation among different countries through offering different perceptions on the way to best control global relations and resolve disputes. it is manifested that from the tiniest village to the worldwide stage, the rule of new legislation is all that takes place between peace and balance and an extreme struggle for strength and resources [21]. The global community is at a huge risk of the rule of no legislation. Disputes are a fact that must not limit growth elsewhere. According to different researchers, even though the encounter now does not manifest any major inconsistencies between the arbitral award, acknowledging crosscutting regulations, a few decisions reviewed instability by a few parties.

Also, the changing landscape in investment arbitration is directed to discussions with the OECD committee along with the context of ICSID on the probability of the making of a new appeal mechanism. It is also argued that the organisation is in a different position to encourage creativity and progress in regard to the rules of legislation, as no other worldwide entity has the legitimacy, and compatibility to bring individuals together [22]. In addition to that, the ICJ occupies a particular place in these different mandates to acknowledge its "compulsory jurisdiction." Furthermore, the President of ICJ also mentioned that being involved with the global dispute settlement alludes to more than adopting jurisdiction, as states need to collaborate in proceedings given to them. Moreover, the rule of legislation needs states to abide by the decisions of ICJ and tribunals that are collaborating on them – even in case not all the parties agree to that ruling.

CONCLUSION

The review article discusses the understanding of compulsory jurisdiction, its advantages, and the way it was started in ICJ. The history of compulsory jurisdiction adaptation and ways to enhance the settlement functions are further mentioned. From the discussions in this report, it is evident that Article 36 of the law of ICJ is of huge significance in increasing the compulsory jurisdiction of the court. However, the jurisdiction requires to be rationalised by making a division for working for other violating activities. Hence, it can be concluded that in this way, ICJ, within its restricted jurisdiction, can help resolve significant global disputes and thereby contribute to making sure that global peace and security are achieved. It is this evident success, as differentiated, with the defeat of the ICJ, that is intended to be explored in future in an in-depth manner. It is further concluded that the formalist theory mentioned here puts huge force in the comprehensive collaboration of both general and statutory legislation, and enhances the capability of judges to highlight the applicable regulations of law in developing a result.

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