The International Court of Justice

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"Where laws end, tyranny begins."--William Pitt (1759-1806)

International Disputes Need Law and Judges

The law--being bound to local territory, culture, and history--does not willingly embrace the march of globalization. We know that the laws and procedures governing us can differ considerably from one municipality to another in the same region of the province. The variations are even greater across provinces, Imagine then the challenge of law to ensure justice between foreign citizens or sovereign states with vastly different laws, cultures, and legal systems!

Yet the United Nations must try to resolve international disputes by the rule of law before the rule of force threatens to settle them. Moreover, several domains such as human rights, maritime activities, war, space, free trade, biological diversity, and the environment enjoy an international consensus that has been codified into treaties and conventions. This body of agreements that are voluntarily signed on to by most states is known as international law, together with international custom and the general principles of law recognized by civilized nations. If there is an international law, especially where it is based upon ethereal customs, there must be an international court to declare, interpret and apply it. This is the job of the world court, also known as the International Court of Justice.

In March 1995, Spain took Canada to the world court against the Canadian Coastal Fisheries Protection Act and the pursuit, boarding and seizure on the high sea of a fishing vessel, the Estai, which had been flying the Spanish flag. Spain requested a declaration from the Court that Canadian fisheries legislation cannot be invoked against Spain, and that the boarding and seizure of the Estai constituted "a concrete violation of the norms and principles of international law." Spain 'also asked for money to compensate for the incident. Before we tell you the outcome, let's find out more about the International Court of Justice.

History of the International Court

Established by the League of Nations in 1922, the Permanent Court of International Justice (PCIJ) was promising but not permanent. The PCIJ determined international disputes submitted by states and gave advisory opinions on questions from the League Council or Assembly. By the end of the Second World War, the PCIJ was formally dissolved, along with the League of Nations itself. A new International Court of Justice (ICJ) was established as the principal judicial organ of the United Nations, through articles 7 and 92 of the Charter of the United Nations. The

ICJ has survived 60 years and is seated in the Peace Palace at The Hague, in the Netherlands, the same location as the former PCIJ. It has its own Statute that elaborates on the enabling UN Charter articles, and it has made its own Rules of Court.

Proceedings at the ICJ include a written stage and an oral stage. At the written stage of proceedings, the parties submit pleadings containing statements about the facts of the dispute and law. The pleadings are confidential until final judgment. The oral phase normally lasts two to three weeks. Proceedings before the ICJ are open to the public unless they are closed by order of the Court.

The dispute may be settled at any stage of the proceedings or the Court will render judgment on the merits of the case. The Court deliberates in secret to facilitate unhampered and effective deliberations. Like the Supreme Court of Canada, the ICJ delivers judgment in French and English. The judgment of the ICJ, by a simple majority of judges present, is binding on the parties to the dispute only and there is no appeal. It is a part-time court. Despite the whole world having access to the ICJ (including non-members of the UN), it has rendered only 89 judgments in almost 60 years. The Supreme Court of Canada decides almost that many cases each year with nine judges. The full text of all ICJ judgments is found at http://www.icj-cij.org/icjwww/idecisions.htm.

Composition

Reflecting the need for broad representation perhaps more than workload, the ICJ has 15 independent, elected judges. Every three years one-third of the judges are elected for nine-year terms, and they are eligible for reelection. States propose candidates "from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law." To be elected, a candidate must receive an absolute majority of votes in both the General Assembly and the Security Council.

Judges are elected without regard to nationality, but the Court may not have more than one national of the same country. The distribution of judges reflects the principal regions of the world, and not population: Africa (3), Latin America (2), Asia (3), Western Europe and other states (5), and Eastern Europe (2). Each of the five permanent members of the Security Council (France, China, Russia, the United Kingdom, and the United States) have always had a judge on the Court. Canada has had judges on the ICJ in the past.

As a confidence-building gesture to parties, there is a judge on the panel from each country to the dispute. Therefore, each country that is a party before the ICJ may appoint an ad hoc judge for that case, although technically the ICJ judges are not government representatives. To safeguard the Court's independence, judges cannot be dismissed unless the Court itself unanimously determines that a judge cannot fulfill the required conditions, but this has never happened.

The Parties and Jurisdiction

An international legal dispute could fore-seeably involve countries, international organizations, and individuals. Regional courts such as the European Court of Human Rights welcome disputes involving those three kinds of parties. The ICJ, however, only determines cases between countries, according to article 34 of the Statute, but any country in the world can use the ICJ.

The ICJ can decide a dispute ("has jurisdiction") only if the countries involved have consented to it. This consent may be manifested by making a special agreement or declaration to submit an existing dispute to the Court, or by incorporating ICJ jurisdictional clauses into international agreements. Such jurisdictional clauses (similar to arbitration clauses in private contracts) have been incorporated into hundreds of international treaties and conventions. Sixty-five countries, including Canada, have also declared their consent to the Court's compulsory jurisdiction (article 36(2) of the Statute). This means that each one of these countries can bring any other signatory states before the Court. Yet states can still limit their consent to the ICJ. Several of these states have excluded from compulsory jurisdiction all domestic legal matters. In cases where jurisdiction is not clear, the Court determines at the beginning of the case whether or not it has jurisdiction.

The Spanish case against Canada in 1995 argued that the ICJ had jurisdiction as both states had accepted its compulsory jurisdiction. Canada said that the ICJ lacked jurisdiction because this was a domestic fisheries matter. Since the Court comprised neither a Spanish nor Canadian judge, each party selected a judge ad hoc to sit on the case. The Court resolved 12-5 that it had no jurisdiction to decide the dispute. Canada had declared compulsory acceptance of the ICJ's jurisdiction, but it had limited its consent with another declaration excluding the jurisdiction of the ICJ in "... disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the Northwest Atlantic Fisheries Organization Regulatory Area.... and the enforcement of such measures."

This latter limitation was to allow Canada to enforce its Coastal Fisheries Protection Act, legislation to facilitate urgent federal measures to prevent depletion offish stocks on the Grand Banks of Newfoundland. Thus, Canada avoided an international showdown on its fisheries conservation and management programs (Spain v. Canada decision is at http://www.icjcij.org/icjwww/idocket/iec/iecframe.htm). Presumably any country which does not want to be embarrassed by the ICJ could revoke its consent to jurisdiction.

The most recent contentious case was between Romania and the Ukraine where the ICJ was called upon to draw a line in the Black Sea between those two countries. This was similar to another case in which Canada was a party. In 1984, the ICJ was asked by Canada and the United States to draw the border for the continental shelf and the 200 mile exclusive fishery zone in the Gulf of Maine region. The main interest in that frontier dispute was oil and gas development, not fishing.

Yugoslavia sued all of the NATO countries, including Canada, participating in the Kosovo war in the late 1990s. The ICJ did not find it had jurisdiction to decide the case, averting a politically contentious litigation.

Advisory Opinions

Countries alone can be parties to contentious cases at the ICJ. However, the UN General Assembly or the Security Council (but not individual states) can ask the Court for an advisory opinion "on any legal question" (UN Charter, article 96)." Four other UN bodies, such as the Economic and Social Council, and sixteen specialized agencies may also request advisory opinions from the Court "on legal questions arising within the scope of their activities." The United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO) have been two of the few agencies to obtain such advisory opinions. The most recent advisory cases are about the legality of the Israeli-West Bank barrier and the legality of the threat or use of nuclear weapons. The Court's advisory opinions are also usually non-binding and resemble the "reference" procedure in Canada where the provincial and federal governments can ask the highest appellate courts in their jurisdiction for hypothetical legal opinions on current and controversial issues.

Comparison with Other International Courts

The International Court of Justice is the world court in terms of possessing the broadest jurisdiction in applying international law with the consent of states. It should not, however, be confused with the UN's more recent International Criminal Court (from July 2002) (www.icc-cpi.int), also housed in The Hague and currently led by a Canadian. It is also distinct from Belgium's War Crimes Tribunal, to which anyone may bring war crimes charges in Belgian courts under Belgian law, regardless of where the alleged crimes have taken place. We have seen where the regional EU (European Union) courts have a different mandate and approach than the ICJ. Other treaties, such as NAFTA, call for the establishment of ad hoc international arbitration panels to interpret and enforce their provisions.

Conclusion

The principal judicial institution of the United Nations is the International Court of Justice, located in the Netherlands. Its website is http://www.icj-cij.org. Like national judiciaries, it is independent from the UN legislative branch (the Security Council and General Assembly) and the executive branch (the Secretariat). It is staffed with 15 highly qualified jurists from around the world. As the Court renders its decisions on disputes between states and issues advisory opinions in assisting other UN agencies, it contributes to the development of international law.

The International Court of Justice has no means to enforce its rulings which already have limited jurisprudential clout. If a country does not want an adverse judgment, it may withhold consent to the Court's hearing and deciding the case. This is a significant departure from the binding nature of domestic courts. The International Court of Justice's long-term survival is dependent on its political legitimacy. That kind of international political acceptance would be endangered if it frequently issued unpopular rulings against powerful states, and those states ignored the rulings. Overall, the world court--operating in a political context--will be reluctant to take on politically controversial cases of significance. Nevertheless, it provides another forum for hope for the resolution of international disputes, a hope consistent with the mandate of the United Nations.

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