



GSJ: Volume 11, Issue 11 November 2023, Online: ISSN 2320-9186
www.globalscientificjournal.com

**EVALUATION OF THE JURISDICTION AND THE ROLE OF APPOINTMENT OF
JUDGES TO THE OFFICES OF INTERNATIONAL COURT OF JUSTICE**

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Abstract

The Permanent Court of International Justice (PCI) was created to develop international arbitral mechanism, to provide comprehensive system serving the international community and to prevent outbreaks of violence by enabling easily accessible methods of dispute settlement. It later metamorphosed to the International Court of Justice (ICJ) presided by autonomous judges regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices. The procedure for the appointment is highly scrutinized without recourse to any political influence. The ICJ is a judicial institution and exercise its jurisdiction on the basis of international law as it is not a governmental structure. The aim of this research is to discuss the role of International Court of Justice ICJ, to apprise the role of appointment of judicial officer and to discuss the Jurisdiction of Court of International Court of Justice (ICJ) on legal dispute. The research methodology adopted is doctrinal method by consulting text books, article(s), journal(s) and statutes.

Keywords: International Court, Justice, dispute, judicial institution, political etc.

1.0 Introduction

Generally, judicial settlement at the international level comprises the activities of all international and regional courts deciding dispute between subjects of international law, in accordance with the rules and principles of international law. Members of such bodies includes; the European Court of Justice (EC), the European Court of Human Rights,¹ the Inter-American Court of Human Rights² and so forth. However, by far the most important of such bodies both by prestige and jurisdiction is the International Court of Justice,³ hereafter referred to as ICJ. The International Court of Justice came into birth through conference among states. Its jurisdiction is based on international law and has concurrent jurisdiction with different organ of the United Nations.

The International Court of Justice is a world court that has jurisdiction in both civil and criminal proceedings in subject of international law. The court shall consist of Fifteen Members, no two of whom may be nationals of the same state.

This research looked at the brief history of the international Court of Justice, the composition of the justices of the ICJ, the procedure of their appointment and the jurisdiction of the Court. The jurisdiction in terms of the law applicable to the court, its concurrent jurisdiction with other bodies of the United Nations and its jurisdiction on legal disputes. The research was concluded by discussing the manner of appointing a judge adhoc of the Court.

2. 0 Antecedents of International Court of Justice

¹ Javaid Rehman *International Human Rights Law* 2nd ed. (England: person education Limoted,1 2010), 248-251 Both the Community and the Court were committed to protection of fundamental rights, in particular those contain in constitutional frame work of member State.

² See Davidson, *The Inter-American Court of Human Rights* (Dartmouth, 1992), 135; Article 53 (2)ACHR: Article 4 (1) Statute of the Inter- American Court on Human Rights, O.A.S. Res 448 (IX-0/79)

³ Malcolm Nathal Shaw, *International Law*, 5th ed.(United Kingdom: Cambridge University Press 2003), 960

The impetus to create a world court for the international community developed as a result of the atmosphere engendered by the Hague Conference of 1897 and 1907.⁴ The establishment of the Permanent Court of Arbitration, although neither Permanent nor, in fact, a court marked an important step forward in the consolidation of an international legal system. However, no lasting concrete steps were taken until after the conclusion of the First World War. The covenant of the League of Nations called for the formulation of proposals, for the creation of a World Court and in 1920, the Permanent Court of International Justice (PCI) was created with the following functions;

1. An effort to develop international arbitral mechanism together with arbitration.
2. To provide a reasonably comprehensive system serving the international community.
3. To prevent outbreaks of violence by enabling easily accessible methods of dispute settlement in the context of a legal and organizational framework to be made available.⁵

The Permanent Court of International Justice here in after referred to as (PCIJ) was superseded after the Second World War by the International Court of Justice (ICJ) described in Article 92 of the United Nation Charter as “principal judicial organ”. In essence, it is a prolongation of the Permanent Court with virtually the same statute and jurisdiction and with a continuing line of cases, no distinction being made between those decided by the PCIJ and those by the ICJ.⁶ Article 92 of the charter stated thus;

The international Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present charter. The Statute of the International Court of Justice is the rules that govern all the affair of the ICJ.

⁴ M Ellen O’ Connell and L Vanderzee ‘History of International Adjudication’, 61 <https://www.corteidh.org>. accessed 25th October 2023

⁵ Rosenne, *Law and Practice* Vol. 19 cited by N. Shaw Loc. cit

⁶ Ibid

3.0 Judges of the International Court of justice

The court shall be composed of a body of independent judges elected regardless of their nationality from among persons of high moral character,⁷ who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are *juris consults* of recognized competence in international law.⁸

The court shall consist of Fifteen Members, no two of whom may be nationals of the same state.⁹ In other words, two judges cannot be from the same state. The person who for the purposes of membership in the court, could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.¹⁰

4.0 Procedure for Appointment of Judges

The procedure for the appointment of judges is combined of both legal and political elements, while seeking to exclude as far as possible the influence of National States over them. The system established by the Root. Philemon plan in 1920 is in essence followed; ¹¹

1. The members of the court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.
2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the

⁷ In the case of Nigeria the Supreme Court established by section 230 of the Constitution of the Federal Republic of Nigeria (as amended) is the apex court. By section 231 (3) a person shall be qualified to be a Justice of Supreme Court if he is a legal practitioner in Nigeria and has been so qualified for a period not less than fifteen years. Professor Taslim Olawale Elias was the first African judge to be appointed as president of the International Court of Justice in The Hague. He was the longest serving judge at the ICJ.

⁸ Article 2 of Statute of the International Court of Justice.

⁹ Ibid Article 3 (1)

¹⁰ Ibid

¹¹ L. Lloyed *Peace through Law*, London: 1997 cited by N Shaw Op.Cit, 961

Permanent Court of Arbitration by Article 44 of the Convention of the Hague of 1907 for the pacific settlement of International dispute.¹² Article 44 stated thus; *Each Contracting Power selects four persons at the most, of known competence in questions of international law of the highest moral reputation and disposed to accept the duties of Arbitrator.*

The persons thus selected are inscribed as members of the court, in a list which shall be notified to all the contracting powers by the Bureau. Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the contracting powers. Two or more powers may agree on the selection in common of one or more members. The same person may be selected by different powers. The members of the court are appointed for a term 6 years. Their appointments can be renewed. Should a Member of the court die or resign, the same procedure is followed in filling the vacancy as was followed in appointing him. In this case, the appointment is made for a fresh period of 6 years.

When the contracting powers wish to have recourse to the Permanent Court for the settlement of differences which has arisen between them, the Arbitrators called upon to form the Tribunal to decide this difference must be chosen from the general list of Member of the Court. Supplementing the composition of the Arbitration Tribunal by agreement between the parties, the following course shall be pursued;- each party appoints two Arbitrators of whom one only can be its national or chosen from among the persons selected by it as Members of the Permanent Court. These Arbitrators together choose an umpire. If the votes are equally divided, the choice of the umpire is entrusted to as a 3rd power, selected by agreements between the parties. If an agreement is not arrived at on this subject each party selects a different power and the choice of the umpire is made in the powers thus selected. If within 2 months' time, these two powers cannot come to an agreement, each of them present two candidates taken from the list of

¹² Article 4 (1), (2), (3) of Statute the Status of International Court of Justice

Members of Permanent Courts. The candidates presented shall be umpire shall be by LOT.¹³

3. The conditions under which a State which is a party to the present statute but is not a Member of the United Nations may participate in electing the Members of the Court shall in the absence of a special agreement be laid down by the General Assembly upon recommendation of the Security Council. At least, three months before the date of the election, the Secretary General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present statute and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake within a given home by national groups, the nomination of persons in a position to accept the duties of a member of the court. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case, may the number of candidates nominated by a group be more than double the number of seats to be filled.¹⁴

5.0 The Jurisdiction of ICJ

General, the International Court is a judicial institution that decides cases on the basis of international law as it is not a legislative organ.¹⁵ *The court has emphasized that “it states the existing law and does not legislate. This is so even if, in stating and applying the law, the court necessarily has to specify its scope and sometimes note its general trend.”*¹⁶ Its views as to what the law is are of the highest authority. However, the matters that come before it are invariably intertwined with political factors. On occasions, such matters are also the subject of consideration before political organs of the UN or other international organizations, or indeed,

¹³ Article 45

¹⁴ Article 5

¹⁵ *Fisheries Jurisdiction Case*, I.C.J Reports, 1974

¹⁶ *Legality of the threat or use of Nuclear Weapons*, I.C.J Reports, 1996 , 226

the subject of bilateral negotiations between the parties. This raises issues as to the proper function and the role of the court.

The International Court of Justice is by virtue of Article 92 of the charter the “principal judicial organ of the United Nations.”¹⁷ It is also as Judge Lachs put it, “*the guardian of legality for the international community as a whole both within and without the United Nations*”. In *Northern Cameroons case*,¹⁸ it was emphasized that the “function of the Court is to state the law.” In case of political issues it must be established that the dispute in question was a legal dispute. “in the sense of dispute capable of being settled by the application of principle and rules of international law.” The fact that other elements are present cannot detract from the characterization of a dispute as a legal dispute.¹⁹ The court has also referred to the assessment of the legality of the possible conduct of states with regard to international legal obligations as an “essentially judicial task.”²⁰

5.1 Concurrent Jurisdiction of ICJ

The fact that the same general political situation may come before different organs of the UN has raised the problems of concurrent jurisdiction.²¹ The court, however, has been consistently clear that, the fact that, the issue before the court is also the subject of active negotiations between the parties,²² or the subject of good offices activity by the UN Secretary General²³ or the subject of

¹⁷ *The Lockerbie Case*, I.C.J Reports 1992, 326

¹⁸ I.C.J Reports 1988, 16:91

¹⁹ See *Armed Actions (Nicaragua V Honduras) case* I.C.J Reports 1988, 16, 91

²⁰ *Iranian Hostage case* I.C.J Report 1980 ,719-720

²¹ See *Advisory opinion on the legality of the use of a state of nuclear Weapons in Armed Conflict*, I.C.J Reports 1996, Pp 66, 73.

²² N Shaw Op. Cit. 968

²³ *Aegean See Continental Shelf Case* I.C.J Reports 1976 pp 31,260

consideration by the Security Council,²⁴ or regional organization,²⁵ will not detract the competence of the court or the exercise of its judicial function. The court has noted that the Security Council has functions of a political nature, while the court itself has functions of a legal nature and that therefore, both organs could perform their separate but complementary functions with respect to the same events.²⁶ The court may also indicate provisional measures of protection at the same time as the UN Secretary General is organizing a fact finding mission to investigate the same event.²⁷ The courts essential function is to resolve in accordance with international law disputes placed before it and to refrain from deciding points not included in the final submissions of the parties.²⁸ The Concept of jurisdiction also imports the notions of *Seisin*, which relates to the way in which the court's jurisdiction is first engaged. The court noted in the *Qatar I Bahrain case*²⁹ that as an act of instituting proceedings, seisin is a procedural steps independent of the basis of jurisdiction involved; although, the question as to whether the court has been validly seized was a question of jurisdiction.³⁰

The court has underlined that the question as to the establishment of jurisdiction is a matter for the court itself. Although, a party seeking to assert a fact must prove it, the issue of jurisdiction is a question of law to be resolved by the court in the light of the relevant facts.³¹ Further, jurisdiction must be determined at the time that the act instituting proceedings was filed so that if the court had jurisdiction at that date, it will continue to have jurisdiction irrespective of

²⁴ *Iranian Hostage Case (Supra)*

²⁵ *Nicaragua Case (Supra)*

²⁶ *Ibid*

²⁷ *Cameroon vs. Nigeria (preliminary objections)* I.C.J Reports 1998 pp. 275 and 307

²⁸ *Ibid*

²⁹ See *the request for the interpretation of the judgment in the Asylum Case*, I.C.J Reports, 1950 pp. 395, 402.

³⁰ I.C.J Reports 1995 pp. 6, 23-24

³¹ Thirl way "*Law and procedure*", 1998 pp. 1, 10, cited by N. Shaw p. 969.

subsequent events.³² Subsequent events may lead to a finding that an application has become moot, but cannot deprive the court of jurisdiction.³³

5.2 Jurisdiction of Court of International Court of Justice (ICJ) on legal dispute

Article 36 of the Statute of court provides thus;

- (1) The jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
- (2) The state parties to the present Statute may at any time declare that they recognize as compulsory *Ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the court in all legal dispute concerning.
 - (a) the interpretation of a treaty;
 - (b) any question of interactional law ;
 - (c) the existence of any fact which if established, would constitute a breach of an international obligation;
 - (d) the nature or extent of the reparation to be made for the breach of an international obligation
- (3) The declarations referred to in sub (2) above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
- (4) Such declaration shall be deposited with the Secretary- General of the United Nations, who shall transmit copies thereof to the parties to the statute and to the Registrar of the court.
- (5) Declarations made under article 36 of the Statute of the Permanent court of International Justice and which are still in force shall be deemed, as between the parties to the present

³² *Spain vs. Canada Case* I.C.J Reports 1998 pp.432, 450

³³ N Shaw Loc. cit

statute to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

- (6) In the event of dispute as to as to whether the court has jurisdiction will be settled by the decision of the court.

Article 36 (2) above is termed as the “Option Clause” the provision was intended to operate as a method of increasing the court’s jurisdiction, by the gradual increase in its acceptance by more and more states.³⁴

The court discussed the nature of such declarations mentioned in article 36 in the *Cameroon vs Nigeria*.³⁵ As follows;

Any state party to the Statute in adherin to the jurisdiction of the court in accordance with article 36 Paragraph (2) accepts jurisdiction in its relations with States previously having adhered to that clause. At the same time, it makes a standing offer to the other states parties to the Statute which have not yet deposited a declaration of acceptance. The day one of those states accepts that offer by depositing in its declaration of acceptance; the consensual bond is established and no further condition needs to be met

Declarations pursuant to article 36 (2) are in the majority of cases conditional and as noted, are dependent upon reciprocity for operation. This means that the court will only have jurisdiction under Art. 36 (2) where the declarations of the two parties in dispute meet the doctrine of lowest common denominator operates

6.0 Conclusion

The Statute of the International Court of Justice ICJ consisting of seventy articles, is annexed to the UN Charter. A member of the UN is automatically a signatory to the Statute which is an

³⁴ N. Shaw OP. Cit. page 978-979

³⁵ ICJ Reports, 1998, pp.275,291

integral part of UN Charter. Under Article 30 (1) of the Statute “*the court shall frame the rule for carrying out its functions. In particular, it shall lay down rules of procedure*” the court has adopted rules to supplement those rules stated in the Statute. The first set of rules adopted on 6th May, 1964 was based on the 1936 Rules which came into force in 1978.³⁶

To make the court truly universal, the members must represent “the main forms of civilization and of the principal legal systems of the world”³⁷ they are exclusively at the disposal of the court and nine of them form quorum. The president of the court plays an important role; apart from exercising the casting vote in the event of a tie, he appoints members as arbitrators, umpires and members of commissioners or other offices.³⁸

A party to a dispute before the court, who has no member on it, may appoint adhoc judges of its nationality on the panel. Such a judge enjoys the same diplomatic immunity as a head of mission. The appointment of a judge adhoc is defended on the ground that he may have an insight of the dispute which the regular judges may not have and strengthens the confidence of his appointer in the court. The court may, if it wishes, appoint assessors in cases with complicated details. Assessor may also be introduced by the parties who may also ask for a case to be decided in chambers with lesser formalities, rather than in open court.³⁹

³⁶ ICJ Acts and documents No. 4, 92-161

³⁷ Article 9

³⁸ U.O Umuzurike., *Introduction to International Law* 3rd ed. (Ibadan; Spectrum Books Limited, 2007) , 191

³⁹ Ibid see also Frontier Dispute (*Burkina Faso/ Republic of Mali*) ICJ Rep. 1986 p. 554

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