



The Role of the International Court of Justice in the Development of International Criminal Law

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دور محكمة العدل الدولية في تطوير القانون الجنائي الدولي

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Abstract

This research paper examines the pivotal role of the International Court of Justice (ICJ) in the evolution and development of international criminal law. Despite its primary jurisdiction over disputes between states, the ICJ's judgments and advisory opinions have significantly influenced the interpretation and application of international legal principles, including those pertaining to international crimes such as genocide, war crimes, and crimes against humanity. The paper distinguishes the ICJ from the International Criminal Court (ICC), highlighting their respective mandates and contributions to international justice. By analyzing key cases and legal doctrines, this study demonstrates how the ICJ, through its jurisprudence, has contributed to clarifying state responsibility for international crimes and reinforcing the normative framework of international criminal law. It also addresses the challenges and criticisms faced by the ICJ in this domain, particularly concerning its jurisdictional limitations and the enforcement of its decisions. Ultimately, this paper argues that the ICJ's indirect yet profound impact on international criminal law is indispensable for fostering accountability and upholding the rule of law in the international arena.

Keywords: International Court of Justice, international criminal law, international crimes, state responsibility, international justice.

المخلص

تتناول هذه الورقة البحثية الدور المحوري الذي تؤديه محكمة العدل الدولية في تطور وتقدم القانون الجنائي الدولي. فعلى الرغم من أن اختصاصها الأساسي يتركز في تسوية النزاعات بين الدول، فقد كان لأحكامها وآرائها الاستشارية تأثير بالغ في تفسير وتطبيق المبادئ القانونية الدولية، بما في ذلك تلك المتعلقة بالجرائم الدولية مثل الإبادة الجماعية وجرائم الحرب والجرائم ضد الإنسانية. وتُميز الورقة بين محكمة العدل الدولية والمحكمة الجنائية الدولية من حيث المهام والصلاحيات، مسطرة الضوء على إسهامات كل منهما في تحقيق العدالة الدولية. ومن خلال تحليل قضايا رئيسية ومبادئ قانونية مهمة، تُبين الدراسة كيف أسهمت محكمة العدل الدولية، من خلال اجتهاداتها القضائية، في توضيح مسؤولية الدول عن الجرائم الدولية وتعزيز الإطار المعياري للقانون الجنائي الدولي. كما تتناول التحديات والانتقادات التي تواجه المحكمة في هذا المجال، لا سيما ما يتعلق بحدود اختصاصها وصعوبة تنفيذ قراراتها. وتخلص الورقة إلى أن تأثير المحكمة غير المباشر، ولكنه العميق، في القانون الجنائي الدولي يُعد أمراً لا غنى عنه لتعزيز المساءلة وترسيخ سيادة القانون في الساحة الدولية.

الكلمات المفتاحية: محكمة العدل الدولية، القانون الجنائي الدولي، الجرائم الدولية، المسؤولية الدولية، العدالة الدولية.

1. Introduction

1.1. Background on International Law and the need for International Justice

International law, a complex body of rules and principles governing the relations between states and other international actors, has undergone significant evolution throughout history. Its development has been driven by a continuous pursuit of order, stability, and justice in an increasingly interconnected world. The aftermath of major global conflicts, particularly the two World Wars, underscored the urgent need for robust international legal frameworks to prevent atrocities and hold perpetrators accountable. This realization led to the establishment of various international institutions and the codification of international norms aimed at regulating state conduct and

protecting fundamental human rights. The concept of international justice emerged as a cornerstone of this evolving legal order, emphasizing the imperative to address grave violations of international law that transcend national boundaries and affect the conscience of humanity. The pursuit of international justice seeks to ensure that individuals and states responsible for such egregious acts are held accountable, thereby deterring future crimes and promoting lasting peace and security.

1.2. Overview of the International Court of Justice (ICJ)

The International Court of Justice (ICJ), often referred to as the "World Court," stands as the principal judicial organ of the United Nations. Established in 1945 by the Charter of the United Nations, the ICJ succeeded the Permanent Court of International Justice (PCIJ), which operated under the League of Nations. Its primary function is to settle legal disputes submitted to it by states in accordance with international law and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. The Court is composed of 15 judges elected for nine-year terms by the United Nations General Assembly and the Security Council. Operating from the Peace Palace in The Hague, Netherlands, the ICJ plays a crucial role in the peaceful resolution of international disputes and the progressive development of international law. Its judgments are binding on the parties to a case and are final, without appeal. The Court's jurisprudence has contributed significantly to clarifying various aspects of international law, including territorial disputes, maritime boundaries, diplomatic protection, and the use of force.

1.3. Distinction between ICJ and International Criminal Court (ICC)

Despite their shared location in The Hague and their common objective of upholding international law, the International Court of Justice (ICJ) and the International Criminal Court (ICC) possess distinct mandates and jurisdictions, leading to frequent confusion. The fundamental difference lies in the entities they prosecute and the nature of the cases they handle. The ICJ is a civil court that adjudicates disputes between states. Its jurisdiction is limited to states, meaning only states can be parties to cases before it. The ICJ's role is to interpret and apply international law to resolve inter-state conflicts, and its judgments primarily concern state responsibility. In contrast, the ICC is a criminal court with jurisdiction over individuals accused of the most serious international crimes: genocide, war crimes, crimes against humanity, and the crime of aggression. The ICC's focus is on individual criminal responsibility, and it complements national judicial systems when they are unwilling or unable to genuinely prosecute such crimes. While the ICJ is an organ of the United Nations, the ICC is legally independent, though it maintains a cooperative relationship with the UN. This distinction is crucial for understanding their respective contributions to the broader landscape of international justice [6].

1.4. Research Question/Thesis Statement

This research paper aims to explore the extent to which the International Court of Justice (ICJ), through its contentious cases and advisory opinions, has contributed to the development and clarification of international criminal law principles. Specifically, it seeks to answer: How has the ICJ's jurisprudence, despite its primary focus on inter state disputes, influenced the understanding and application of international criminal law, particularly concerning state responsibility for international crimes? This paper argues that while the ICJ does not directly prosecute individuals for international crimes, its interpretations of international law, particularly in cases involving grave breaches of humanitarian law and human rights, have indirectly but significantly shaped the normative framework of international criminal law and reinforced the principle of state accountability for such violations.

2. The International Court of Justice: Jurisdiction and Judgments

2.1. Historical Context and Establishment

The evolution of international judicial bodies is a testament to the international community's continuous efforts to establish a rules-based order and resolve disputes peacefully. The journey towards the establishment of the International Court of Justice (ICJ) is rooted in earlier attempts to institutionalize international arbitration and judicial settlement.

2.1.1. Hague Conventions (1899, 1907) and Permanent Court of Arbitration

The late 19th and early 20th centuries witnessed a growing recognition of the need for mechanisms to prevent armed conflicts. The Hague Peace Conferences of 1899 and 1907 were pivotal in this regard. While they did not establish a permanent international court with compulsory jurisdiction, they led to the creation of the Permanent Court of Arbitration (PCA). The PCA, established in 1899, is not a court in the traditional sense but rather a framework for arbitral tribunals and commissions to resolve disputes between states. It provided a significant step towards the peaceful settlement of international disputes by offering a permanent administrative infrastructure for arbitration, thereby laying foundational principles for future international judicial institutions [15].

2.1.2. League of Nations and Permanent Court of International Justice (PCIJ)

The devastation of World War I spurred a more ambitious drive towards international cooperation and the establishment of a robust international legal order. The League of Nations, founded in 1920, was the first intergovernmental organization whose principal mission was to maintain world peace. As part of its framework, the Permanent Court of International Justice (PCIJ) was established in 1922 [16]. The PCIJ was the first permanent international court with general jurisdiction, marking a significant advancement from the ad hoc nature of arbitration. It heard cases between states and issued advisory opinions, contributing substantially to the development of international law through its jurisprudence. Many of the PCIJ's practices and procedures were later adopted by its successor, the ICJ, highlighting its enduring legacy in international adjudication [17].

2.1.3. Establishment of ICJ under the UN Charter

The failure of the League of Nations to prevent World War II led to the creation of the United Nations in 1945, with a renewed commitment to international peace and security. The International Court of Justice (ICJ) was established as one of the six principal organs of the United Nations, succeeding the PCIJ. Its Statute is an integral part of the UN Charter, reflecting its central role within the international legal system. The ICJ inherited the PCIJ's jurisdiction and many of its operational principles, but with the enhanced legitimacy and universal membership of the United Nations. Its establishment signified a global consensus on the importance of judicial settlement as a means of resolving disputes between states and upholding the rule of international law.

2.2. Jurisdiction of the ICJ

The ICJ's jurisdiction is primarily based on the consent of states, which can be expressed in various ways [18]. The Court exercises two main types of jurisdictions: contentious jurisdiction and advisory jurisdiction.

2.2.1. Contentious Cases (Jurisdiction over States)

The contentious jurisdiction of the ICJ allows it to settle legal disputes between states. Only states can be parties in contentious cases before the Court. The consent of states to the Court's jurisdiction can be given through special agreement (ad hoc consent for a specific dispute), treaties or conventions (where states agree in advance to submit disputes arising from the treaty to the ICJ), or through declarations accepting compulsory jurisdiction (the Optional Clause). The Court applies international law, including international conventions, international custom, general principles of law, judicial decisions, and the teachings of the most highly qualified publicists. Its judgments are binding on the parties to the dispute and are final and without appeal.

2.2.2. Advisory Opinions (Legal questions from UN organs)

In addition to its contentious jurisdiction, the ICJ also has advisory jurisdiction, allowing it to provide advisory opinions on legal questions [10]. These opinions are not binding but carry significant legal authority and contribute to the clarification and development of international law [11]. Requests for advisory opinions can be made by the General Assembly or the Security Council of the United Nations, or by other organs and specialized agencies of the UN authorized by the General Assembly. Advisory opinions often address complex legal issues that have broad implications for international relations and the interpretation of international law [12]. While not directly resolving disputes between states, they can provide authoritative guidance on the legality of certain actions or the interpretation of international instruments, thereby indirectly influencing state behavior and the evolution of international legal norms [13], [14].

2.3. Composition and Election of Judges

The ICJ is composed of 15 judges, who are elected for terms of nine years by the United Nations General Assembly and the Security Council. Elections are held every three years, with one-third of the Court retiring each time. Retiring judges may be re-elected. The judges are chosen 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. Care is taken to ensure that the principal legal systems of the world and the main forms of civilization are represented on the Court. No two judges may be nationals of the same state. Judges act as independent magistrates and do not represent their governments. This ensures the impartiality and independence of the Court in its deliberations and judgments.

2.4. Judgments of the ICJ

The judgments of the International Court of Justice are a cornerstone of the international legal system, providing authoritative interpretations of international law and contributing to its progressive development.

2.4.1. Binding Nature and Finality

Article 59 of the ICJ Statute stipulates that the decision of the Court has no binding force except between the parties in respect of that particular case. However, Article 60 states that the judgment is final and without appeal

[19]. This means that once a judgment is rendered, it is conclusive for the parties involved in that specific dispute. While the principle of stare decisis (precedent) does not formally apply in international law as it does in common law systems, the ICJ's judgments are highly influential and are frequently cited as authoritative interpretations of international law by states, international organizations, and other courts. The binding nature of judgments on the parties underscores the Court's role in the peaceful settlement of disputes and the enforcement of international legal obligations.

2.4.2. Interpretation and Revision of Judgments

In certain circumstances, parties may request the interpretation or revision of an ICJ judgment. Article 60 of the Statute allows for a request for interpretation if there is a dispute as to the meaning or scope of the judgment. This mechanism ensures clarity and prevents further disputes arising from ambiguities in the Court's decision. Furthermore, Article 61 provides for the possibility of revision of a judgment, but only upon the discovery of some fact of such a nature as to be a decisive factor, which was unknown to the Court and also to the party claiming revision at the time the judgment was given. Such a request must be made within six months of the discovery of the new fact and within ten years of the date of the judgment. These provisions reflect the need for both finality and flexibility in international adjudication, allowing for adjustments in exceptional circumstances while preserving the integrity of the judicial process.

3. ICJ's Contribution to International Criminal Law

While the International Court of Justice (ICJ) does not directly prosecute individuals for international crimes, its jurisprudence has significantly contributed to the development and clarification of international criminal law (ICL) principles. This influence is primarily indirect, stemming from its interpretations of general international law, which often intersect with the elements and scope of international crimes.

3.1. General Principles of International Criminal Law

International criminal law is a relatively young but rapidly evolving field that seeks to hold individuals accountable for the most heinous crimes affecting the international community as a whole. These crimes typically include genocide, crimes against humanity, war crimes, and the crime of aggression. The foundational principles of ICL are derived from various sources, including international treaties (such as the Rome Statute of the International Criminal Court), customary international law, and general principles of law recognized by civilized nations [20], [21]. Key principles include *nullum crimen sine lege* (no crime without law), *nulla poena sine lege* (no punishment without law), individual criminal responsibility, command responsibility, and the prohibition of certain defenses like superior orders. The ICJ, in its role as the principal judicial organ of the UN, has often had to interpret and apply broader principles of international law that underpin these criminal concepts, thereby indirectly shaping their understanding and application.

3.2. ICJ's Role in Interpreting and Applying International Criminal Law Principles

The ICJ's contribution to ICL often arises when states bring cases concerning violations of international obligations that have a criminal dimension. Although the Court cannot impose criminal sanctions on individuals, its pronouncements on state responsibility for breaches of international law, including those related to international crimes, have profound implications for ICL. For instance, when the ICJ determines that a state has violated its obligations under the Genocide Convention, it implicitly clarifies the elements of genocide and the scope of state responsibility for preventing and punishing such crimes. These interpretations, while not directly binding on criminal courts, serve as authoritative guidance for the international legal community, influencing the development of customary international law and the jurisprudence of international criminal tribunals.

3.3. Specific Cases and Advisory Opinions related to International Criminal Law

Several landmark cases before the ICJ have had a direct or indirect bearing on international criminal law, particularly concerning the crime of genocide and other grave international offenses.

3.3.1. Genocide Convention Cases (e.g., *Bosnia and Herzegovina v. Serbia and Montenegro*, *The Gambia v. Myanmar*)

The ICJ has played a crucial role in interpreting and applying the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Two prominent cases illustrate this contribution:

- **Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) [1]:** This seminal case, decided in 2007, was the first time the ICJ ruled on the merits of a case concerning the Genocide Convention. The Court found Serbia (then Serbia and Montenegro) responsible for failing to prevent the Srebrenica genocide and for failing to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) in handing over General Ratko Mladić. While the Court did not find Serbia directly responsible for committing genocide, its judgment provided crucial interpretations of the Genocide Convention,

particularly regarding the concept of state responsibility for complicity in genocide and the obligation to prevent genocide. The Court clarified the high evidentiary threshold required to prove genocidal intent and distinguished between genocide and ethnic cleansing, emphasizing that only acts committed with the specific intent to destroy, in whole or in part, a national, ethnical, racial, or religious group fall under the Convention [7].

• **Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)** [2]: In this ongoing case, The Gambia instituted proceedings against Myanmar concerning alleged violations of the Genocide Convention against the Rohingya minority. In 2020, the ICJ issued provisional measures, ordering Myanmar to take all measures within its power to prevent all genocidal acts against the Rohingya. This case is significant as it reaffirms the *erga omnes* nature of the obligations under the Genocide Convention, meaning that any state party to the Convention can bring a claim against another state party for alleged breaches, even if it is not directly affected by the alleged genocide. The Court's order for provisional measures underscored the urgency of preventing potential genocidal acts and highlighted the international community's collective responsibility to uphold the Convention [8].

These cases demonstrate the ICJ's critical role in clarifying the scope and application of the Genocide Convention, thereby contributing to the development of international criminal law by defining the parameters of state responsibility for this gravest of crimes [9].

3.3.2. War Crimes and Crimes Against Humanity (indirect contributions through interpretation of international law)

While the ICJ does not directly address war crimes or crimes against humanity in the same manner as the ICC, its interpretations of general international law, particularly humanitarian law and human rights law, often have indirect implications for these categories of international crimes. For example, in cases concerning the legality of the use of force or the treatment of individuals during armed conflict, the ICJ's pronouncements on the principles of proportionality, distinction, and military necessity contribute to the broader understanding of norms that, when violated, can constitute war crimes. Similarly, the Court's emphasis on fundamental human rights, even in times of armed conflict, can reinforce the legal framework against crimes against humanity. Although these contributions are indirect, they are vital in shaping the normative environment within which international criminal law operates.

3.4. Impact on State Responsibility for International Crimes

The ICJ's jurisprudence has significantly impacted the understanding of state responsibility for international crimes. By holding states accountable for breaches of international law, including those that may constitute or contribute to international crimes, the Court reinforces the principle that states have obligations not only to their own citizens but also to the international community as a whole. The ICJ's findings on state responsibility can serve as a basis for diplomatic pressure, sanctions, or reparations, even if they do not lead to individual criminal prosecutions. This emphasis on state accountability complements the work of international criminal tribunals by addressing the broader context in which international crimes occur and by encouraging states to fulfill their obligations to prevent and punish such offenses within their own jurisdictions. The interplay between state responsibility (ICJ) and individual criminal responsibility (ICC) is crucial for a comprehensive approach to international justice.

4. Challenges and Criticisms

Despite its significant contributions to international law, including its indirect influence on international criminal law, the International Court of Justice (ICJ) faces several challenges and criticisms, particularly concerning its role in addressing international crimes. These limitations stem primarily from its foundational mandate as a court for states, rather than individuals, and the inherent complexities of international relations.

4.1. Limitations of ICJ's Jurisdiction in Criminal Matters (States vs. Individuals)

The most fundamental limitation of the ICJ in the context of international criminal law is its jurisdiction *ratione personae*. As established in its Statute, only states may be parties in cases before the Court. This means the ICJ cannot prosecute individuals for international crimes, nor can it impose criminal penalties. This is a crucial distinction from the International Criminal Court (ICC) and other *ad hoc* international criminal tribunals (e.g., ICTY, ICTR), which are specifically designed to hold individuals criminally responsible. While the ICJ can determine a state's responsibility for breaches of international law that may involve international crimes (e.g., a state's failure to prevent genocide), it cannot directly address the individual perpetrators of those crimes. This jurisdictional gap often leads to public misunderstanding and frustration, as victims and the international community may seek direct accountability for individuals, which the ICJ is not empowered to provide.

4.2. Enforcement of ICJ Judgments

Another significant challenge for the ICJ, which indirectly affects its impact on international criminal law, is the enforcement of its judgments. While ICJ judgments are legally binding on the parties to a dispute, the Court lacks its own enforcement mechanism. If a state fails to comply with a judgment, the other party may have recourse to the United Nations Security Council, which can decide upon measures to give effect to the judgment (Article 94(2) of the UN Charter). However, the effectiveness of this enforcement mechanism is often hampered by the political dynamics within the Security Council, particularly the veto power of its permanent members. This political dimension can undermine the Court's authority and lead to situations where states, especially powerful ones, may not fully comply with adverse rulings. In the context of international crimes, a state's non-compliance with an ICJ judgment related to its obligations (e.g., to prevent genocide) can perpetuate impunity and hinder efforts to achieve justice.

4.3. Political Influence and State Sovereignty

The ICJ operates within a system of sovereign states, and its work is inevitably influenced by political considerations. States, as the primary subjects of international law, often prioritize their national interests and sovereignty, which can sometimes conflict with the impartial application of international law. This is particularly evident in cases involving sensitive issues such as international crimes, where accusations can have profound political and diplomatic ramifications. The Court's reliance on state consent for jurisdiction also means that states can choose not to appear before the Court or not to accept its jurisdiction in certain matters, thereby limiting its reach. Furthermore, the election of judges by the General Assembly and Security Council, while designed to ensure broad representation, can also be subject to political maneuvering. These political influences, while inherent in the international system, can sometimes be perceived as compromising the Court's independence and effectiveness, especially when dealing with powerful states or highly politicized disputes related to international criminal law.

5. Conclusion

5.1. Summary of ICJ's Role and Contributions

The International Court of Justice (ICJ), as the principal judicial organ of the United Nations, plays a unique and indispensable role in the international legal order. While its primary mandate is to settle disputes between states and provide advisory opinions on legal questions, its jurisprudence has had a significant, albeit indirect, impact on the development and clarification of international criminal law (ICL). The ICJ's contributions stem from its authoritative interpretations of general international law, including treaties and customary norms, which often underpin the principles of ICL. Through landmark cases, particularly those concerning the Genocide Convention, the Court has clarified the scope of state obligations to prevent and punish international crimes, and has reinforced the concept of state responsibility for such egregious acts. Its pronouncements on the elements of international crimes, the nature of *erga omnes* partes obligations, and the interplay between state and individual responsibility have provided crucial guidance for the international legal community and influenced the jurisprudence of international criminal tribunals. The ICJ's work, therefore, serves as a vital complement to the direct prosecution of individuals by courts like the ICC, by addressing the broader state-level accountability for international crimes.

5.2. Future Outlook and Recommendations

The future outlook for the ICJ's role in the context of international criminal law is complex but promising. As international law continues to evolve and the international community increasingly demands accountability for mass atrocities, the ICJ's interpretations of state obligations will remain highly relevant. To further enhance its indirect contribution to ICL, several recommendations can be considered. Firstly, greater cooperation and dialogue between the ICJ and international criminal tribunals could foster a more coherent and mutually reinforcing body of jurisprudence. While their mandates differ, their shared objective of upholding international law can be better served through coordinated efforts. Secondly, states should be encouraged to make greater use of the ICJ's contentious jurisdiction in cases involving alleged breaches of international law with a criminal dimension, thereby allowing the Court to further clarify state responsibilities. Thirdly, continued academic and legal analysis of the ICJ's judgments and advisory opinions, specifically through the lens of ICL, can help to highlight and amplify its indirect contributions. Finally, public education on the distinct roles of the ICJ and the ICC is crucial to manage expectations and ensure a clear understanding of how each institution contributes to the multifaceted pursuit of international justice. By embracing these recommendations, the international community can further leverage the ICJ's unique position to strengthen the normative framework of international criminal law and advance the cause of accountability for the gravest crimes.

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