

Jurisdiction Issues of the International Court and the effectiveness of ICJ's Decision in the Russia-Ukraine Dispute Resolution

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Abstrack: *In order for the Court to have jurisdiction over international issues, the disputing parties must accede to the Court's jurisdiction. Ukraine has independently brought its case before the International Court of Justice in its dispute with Russia. This calls into question both the Court's ability to resolve the issue and its own jurisdiction over it. Article 36, clauses 1-3, and article 41 of the Statute of the ICJ will be referenced in order to respond to these inquiries. This article uses a normative methodology. The research objective is to examine the effectiveness of the international court's decision. The method used in this research is normative. The approach method used is deductive. The research results show that the Court of International Justice does not have jurisdiction to issue a final decision but only has jurisdiction to issue a Provisional Measures. However this Provisional Measures will not be effective because the security council resolution as a means of forcing the implementation of the Provisional Measures will fail to be issued due to the Russian veto.*

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Introduction

The only UN body currently available for judicial settlements between nations is the International Court of Justice (ICJ) (article 92 of the UN Charter). The PCIJ, which was established on April 18, 1946, is replaced by this organization, which also carries on its legacy. The PCIJ is distinct from the LBB, whereas the International Court is a fundamental component of the United Nations. This is demonstrated by the fact that the PCIJ legislation is distinct from the LBB Pact, but the ICJ Statute is an annex to the UN Charter (Gammas, 2021).

All UN members automatically become parties to the Statute of the ICJ, according to Article 93 of the UN Charter. In accordance with Article 93 Paragraph 2, non-UN members may also join the Court as parties. The ICJ is open to both member and non-member nations, as stated in article 35 of the Court's Statute.

As a UN member, Ukraine has brought Russia's invasion of Ukraine before the ICJ (Tim, 2022). Don't seeking permission from Russia, Ukraine unilaterally submitted this dispute. Russia did not attend the first trial and instead informed the court through letter that it was uninterested in taking part. In the trial, Ukraine has made the following demands: 1) Sanction Russia for claiming that Moscow was planning a genocide. 2. Requesting intervention from the Court to halt Russia's invasion of Ukraine 3. Request payment from Russia. 4. Requesting that the Court issue Provisional Measures, specifically requesting that Moscow immediately halt all military actions in Russia.

Because Ukraine unilaterally brought the matter to the ICJ without Russia's approval, Russia believes it is not bound by the ruling. The idea of sovereignty, a fundamental component of the current international legal order, is the subject of Russia's denial. Even though there may be inequalities in the political, military, cultural, social, economic, or other spheres between nations, the state has the legal capacity to uphold all of its rights and obligations under international law. No country may assert jurisdiction over another sovereign state without that state's permission in the absence of a treaty.

It is necessary to obtain state consent (from the disputing parties) before submitting a matter to the ICJ (Nurullah, 2015). The ICJ's Statute, however, states in its provisions of Article 36, paragraph 1, that "It shouldn't be taken to mean that the Court only has jurisdiction when the contending nations submit a case jointly. If one party agrees or later agrees to unilaterally submit a matter to the Court without a Special Agreement or previous compromise, or if there is voluntary acceptance of jurisdiction and such permission is not necessary prior to the trial process (forum prorogatum), it is deemed sufficient."

Unilateral action in selecting a dispute resolution process is in violation of both article 36 paragraph 1 of the ICJ and article 33 of the UN Charter. ICJ, however, has ruled in favor of one of Ukraine's petitions and issued a Provisional Measures. This calls into doubt the ICJ's authority to resolve the Ukraine-Russia conflict as well as the legal force of its ruling against Russia.

Research on the conflict between Ukraine and Russia has been carried out by previous researchers. As was done by (Putra et al., 2022), this research discusses ways of settling international disputes. Furthermore, research that discusses the form of dispute resolution between Ukraine and Russia (Syaroni & Nugroho, 2019). Furthermore, research that discusses the impact of the dispute between Ukraine and Russia on the economies of the states of Southeast Asia (Bakrie et al., 2022). There are also those who examine the factors as well as the impact resulting from the conflict between Russia and Ukraine (Atok, 2022). further research that specifically examines the economic embargo which is the European Union's confrontation strategy against Russia during the conflict with Ukraine (Hanifah, 2017).

According to the studies mentioned above, nobody has yet talked about how well international court rulings on disputes between Russia and Ukraine. So, this research aims to close this gap. Does the ICJ have the authority to

consider and rule on issues brought by Ukraine? is the study's key issue. And how effective is the ICJ's ruling? Analysis of the Court's jurisdiction in the Russia-Ukraine dispute and analysis of the decision's efficacy based on articles 36, paragraphs 1-3, and 41 of the Statute of the ICJ are the goals this research

Research Method

This study of the ICJ's jurisdiction over the conflict between Russia and Ukraine employs a normative approach to legal research. The major premise and then the minor premise are presented in the deductive method. The rule of law is the major premise, while a legal reality is the minor premise (Marzuki., 2013). Searching for reference sources on legal norms, such as laws and regulations, legal principles, and legal doctrines, will be carried out by researchers in studying normative law to look for legal constructions and their relationships (Muhaimin, 2020).

Legal resources, legal sources from around the nation and the world, as well as legal sources found in publications and online, are all used to assess this research. The notion of sovereignty, the norms of jurisdiction, and other concepts upheld by both national and international law are researched in this subject using sources of national law. The UN Charter and the Statute of ICJ are two examples of the international legal sources used in the study.

Discussion and Results

The jurisdiction of the International Court of Justice in examining and deciding cases brought by Ukraine

A theory concerning the essence of the state, especially the concept of sovereignty, has been developed in response to the 1648 Westphalia Peace Treaty, which established the framework for a contemporary international society based on national states. sovereignty is a source of authority. According to Boer Mauna, the negative definition of sovereignty is when "the state is not subject to any power and wherever it comes from without the approval of the concerned country" (Mauna, 2005). Meanwhile, the state's independence and sovereignty mean that it is not subject to a higher power, according to Miguel (Riyanto, 2012).

The state has the power to control both internal and exterior affairs based on its sovereignty. Jean Bodin examines sovereignty from the inside out, focusing on the state's ability to control its citizens and territory (Ardhiwisastra, 1999).. Grotius looks at sovereignty from the outside, that is, how it relates to other nations. Outside sovereignty is often referred to as independence and equality (Ardhiwisastra, 1999).

International courts, in contrast to national courts, are often facultative, meaning that all parties to the issue must agree before a country can bring a matter to an international court. Due to the violation of the State's sovereignty, it has not been possible for a country to freely involve another country in a matter that it wants to bring before an international court (Mauna, 2005).

The word "jurisdiction" is comes from Latin "ius," where "juris" stands for "law" and "dicere" for "speaking." If one were to understand the word's origin,

jurisdiction would mean the passing of laws in a region or regions (Parthiana, 1990). I Wayan says jurisdiction entails "the authority or power that a court or another state body possesses in accordance with international law (Sefriani, 2016). Although Jan Remmelink proposed the following definition of judicial jurisdiction: "As well as the power to sentence someone and the fact that the judiciary has jurisdiction (Remmelink, 2003). Chapter II of the Statute, which is broken down into the following sections, governs the ICJ's jurisdiction:

- a. Jurisdiction *ratio personae*, or the people who are permitted to bring cases before the ICJ; and
- b. Jurisdiction *material ratio*, or the kinds of issues that may be brought.

Regarding to personal jurisdiction, or those who have the right to bring matters before ICJ, article 34 paragraph 1 indicates that only states may join claims before ICJ; individuals or international organizations are not permitted to do so. International organizations may, however, request counsel (an advisory opinion) from the Court on the legal matters they are facing under paragraphs 2 and 3 of the same article.

The jurisdiction of the Court includes all cases submitted by the parties to the dispute, particularly those contained in the UN Charter or in applicable agreements and conventions, according to article 36 paragraph 1. This refers to the jurisdiction of the *material ratio*, i.e. the kinds of disputes that can be filed.

According to the aforementioned clauses, the Court has jurisdiction over all cases submitted by the parties. The notification of a bilateral agreement known as the *Compromise* is typically how the submission is made (Starke, 2011). A compromise is also referred to as a special agreement when the parties concur to refer cases to the Court with explicit assent to the Court's jurisdiction. Because it needs the consent of both parties, this compromise or special agreement is not binding.

The articles above clarify that the parties who are bound by the "Declaration," also known as the *Optional Clause* to accept the jurisdiction of the Court, are subject to the jurisdiction of the Court. In reality, several nations enforce conditions (reservations), and even abolish this *Optional Clause*. So that the nation making the reservation is not bound by the Declaration's action. Additionally, one of the requirements for issuing a Declaration is the reciprocity principle, which has the potential to restrict jurisdiction (Article 36 paragraph 3).

ICJ must determine whether Russia has made a Declaration or accepted the *Optional Clause* on acceptance of the jurisdiction of the court under accords pertaining to Russia's invasion of Ukraine in order to respond to Russia's refusal to take its case there. Since it is now known that Russia has neither made a declaration or accepted the *Optional Clause*, the Court's jurisdiction based on Article 36 paragraph 2 is also inapplicable.

The Court also has the authority to order temporary measures to protect the interests of the parties to a dispute by taking into account the emergency that arose and the urgency of the situation, as described in Article 41 of the Statute respecting incidental jurisdiction. The *Provisional Measures* also aim to stop "disputes from deteriorating or growing at any time." ICJ's Statute grants this incidental jurisdiction, ensuring that state consent is not required for its

implementation (Winarwati, 2014). Article 75 of the Rules of Court, which reads, "The Court may at any time," emphasizes this court's competence.

On September 11, 1976, the Court issued a Provisional Measure similar to this in the case of the Aegean Sea Continental Shelf (Greece and Turkey). Only when there is a potential for irreparable harm to the party requesting the action or when one of the parties is believed to have violated a UN charter requirement is an interim decision offered (Uswah, 2022).

A Provisional Measures can be presented based on: 1) the following, according to article 73 of the 1978 Rules of Court. Any point during the inspection process, either party may submit a written request, or both parties may do so jointly. A request for the Court to give a temporary ruling may be made by one or both disputing parties, 3). The opposing party must accept the Court's jurisdiction if the case is independently submitted. An order, decision, or prohibition can be used to describe the temporary decision.

The Effectiveness of International Court Decisions

The nations of the globe have confirmed the globally recognized legal force of international law at several international conferences. The United Nations organization was founded as a result of a summit held in San Francisco in 1945. The legitimacy of international law is embodied in the United Nations Charter. The ICJ's mandate is to "decide in accordance with international law such matters submitted to it," according to the ICJ Statute that is annexed to the UN Charter. (Statute, Article 38).

There is still no worldwide mandatory jurisdiction to settle legal disputes between nations, even though the United Nations has the authority to re-establish an ICJ under the term ICJ. The ICJ has mandatory competence under Article 41 of the Statute to issue temporary orders to preserve the interests of the disputing parties. If one of the parties does not carry out the decision voluntarily, there is no coercive effort. According to paragraph (2) of article 94 of the UN Charter, if one party disobeys the terms of a court ruling, the other party may use coercive measures against that party (Tirta, 2011).

This vast amount of authority is granted to the Security Council in regard to its principal mission under Article 24(1) of the Charter to uphold international peace and security while abiding by the values and purposes of the United Nations in carrying out its duties. (The Charter's Article 24(2)).

If the party opposing the decision is a permanent member of the Security Council with veto power, it presents a second issue with regard to the decision's execution. Politically, it appears that implementing Article 94(2) above will be challenging (Sefriani, 1997).

The parties who agree to take the case before the ICJ often comply with the court's decisions by agreeing to accept whatever verdict the court ultimately renders. However, in cases when a party unilaterally submits a disagreement, it is likely that the other party will not abide by the court's ruling. Permanent arbitration courts have demonstrated this in the United States-Nicaragua and Philippines-China conflicts. In the Russian-Ukrainian conflict, it was also demonstrated that Russia disregarded the Provisional Measures imposed by the Court, particularly because Russia refused to consent to the case being filed

before the ICJ from the outset. Consequently, the court's ordered provisional measures won't be implemented.

It is difficult to force Russia to comply with the decisions that have been given by the court, because Russia is a permanent member of the Security Council which has veto rights. Russia will veto the UN Security Council resolution. The implication is that even though the Provisional Measures were binding, they were not enforceable.

In the settlement of international disputes peacefully must comply with principles such as the principle of prevention of disputes, the principle of tolerance in international relations, the principle of agreement of the parties to the dispute, the principle of good faith, the principle of prohibiting the use of force in dispute resolution, the principle of freedom to choose ways of settling disputes, the principle of freedom to choose the law that will be applied to the subject matter of the dispute, the principle of exhaustion of local remedies, the promotion of common interests and cooperation, and the principles of international law regarding the sovereignty, independence and territorial integrity of countries (Adolf, 2020).

In cases of conflict resolution between Russia and Ukraine submitted to the international court it does not fulfill the principles that should be applied. One of the principles that has not been fulfilled is the principle of agreement of the parties to the dispute, so that the decision given by the international court will not be effective. The decision also cannot be enforced because it does not have an element of coercive power.

Conclusion

Every nation recognizes the importance of coordinated state interactions by upholding the idea of state sovereignty. As a result, in order to bring a matter before the ICJ under article 36 of the Statute of ICJ, the parties must agree to do so. However, the parties' agreement may be disregarded if it is determined that the conflict has "worsened or spread at any point" and that a court order is required to uphold the parties' interests (Article 41 of the Statutes of the ICJ). The lack of provisions allowing the Court to enforce its judgements is one of the main flaws in the effectiveness of court decisions. This is because Russia is a permanent member of the Security Council and does not agree to resolve its case to the ICJ. Only Provisional Measures may be issued by the ICJ; Final Decisions are not within its purview. However, these Provisional Measures will be ineffective since the Russian veto will prevent the Security Council from passing a resolution ordering the implementation of the Provisional Measures.

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