

ROLE OF THE INTERNATIONAL COURT OF JUSTICE IN GLOBAL GOVERNANCE WITH SPECIAL REFERENCE TO THE JADHAV CASE (INDIA VS PAKISTAN, 2017)

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Abstract

The International Court of Justice (ICJ) plays a significant role in global governance by providing a platform for resolving international disputes and upholding international law. One case that exemplifies the importance of ICJ's role in global governance is the Jadhav Case, a high-profile legal battle between India and Pakistan in 2017. This paper explores the Jadhav Case. Through a detailed examination of the proceedings, pleadings, and judgments of the ICJ, the paper also evaluates the Court's role in affirming the principles of international law, including the right to consular access, fair trial, and protection against arbitrary detention. Overall, this paper contributes to understanding the ICJ's role in global governance and underscores the significance of its interventions in upholding international law and resolving disputes, as demonstrated by the Jadhav Case.

Keywords: Arbitrary Detention, Compulsory Jurisdiction, Global Governance, ICJ, and International Law.

1. Introduction

The International Court of Justice (ICJ), also known as the World Court, is the primary judicial organ of the United Nations (UN). It is based in The Hague, Netherlands, and was established in 1945 by the UN Charter. The ICJ is the highest Court in the world, responsible for settling disputes between nations and providing advisory opinions on international law.

The ICJ has 15 judges, elected by the UN General Assembly and the Security Council, who serve for nine-year terms. The Court's primary function is to resolve disputes between states, including boundary disputes, territorial claims, and violations of international law. The ICJ's jurisdiction is based on states' consent, which can be expressed through conventions, treaties, or special agreements.

1.1. The ICJ has several key functions:

Contentious Jurisdiction: The ICJ settles disputes

between states to resolve conflicts peacefully and promote respect for international law.

Advisory Jurisdiction: The ICJ provides advisory opinions on international law to the UN General Assembly, the Security Council, and other authorized UN organs.

Interpretation of International Law: The ICJ interprets and applies international law, contributing to its development and clarification.

Global governance refers to the system of norms, rules, and institutions (Krummenacher, 2018). that regulate and shape the behavior of international organizations, states, and non-state actors globally.¹ It encompasses the collective efforts of governments, international organizations, civil society, and the private sector to address common global challenges, promote cooperation, and ensure a stable and peaceful world order.

The concept of global governance emerged in the

1990s (Jang et al: 2016) as the world became increasingly interconnected and interdependent. It recognizes that many of today's global challenges, such as climate change, pandemics, poverty, and inequality, cannot be addressed by individual states alone but require collective action and cooperation.

1.2. Global governance involves a range of activities.ⁱⁱ

International Law: The development and implementation of international laws, treaties, and agreements that regulate state behaviour and are responsible for a structure for cooperation.

Institutional Architecture: The establishment and operation of international organizations, such as the United Nations, the World Trade Organization, and the International Monetary Fund, which provide a platform for cooperation and decision-making.

Global Policy-Making: The development of global policies and standards that address common challenges, such as environmental protection, human rights, and labor standards.

Multistakeholder Engagement: The involvement of non-state actors, including academia, civil society, and the private sector, in global governance processes and decision-making.

Global Governance Networks: The creation of informal networks and partnerships that bring together international organizations, states, and non-state actors to address specific global challenges.

Global governance is essential for addressing a range of global challenges, including:

Climate Change: Developing and implementing global agreements, such as the Paris Agreement, to mitigate the impacts of climate change.

Global Health: Coordinating responses to pandemics, such as COVID-19, and addressing global health inequities.

Economic Inequality: Addressing poverty, reducing economic inequality, and promoting fair trade practices.

Human Rights: Protecting and promoting human rights, including those of marginalized and vulnerable groups.

Peace and Security: Preventing and resolving conflicts and promoting disarmament and arms control.

In an increasingly interconnected world, effective global governance is critical for promoting peace, stability, and prosperity (Abbott & Snidal, 2010). It requires cooperation, collaboration, and collective action among international organizations, states, and non-state actors to address common global challenges and promote a more just and equitable world order.

2. ICJ and Global Governance

As the prime Court of the United Nations (UN), the International Court of Justice (ICJ) is essential to global governance.ⁱⁱⁱ Its duties include resolving legal disputes between nations and offering advisory views on legal matters that UN member states or international organizations bring up.

The ICJ's role in global governance is multifaceted and encompasses several key areas. The ICJ acts as a forum for the peaceful resolution of international disputes, promoting stability and preventing conflicts between states. By providing a platform for legal arguments and interpretations, the Court helps ensure that disputes are settled fairly and justly rather than resorting to unilateral actions or armed conflicts. This contributes to the maintenance of international peace and security.

The ICJ plays a crucial role in upholding the rule of law at the international level. It interprets and applies international law, including customary law,

conventions, and treaties, which form the basis of global governance (Bhagwati: 2004). Through its judgments and advisory opinions, the Court establishes legal precedents and clarifies the rights and obligations of states. This helps to strengthen the international legal framework and ensures that states abide by their legal commitments.

The ICJ contributes to the protection and promotion of human rights worldwide. It adjudicates cases involving purported human rights abuses, thereby holding states accountable for their actions. The Court's decisions in such cases have far-reaching implications, demonstrating that human rights are integral to global governance. By recognizing the fundamental rights of individuals and addressing instances of human rights abuses, the ICJ contributes to the advancement of justice and the protection of society's most vulnerable.^{iv}

However, it is important to acknowledge the limitations of the ICJ in its role in global governance. (McGrew: 2008) Its authority is predicated on the parties' agreement, and not all states accept the Court's compulsory jurisdiction. Moreover, the enforcement of the Court's judgments relies heavily on the willingness of states to comply. These challenges highlight the need for continued efforts to strengthen the role of the ICJ and enhance compliance with its decisions.

The ICJ's role in global governance is multifaceted. It serves as a forum for the peaceful resolution of international disputes, promoting stability and avoiding conflicts between states.^v By providing a platform for legal arguments and interpretations, the Court helps ensure that disputes are settled fairly and justly rather than resorting to unilateral actions or armed conflicts. This helps to preserve the peace and security of the world at large.

Additionally, The ICJ plays a significant role in shaping and influencing international law and norms. Its decisions and advisory opinions have immediate legal implications and serve as

important guidance for states, international organizations, and other courts.^{vi} The Court's interpretations and clarifications of legal principles contribute to the progressive development of international law, ensuring its relevance and adaptability to evolving global challenges.

3. Background and Context of the Jadhav Case^{vii}

The Jadhav case refers to the legal dispute between India and Pakistan concerning the arrest, trial, and conviction of Kulbhushan Jadhav, an Indian national.

3.1. Arrest and Trial

On March 3rd, 2016, Pakistani authorities announced the arrest of Kulbhushan Jadhav in the Baluchistan province. Pakistan accused Jadhav of being a serving Indian naval officer and an agent of the Research and Analysis Wing (RAW), India's external intelligence agency. According to Pakistan, Jadhav was involved in espionage/subversive/terrorist activities aimed at destabilizing the country.

3.2. Pakistan's Claims

Pakistan claimed that Jadhav confessed to his involvement in espionage and terrorist activities during his trial. They accused him of being responsible for various acts of violence, sabotage, and support to the separatist movements within Pakistan. Pakistan also claimed that Jadhav was working to disrupt the China-Pakistan Economic Corridor (CPEC), a significant regional infrastructure project.

3.3. India's Denial

India consistently denied Pakistan's allegations against Jadhav. They asserted that Jadhav was a former Naval officer but had no links to the Indian government during his arrest. India maintained that he was kidnapped from Iran, where he was running

a legitimate business, and was taken to Pakistan without any consular access.

3.4. International Court of Justice (ICJ)

In May 2017, India approached the International Court of Justice (ICJ) to seek provisional measures against Pakistan, alleging violations of the Vienna Convention on Consular Relations of 1963 (ICJ: 2019). India argued that Pakistan's denial of consular access to Jadhav was a breach of his fundamental rights. The ICJ ordered Pakistan to stay Jadhav's execution pending the final judgment in the case.

3.5. ICJ Judgment and Subsequent Developments

The International Court of Justice (ICJ) declared in July 2019 that Pakistan had violated its obligations under the Vienna Convention, ruling in favor of India. The Court directed Pakistan to provide consular access to Jadhav and review his conviction and sentence. Subsequently, in 2019 and 2020, Pakistan granted consular access to Indian officials and allowed Jadhav to file a review petition against his conviction in domestic courts.

3.6. Current Developments

Former Solicitor General of India Harish Salve is fighting the Jadhav case for India in the ICJ on a pro-bono basis, stating that India has a lot of stake in this important case. In addition, the Jadhav case remains unresolved, with ongoing legal proceedings in Pakistan. Jadhav's review petition was rejected by Pakistan's military Court in 2020. (Hindustan Times: 2019) India continues to pursue measures to secure Jadhav's release, emphasizing his innocence and highlighting Pakistan's lack of transparency and fairness in the legal process.^{viii}

The Jadhav case has remained a significant point of contention between India and Pakistan, highlighting complex issues related to espionage, terrorism,

diplomatic relations, and adherence to international legal obligations.

4. Arguments presented by India in the Jadhav Case

In 2017, India approached the International Court of Justice (ICJ) to seek justice for Kulbhushan Jadhav, an Indian national who was arrested in Pakistan on charges of espionage and terrorism. The ICJ delivered its verdict in 2019, and here are the key arguments presented by India in the Jadhav case:

Vienna Convention on Consular Relations (VCCR) Violation: India argued that Pakistan, by not granting consular access to a detained foreign national, Jadhav dishonored Article 36 of the VCCR. India claimed that Pakistan failed to inform India about Jadhav's arrest and detention and denied India's requests for consular access.

Denial of Due Process: India contended that Jadhav was not given a fair trial and that irregularities marred the proceedings against him. India argued that Jadhav was not given access to legal counsel and that the trial was conducted in secret.

Torture and Coercion: India alleged that Jadhav was subjected to physical and mental torture and that his confession was extracted through coercion. India claimed that Pakistan's actions violated the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

Lapse of Time: India pointed out that Pakistan took an inordinate amount of time to provide India with information about Jadhav's detention and that this delay violated the VCCR.

Failure to Provide Evidence: India argued that Pakistan failed to provide credible evidence to support its claims of Jadhav's involvement in espionage and terrorism. India claimed that the

evidence presented by Pakistan was fabricated and unreliable.

Breach of International Humanitarian Law: India contended that Pakistan's actions violated international humanitarian law, including the principles of humanity, distinction, and proportionality.

Request for Provisional Measures: India requested the ICJ to indicate provisional measures to ensure Jadhav's safety and well-being, pending the court's final decision. India sought the ICJ's intervention to stay Jadhav's execution.

Sovereign Immunity: India argued that Pakistan's claims of sovereign immunity did not apply in this case, as the VCCR and other international treaties took precedence over national laws.

Human Rights Violations: India claimed that Pakistan's actions violated Jadhav's fundamental human rights, including the freedom from torture and other cruel, inhuman, or degrading treatment, the right to life, and the right to a fair trial.

Request for Reparation: India sought reparation from Pakistan for the harm caused to Jadhav, including compensation for the violation of his rights and the suffering he endured during his detention.

The ICJ ultimately ruled in favour of India, ordering Pakistan to provide consular access to Jadhav and to review his conviction and sentence. While the ICJ's verdict was a significant victory for India, the case highlighted the need for greater regional cooperation and adherence to international law.

5. Arguments Presented by Pakistan in the Jadhav Case

In the Kulbhushan Jadhav case, Pakistan presented several arguments to the International Court of Justice to justify its actions and refute India's

claims. Here are the key arguments presented by Pakistan:

Sovereign Immunity: Pakistan claimed sovereign immunity, arguing that the ICJ lacked jurisdiction to entertain India's application, as the case involved national security and sensitive intelligence matters.

National Security Exception: Pakistan invoked the national security exception, stating that the Vienna Convention on Consular Relations (VCCR) did not apply in cases involving national security and terrorism.

Jadhav's Admission of Guilt: Pakistan highlighted that Jadhav had confessed to his crimes, including espionage and terrorism, and that his confession was voluntary and not extracted through coercion.

Evidence of Jadhav's Involvement: Pakistan presented evidence, including documents and videos, to demonstrate Jadhav's involvement in terrorist activities, including the 2015 Gwadar attack and the 2016 Quetta attack.

India's Interference in Pakistan's Internal Affairs: Pakistan accused India of interfering in its internal affairs, including sponsoring terrorism and separatist movements, and argued that Jadhav's activities were part of this larger conspiracy.

Denial of Consular Access: Pakistan justified its denial of consular access to Jadhav, citing national security concerns and the need to protect sensitive information.

Compliance with International Law: Pakistan claimed that it had complied with international law, including the VCCR, and that India's allegations of human rights violations were unfounded.

ICJ's Limited Jurisdiction: Pakistan argued that the ICJ's jurisdiction was limited to interpreting the VCCR and did not extend to reviewing the merits of Jadhav's conviction or sentence.

India's Failure to Cooperate: Pakistan accused India of failing to cooperate in the investigation and prosecution of Jadhav and of attempting to politicize the case.

Pakistan's Right to Self-Defence: Pakistan argued that it has the right to take action to safeguard its national security and sovereignty by invoking its right to self-defence under Article 51 of the UN Charter.

Jadhav's Illegal Entry: Pakistan pointed out that Jadhav had illegally entered Pakistan using a fake identity and that his activities were in violation of Pakistani law.

Pakistan's Judicial Process: Pakistan argued that its judicial process was fair and transparent and that Jadhav had been given a fair trial, with the opportunity to appeal his conviction and sentence.

While the ICJ ultimately rejected some of Pakistan's arguments, its verdict acknowledged the situation's complexity and the need for cooperation between India and Pakistan to resolve their differences.

6. ICJ's Jurisdiction and its Relevance to the Jadhav Case

The International Court of Justice (ICJ) is the primary judicial organ of the United Nations, responsible for resolving disputes between states and interpreting international law. In the Kulbhushan Jadhav case, the ICJ's jurisdiction was crucial, as India sought to challenge Pakistan's actions through the Court. Here's an analysis of the ICJ's jurisdiction and its relevance to the Jadhav case:

7. ICJ's Jurisdiction

The ICJ has the authority to settle disputes between states that are parties to the Statute of the Court. The ICJ's jurisdiction is based on the following principles:

Compromissory clauses: The ICJ has jurisdiction over disputes arising from treaties or conventions that contain compromissory clauses, which provide for the ICJ's power in case of disputes.

Optional clause declarations: States can make optional clause declarations, which accept the ICJ's jurisdiction as compulsory with any other state that has made a similar declaration.

Special agreements: States may reach special agreements to send particular cases to the ICJ.

8. Relevance to the Jadhav Case

In the Jadhav case, India invoked the ICJ's jurisdiction based on the Vienna Convention on Consular Relations (VCCR), which provides for the ICJ's jurisdiction in case of disputes arising from its interpretation or application (United Nations: 2005:15) . Pakistan ratified the VCCR in 1976, and India did so in 1977. The VCCR contains a compromissory clause (Article 36) outlining the ICJ's power in disputes.^{ix}

India claimed that Pakistan had broken the VCCR by preventing Jadhav from receiving consular access and that the ICJ was qualified to hear the case. Pakistan, on the other hand, contested the ICJ's jurisdiction, arguing that the VCCR did not apply to cases involving national security and terrorism.

9. ICJ's Ruling on Jurisdiction

On May 18th, 2017, the ICJ delivered a unanimous ruling on its jurisdiction, finding it had jurisdiction to entertain India's application. The Court held that the VCCR's compromissory clause provided a basis for its authority and that Pakistan's objections to jurisdiction were unfounded.

The ICJ's ruling on jurisdiction was significant (UN: 1964: 2) as it paved the way for the Court to consider the merits of India's claims.^x The Court's decision reinforced the importance of the VCCR

and the need for states to comply with their obligations under international law.

10. Implications

The ICJ's jurisdiction in the Jadhav case has significant implications for international law and diplomacy:

Upholding the rule of law: The ICJ's jurisdiction reinforces the importance of upholding the rule of law in international relations.

Protecting human rights: The ICJ's jurisdiction in the Jadhav case highlights the need for states to protect human rights (Kattan: 2020), including the right to a fair trial and consular access.

Encouraging diplomatic cooperation: The ICJ's jurisdiction encourages states to engage in diplomatic efforts to resolve disputes peacefully rather than resorting to unilateral actions.

11. Significance of the Jadhav Case (India vs Pakistan, 2017)^{xi} in Global Governance

The Jadhav case between India and Pakistan (Tornaritis: 1971) has significant global governance implications.^{xii} It raises fundamental questions surrounding international law, human rights, and bilateral relations between nations.

The case revolves around the arrest and subsequent conviction of Kulbhushan Jadhav, an Indian national accused by Pakistan of espionage and terrorism. It has been a highly contentious issue, with India contesting the legality of the arrest, the lack of consular access, and the secretive nature of the trial.

The significance of this case lies in its impact on various aspects of global governance. It underscores the importance of upholding the rule of law and international legal norms. (Poeggel, W., et al: 1991) The case has exposed questions of due process, fair trial, and the right

to consular access, cornerstones of global governance.

The Jadhav case highlights the need for bilateral and multilateral mechanisms to resolve disputes peacefully. The case has escalated tensions between India and Pakistan, emphasizing the significance of diplomatic dialogue and negotiation in resolving conflicts.

Moreover, the Jadhav case highlights the role and responsibilities of international organizations, such as the International Court of Justice. India filed a case against Pakistan at the ICJ, seeking provisional measures to protect Jadhav's rights. The ICJ's involvement in the case showcases the importance of a neutral body in ensuring fairness and justice in global governance.

The Jadhav case has wider implications for cross-border relations, particularly in the context of counterterrorism efforts. It highlights the complexities and sensitivities surrounding national security concerns, intelligence sharing, and the potential impact on diplomatic relations.

Overall, the Jadhav case serves as a reminder of the intricate interplay between international law, bilateral relations, and individual rights within global governance. Its significance lies in shaping future precedents and discourses on these critical issues.

12. Analysis of the ICJ's Role in upholding International Law and promoting Global Governance in the Jadhav Case^{xiii}

The part played by the International Court of Justice in the Jadhav case has been instrumental in upholding international law and promoting global governance.

Legal Dispute Settlement: The ICJ played a vital role in giving a platform for India and

Pakistan to settle their legal dispute regarding the arrest, trial, and conviction of Kulbhushan Jadhav. By accepting India's application and hearing the case, the ICJ demonstrated its commitment to resolving conflicts peacefully and adhering to international law.

Interpretation of the Vienna Convention: The Jadhav case revolved around the Vienna Convention on Consular Relations, emphasizing the importance of consular access and protecting the rights of individuals detained in foreign countries. The ICJ's ruling reaffirmed the Vienna Convention's importance, clarifying governments' duties to provide foreign nationals with consular access.

Protection of Individual Rights: In the Jadhav case, the ICJ's intervention highlighted its commitment to safeguarding individual rights and preventing potential violations. With its provisional measures, the ICJ ensured that Jadhav's execution was stayed until the final judgment, providing protection against potential human rights abuses and allowing time for a fair review of the case.

Upholding the Rule of Law: The ICJ's judgment in favour of India underscored the significance of upholding the rule of law at the international level. By declaring Pakistan's denial of consular access to Jadhav as a violation of its international legal obligations, the ICJ emphasized the importance of due process, fair trial, and consular rights.

Promotion of Diplomatic Dialogue: The ICJ's involvement in the Jadhav case also promoted diplomatic dialogue between Pakistan and India. The ICJ's decision to hear the case and the subsequent implementation of its judgment created an opportunity for the two nations to engage in discussions on various aspects, including consular access, legal review, and overall bilateral relations.

Precedent and Future Implications: The ICJ's judgment in the Jadhav case sets a precedent for similar cases involving consular access and rights in the future. It reiterates states' obligation to provide consular access to foreign nationals and clarifies the consequences of non-compliance.

The ICJ's role in the Jadhav case demonstrated its commitment to upholding international law, protecting individual rights, and promoting global governance. The ICJ develops an international system based on norms and justice by providing a legal framework for resolving disputes and interpreting international conventions.

13. Limitations and Challenges faced by the ICJ in its role in Global Governance

While the International Court of Justice (ICJ) plays a vital role in global governance, it is not without limitations and challenges. Here are some limitations and challenges faced by the ICJ in its role:

Limited Jurisdiction: The ICJ's jurisdiction is restricted to cases where both parties willingly accept its authority or where customary international law applies. This limitation prevents the ICJ from adjudicating disputes without the consent of all involved states, making it difficult to address some pressing global issues where states may be unwilling to submit to the ICJ's jurisdiction.

Non-binding Opinions: The ICJ can only provide advisory opinions upon request from authorized UN bodies. These opinions are non-binding and dependent on states' willingness to abide by them. As a result, their effectiveness and impact are contingent on state compliance, limiting their ability to enforce global governance in certain situations.

Lack of Enforcement Mechanisms: The ICJ lacks direct enforcement mechanisms, relying on states' voluntary compliance with its

judgments. If a state refuses to abide by an ICJ ruling, the Court can impose limited punitive measures. This hampers its ability to ensure compliance and enforce global governance effectively.

Political Influence: The ICJ operates within a political context where states' interests and geopolitical dynamics can influence outcomes. This can create challenges in ensuring impartiality and fairness in decision-making, particularly when powerful states exert political pressure or prioritize their national interests over the Court's judgments.

Non-universal Participation: Not all states are contracting parties to the Statute of the ICJ, limiting its effectiveness as a global governance institution. Some states, including powerful ones, have not recognized the ICJ's compulsory jurisdiction, reducing its universal applicability and raising questions about its representativeness and legitimacy.

Delays and Backlog: The ICJ faces challenges handling its caseload, leading to delays in issuing judgments. The backlog of cases diminishes the Court's ability to address urgent global issues promptly and impacts its perceived effectiveness as a timely dispute resolution mechanism.

Lack of Direct Accessibility: The ICJ operates primarily as an inter-state court. Therefore, limited avenues exist for individuals or non-state actors to bring cases before the Court, potentially hindering the Court's ability to address certain global governance issues.

Despite these limitations and challenges, the ICJ remains a vital institution in global governance. It presents a forum for pacific resolution of differences, clarifies international law, and shapes norms. Addressing these challenges and bolstering the Court's authority can strengthen the ICJ's role in promoting global governance.

14. Lessons learned from the Jadhav Case and their Impact on Global Governance

The Jadhav case, involving an Indian national sentenced to death in Pakistan on charges of espionage, has highlighted several important lessons and their potential impact on global governance:

Diplomatic tensions/Impact on Bilateral Relations: The case highlighted the potential deleterious consequences on the diplomatic and bilateral relations between countries when citizens are involved in legal disputes abroad. It also underlines the need for constructive engagement, effective communication/dialogue, and conflict resolution methods to prevent further escalation of tensions and promote peaceful coexistence by resolving such disputes through diplomatic channels.

Rule of law and due process: The case highlighted concerns about the rule of law and due process. It emphasized the importance of ensuring that individuals facing legal proceedings abroad receive fair trials, access to legal representation, and protection of their human rights. The increased focus on promoting and strengthening principles of justice and fairness in legal systems worldwide impacts global governance.

Consular access and international obligations: The case underscored the significance of consular access and the obligations of countries to provide appropriate consular assistance to their citizens detained abroad. (Aljaghoub, 2006) It highlighted the need to uphold international treaties and conventions to protect the rights and welfare of individuals involved in legal disputes across borders.

International arbitration mechanisms: The Jadhav case also highlighted the value of international arbitration mechanisms for resolving disputes between nations. It sheds light on the role and credibility of international

forums in ensuring impartiality, transparency, and effective dispute resolution, thereby contributing to global governance.

Overall, the Jadhav case serves as a reminder of the importance of upholding the principles of justice, ensuring due process, and promoting effective diplomatic channels in global governance to address legal disputes and maintain harmonious international relations.

15. The ICJ's contribution to the protection of Human Rights in the Jadhav Case

The International Court of Justice's (ICJ) intervention in the Jadhav Case significantly protected human rights. The ICJ's provisional measures, requested by India, ordered Pakistan to take necessary steps to ensure that Jadhav was not executed before the Court's final decision.^{xiv} This decision aimed to ensure Jadhav's right to life, enshrined in various international human rights instruments, including the International Covenant on Civil and Political Rights of 1966.

The ICJ proceedings allowed India to raise concerns about Jadhav's detention, due process, and access to consular assistance. The Court's final judgment, which declared that Pakistan had violated its obligations under the Vienna Convention on Consular Relations, emphasized the right to consular access, which is crucial for protecting the human rights of foreign nationals detained abroad.

The ICJ's verdict in the Jadhav Case contributed to the defense of human rights by emphasizing the importance of universally recognized norms and standards, such as the right to life and consular access. The Court's attention to legal principles and international law highlights its role in promoting justice and upholding human rights in global governance. The ICJ's decision in the Jadhav case

set a precedent for providing consular access and the right to due process for individuals involved in legal disputes across borders.

16. The Role of the Jadhav Case in shaping international law and Norms

The Jadhav Case has significantly impacted international law and conventions. It has brought attention to the importance of the Vienna Convention on Consular Relations and the duty of nations to grant imprisoned foreign individuals access to consular services (Kumar, 2019). The case has also highlighted the importance of the International Court of Justice (ICJ) and other dispute resolution mechanisms for peacefully settling disputes between nations.

The ICJ verdict in the Jadhav Case has renewed interest in and attention to international law and the protection of fundamental human rights, such as the right to fair trial and due process. It underscores the need for countries to uphold their international obligations and work collaboratively to ensure that legal disputes involving foreign nationals are resolved following internationally recognized norms and standards.

Furthermore, the Jadhav Case has contributed to the development of international law in several other ways. It has helped to refine the scope and application of the Vienna Convention on Consular Relations, clarified certain ambiguities in its interpretation, and demonstrated the relevance of international law in resolving disputes between nations.

Overall, the Jadhav Case has exemplified how legal disputes involving foreign nationals can have significant international implications and has highlighted the critical role of international law and institutions in governing world affairs and preserving global order.

17. Notable Cases handled by the PCIJ and ICJ related to Global Governance.

Nicaragua v. United States of America (1986):^{xv} This case involved Nicaragua accusing the United States of violating international law through intervention in its internal affairs (Celui: 1986). The case addressed state sovereignty, use of force, and non-intervention issues. Similarly, the Jadhav Case also deals with issues of state responsibility, violation of international law, and the importance of upholding legal obligations.

Democratic Republic of Congo v. Belgium (2002): The case revolved around the competing principles of state immunity and the exercise of universal jurisdiction (Turns: 2002), highlighting the complex relationship between international law, human rights, and state sovereignty.^{xvi}

United Kingdom v. People's Republic of Albania (Corfu Channel Case, 1946):^{xvii} In this case, British warships suffered considerable damage as a result of striking sea mines that had been laid in the channel allegedly by Albanian naval forces. (U.K. v. Alb: I.C.J: 1948) The United Kingdom subsequently filed a complaint with the International Court of Justice (ICJ), alleging Albania breached international law by laying mines without adequate warning and ignoring the principle of innocent passage. The UK also sought compensation for the loss caused to its naval vessels. The Corfu Channel Case is notable for its contribution to the development of international law concerning the freedom of navigation and the obligations of states to maintain safe passage for the vessels of other nations.

France v. Turkey (SS Lotus Case, 1927): the matter was the collision between a French steamship named Lotus and a Turkish vessel, resulting in the death of eight Turkish nationals. France claimed jurisdiction over the case,

arguing that the incident occurred outside Turkish territorial waters. (Guilfoyle, 2017) Before the Permanent Court of International Justice, the pivotal issue was whether a state could exercise jurisdiction over acts on the high seas.^{xviii} In the end, without a specific prohibition, the Court decided that states had jurisdiction over incidences on the high seas.

United Kingdom v. Norway (Anglo-Norway Fisheries Case, 1951): The case primarily revolved around the interpretation of (Evensen: 1952) historical fishing treaties and the concept of "historic rights."^{xix} The United Kingdom argued for expansive fishing rights based on longstanding traditional practices, while Norway contended for a restrictive interpretation of these rights. In its judgment, the International Court of Justice found that Norway's claims were valid, recognizing the principle of "historic rights" and granting Norway certain exclusive fishing rights in specific areas of the North Sea.

Hungary v. Serbia (2002): It concerned an argument about purported transgressions of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide between Serbia and Hungary. Hungary charged Serbia with failing to stop and punish genocide that took place during the 1990s military conflict. Serbia denied the allegations and argued that it had taken measures to address the situation. The Court found that Serbia did not commit genocide, but it did violate its obligations under the Genocide Convention by failing to prevent and punish acts of genocide.

Hungary v. Slovakia: The case revolved around a bilateral project to construct a dam on the Danube River (ICJ:1997) called the Nagymaros Project.^{xx} Hungary argued that Slovakia's altering the original project and unilaterally suspending its construction violated international law. On the other hand, Slovakia

claimed that the project posed environmental risks and sought to address these concerns. The Court ultimately ruled that both parties had dishonoured their commitments and called for cooperative solutions to the dispute.

Iran v. United States (Iran US Hostage case, 1979): The case refers to the arrogation of the United States Embassy in Tehran by the Iranian students and militants of the Organization of Iranian People's Fedai Guerrillas in 1979 (Röling:1980) resulting in the captivity of 52 American diplomats and citizens for 444 days. It revolves around violating diplomatic immunity and the tension between the United States and Iran.^{xxi} The hostage crisis had profound political, diplomatic, and psychological impacts, straining bilateral relations and leading to several failed diplomatic negotiations and rescue attempts. The case was finally resolved in 1981 with the signing of the Algiers Accords, leading to the release of the hostages.

A. M. Luther v. James Sagor and Company (Luther v. Sagor case, 1921): Sagor, feeling wronged by the lower British Court's decision to rule in favor of Luther after reviewing his case, filed an appeal with the British High Court. Following the appeal, it was discovered that Britain had granted De-Facto Recognition in 1921; hence, the Kings Bench Division of the Court of Appeal upheld Sagor's verdict. (Lauterpacht: 1954) It was decided that the British government had acknowledged the Russian government and that recognition would take effect retroactively. Thus, Russia's nationalization Program was legitimate and lawful.^{xxii}

Australia v. France (Nuclear Test Case, 1974):^{xxiii} This case involved Australia challenging France's nuclear tests in the South Pacific. Australia argued that these tests violated international law, specifically the

obligations under the Partial Test Ban Treaty and customary international law. (*Australia v. France: 1980*) Australia sought a cessation of the tests and compensation for the damage caused. However, the ICJ ruled that it did not have jurisdiction to hear the case, as it considered it primarily a political matter rather than one falling within its legal competence.

Colombia v. Peru (Asylum Case, 1950): Columbia challenged Peru's actions in granting asylum to Colombian political refugees within its embassy. Colombia claimed that Peru violated international law by infringing on its sovereignty and refusing to return the refugees. (Essen: 1952) The ICJ ultimately ruled that while sovereign states have the right to grant asylum, they must also respect the territorial integrity of other nations.^{xxiv} Peru was required to ensure that the refugees did not engage in activities against Colombia while on its premises.

Cambodia v. Thailand (The Temple of Preah Vihear case):^{xxv} This territorial dispute between Cambodia and Thailand over the ownership and sovereignty of the Temple of Preah Vihear and its surrounding areas. The International Court of Justice (ICJ) concluded that the temple was situated in Cambodian territory and that Thailand was obligated to withdraw any military presence (ICJ: 1962). The ruling emphasized the importance of respecting international borders and highlighted the obligation of states to resolve disputes peacefully following international law.

Recommendations for Enhancing the Effectiveness of the ICJ in Global Governance

To enhance the effectiveness of the International Court of Justice (ICJ) in global governance, here are some recommendations:

- **Strengthening the Authority:** Encourage member states to recognize the ICJ's

jurisdiction and abide by its decisions, ensuring its authority is respected globally.

- **Universal Participation:** Promote universal participation and membership in the ICJ. Encourage non-member states to join the Court, as broader participation would increase its legitimacy and effectiveness.
- **Enhanced Accessibility:** Improve accessibility to the ICJ by enhancing the availability of resources and legal expertise, especially for developing countries and underprivileged communities, to help them effectively engage with the Court.
- **Timely and Efficient Processes:** Streamline procedures and timelines within the ICJ to ensure swift and efficient disposal of cases. Reducing the duration of cases would contribute to the Court's overall effectiveness.
- **Strengthening Cooperation:** Foster increased cooperation between the ICJ and other international organizations such as the United Nations, regional courts, and tribunals. This collaboration would enhance coordination and the enforcement of decisions.
- **Awareness and Education:** Promote awareness and education about the ICJ and its role in global governance among the general public, policymakers, and legal professionals. This can be achieved through public outreach programs, educational initiatives, and media engagement.
- **Capacity Building:** Invest in capacity-building programs, training, and technical support for member states to enhance their legal expertise and understanding of international law. This

would facilitate their active participation in ICJ proceedings.

- **Transparent and Accountable Practices:** Foster transparency and accountability within the ICJ's operations. Regular reporting on the Court's activities, decisions, and internal processes would contribute to trust-building and the perception of fairness.

These recommendations aim to bolster the ICJ's role as a key institution in global governance, ensuring its effectiveness, credibility, and relevance in resolving international disputes and upholding the rule of law.

Conclusion

In conclusion, the International Court of Justice (ICJ) plays a crucial role in global governance by providing a platform for the peaceful resolution of international disputes and upholding the rule of law. The ICJ's significance in the Jadhav Case further highlights its importance in ensuring justice and fairness in global affairs.

The Jadhav Case, which involved a contentious issue between Pakistan and India, showcased the ICJ's jurisdiction to adjudicate disputes and make binding decisions. The Court's insistence on fair trial guarantees, including consular access and due process, demonstrated its commitment to upholding fundamental human rights.

By reviewing and ruling on the Jadhav Case, the ICJ provided an impartial forum for resolving a complex legal matter and set a precedent for protecting individuals' rights in similar situations. Its decision ensured that countries respect their international obligations and abide by the Court's rulings.

The case also highlighted the ICJ's significance in promoting peaceful dialogue and negotiation between nations by offering a peaceful avenue to address disputes. It reinforced the importance of

diplomacy, mediation, and international legal frameworks to resolve conflicts rather than resorting to more aggressive means.

Moreover, the Jadhav Case brought international attention to the ICJ's role in safeguarding human rights and deterring potential violations of international law. The Court's decision reinforced the international community's commitment to upholding justice, fairness, and the rule-based international order.

The ICJ's role in the Jadhav Case underscores its significance in global governance and its pursuit of justice, fairness, and the rule of law. As a beacon of international justice, the ICJ plays a vital role in resolving disputes, shaping international norms, and promoting a more peaceful and cooperative global order.

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