International Journal of Research in Economics and Social Sciences(IJRESS)
Available online at: http://euroasiapub.org
Vol. 12 Issue 12 December- 2022
ISSN: 2249-7382 | Impact Factor: 8.018|
(An open access scholarly, peer-reviewed, interdisciplinary, monthly, and fully refereed journal.)

THE IMPARTATION OF JUSTICE IN INTERNATIONAL LAW

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Abstract

The main objective of this documentary research work article is to understand the administration of justice at the international level based on the most significant international legal regulations for the fundamental understanding of it. International agreements, international organizations, and the role of international arbitration in the administration of justice are structural for the correct action of the international society of nations and more in current times where we find ourselves with an increasingly globalized and interdependent world, in addition of the series of extraordinary variables that we have had to resolve due to the effects of the pandemic that has not ended. Of course, it has had a very significant impact on our lives and, consequently, on the international legal community. As for the region of the North American hemisphere, in addition to being our habitat, we have to highlight the issue of the Trade Agreement between Mexico, the United States of America, and Canada (T-MEC) and the tripartite aspiration to become the most important worldwide for its characteristics.

Keywords: Impartation of justice, Internationallegal normativity, International agreements, International organizations,International arbitration, USMCA.

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Introduction

The development of humanity over time in the administration of justice at the international level has had to overcome a series of needs for each specific moment in many of the various stages of its history. The nature of the human being, as well as its various reactions carried out, have made episodes experienced that were believed to be overcome reappear later in an irrational, repetitive and constant way. For this reason, the international community has tried in various ways to overcome these needs and problems that are increasingly pressing in an organized manner and, of course, with legal foundation and certainty.

The constant struggle for the achievement of justice at the international level has made the joint efforts of nations increasingly in tune with articulating the best of the wills of the society of nations, as well as establishing the bases of legal regulations. From my particular point of view, the various international agreements, the creation itself, as well as the strengthening of international organizations and international arbitration have increasingly been carried out towards the joint achievement of achieving the delivery of justice in the most expeditious manner possible. Of course, the integration into economic blocs, as well as those of a different nature, of various countries within the international concert of nations have been created precisely to a large extent in order to satisfy those needs of a legal nature, mainly with its consequent economic aspect.

Problem Statement

Although it is true that, as we have previously commented, there are a series of actions regarding the administration of justice at the international level and given the scope of space that this implies, as well as the current time in which the aforementioned problem impacts, it is essential to decide on the central aspects for its solution. In this sense, we can question the reasons why, despite the series of events that the different generations have had to experience throughout history and that have not been enough to prevent them from happening again, repeat, beyond the antecedent of each historical stage of each generation that is and has been with the different types of needs of the time to which each of them refers.

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(Seara, 2016) states the following:

> International regulations. Public international law, like all law, is a normative set intended to govern a social reality, but at the same time it is also a product of that reality, and must respond to the needs that arise from international life.
>
> In order to understand the international legal phenomenon like any other legal phenomenon, one must think of it in dynamic terms; in fact, international law cannot be conceived as a normative set crystallized in a certain way, but rather as something in constant transformation to adapt to the changing reality. (p.44)

(Kelsen, 2012) questions the following:

> Does general international law establish coercive measures as a consequence of international crimes? Is there intervention by force in the normally protected spheres of interest of the states responsible for the crimes? Such are the problems we must examine. (p.55)

Article 38 of the Statute of the International Court of Justice is the supreme legal norm governing the international legal system.

(Contreras, 2006) mentions in his bibliographical work:

> Our Political Constitution of February 5, 1917 uses various words to refer to treaties: international treaties, diplomatic conventions and treaties. For its part, the Law for the Celebration of Treaties adopts the term treaties, and Mexican practice also reveals the use of other denominations, such as agreements, conventions or conventions, but we can conclude that all of them are synonymous. (p.40)

Therefore, with the aforementioned, we can observe the series of appreciations, opinions and concerns of what legal regulations imply at the international level.

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Methodology

This work was based on the qualitative methodology where emphasis was placed on the use of various options at the international level for the administration of justice. The process of this qualitative research began by evaluating whether the cases considered integrated the conditions required by the research, data collection and its respective analysis. The existence of various models of societies at the international level carried out throughout time and history has put into debate a series of proposals for solutions to each and every one of the justice, economic and social problems as a result.

Developing

The achievement of the various agreements in legal matters at the international level over time that in the different stages of the development of humanity we have had to know are to a large extent, from my particular point of view and opinion, a joint effort by various nations that have agreed to find solutions to the desire for justice, always of an urgent nature, as well as necessary and with the firm intention of safeguarding the international legal order, the common good, peace, and happiness of the peoples.

(United Nations Organization [UN], s.f.) establishes the following:

> The Charter of the United Nations calls on the Organization both to help settle international disputes by peaceful means, including arbitration and judicial settlement (Article 33), and to promote the progressive development of international law and its codification (Article 13).
>
> Over the years, more than 500 multilateral treaties have been deposited with the Secretary-General of the United Nations. In addition, many other treaties are deposited with governments or other entities. The treaties cover a wide range of subjects, such as human rights, disarmament or environmental protection. (pp. 13-14, 24)

(Lara, et al., 2006) argues that:

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> As occurs in any human community, in the international community binding rules or standards are required with which the relations between its subjects (states, international organizations and other subjects) are structured and that regulate the actions of those, constituting as limitations to their free action and political decision and serving as a balance between them. This set of norms integrates what we know today as public international law.
>
> A widespread idea, especially from the perspective of internal law, is that the "right" is closely linked to the possibility of imposing its mandates or prohibitions by force. The right appears like this, characterized by the element of force and the sanction in case of breach of a duty. (p.38)

(Acosta, 2017) argues that:

> In this model of international society, international sources proclaim their own effectiveness and obligation. These sources can be adopted conventionally and in a sovereign manner by subjects of international law as an international commitment, which in turn, as States, in exercise of their legislative sovereignty, may or may not incorporate them into their domestic law (incorporation or constitutionalization of the law international law or pacta sunt servanda). Custom and Doctrine: The international responsibility of the State. It is necessary to briefly refer to the international responsibility of the State, a topic developed in the International Law Commission (CDI) as a necessary element of this self-proclaimed system of obligation. (pp. 305-306,314)

International conventions

The constant need to solve a series of problems in the international arena has led the society of nations throughout the planet to find the best alternative solutions to these controversies of a global nature. This is how the various international agreements that have come to mitigate and solve the series of tensions between peoples arose.

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(ONU, s.f.) establishes the following:

The General Assembly as a forum for the adoption of multilateral treaties.

The General Assembly is made up of each UN Member State and is the main deliberative body on international law. Many multilateral treaties are adopted by the General Assembly and are then open for signature and ratification. The Sixth Legal Committee supports the General Assembly in its functions by advising it on important legal issues. A Commission that is also made up of representatives of all UN Member States.

The General Assembly has adopted various multilateral treaties throughout its history, including the following:

- International Convention for the Prevention and Punishment of the Crime of Genocide (1948)
- International Convention on the Elimination of all Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the elimination of all forms of discrimination against women (1979)
- United Nations Convention on the Law of the Sea (1982)
- Convention on the Rights of the Child (1989)
- Comprehensive Nuclear Test Ban Treaty (1996)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- International Convention for the Suppression of Acts of Nuclear Terrorism (2005)
- Convention on the Rights of Persons with Disabilities (2006)
- United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008)
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)

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The legal work of the UN has been pioneering in many areas as the Organization has been confronted with problems that took on an international aspect. The UN has been at the forefront of efforts to establish a legal framework in areas such as environmental protection, regulation of labor immigration, reduction of drug trafficking and the fight against terrorism. This work continues today as international law assumes an even greater role on a wide spectrum of issues, such as human rights and international humanitarian law.

Development and codification of law

International Law Commission

The International Law Commission was established by the General Assembly in 1947 with the aim of promoting the progressive development of international law and its codification. The Commission is made up of 34 members, who collectively represent the world's major legal systems and serve as experts in their personal capacity, not as representatives of their respective governments. They are in charge of issues related to inter-state relations and, depending on the matter, consult the Committee of the Red Cross, the International Court of Justice and specialized UN agencies. The Commission also prepares projects related to international law.

The Commission chooses some of the topics, while others are referred to it by the General Assembly. When the Commission finishes its work on one of them, the General Assembly can convene an international conference of plenipotentiaries to incorporate the project into a convention. Said convention is then opened to the signature of the States that want to be parties to it, that is, States that formally accept to be bound by its provisions. Some of these conventions constitute the foundation of the law that governs relations between States. Here are some examples:

- The Convention on the Law of the Non-Navigational Use of International Watercourses, approved by the General Assembly in 1997, which regulates the equitable and reasonable use of watercourses shared by two or more countries;
- The Convention on the Law of Treaties between States and International Organizations or between International Organizations, approved at the 1986 Vienna conference;

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- The Convention on the Succession of States in Matters of Assets, Archives, and State Debts, approved at the Vienna conference in 1983;
- The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, was approved by the General Assembly in 1973.

The suggested recommendations propose to follow what is stipulated by international regulations with the aim of promptly complying with it, in addition to avoiding conflicts of a different nature. Of course, when it is not possible to avoid conflicts between nations, then it is when the various types of legal negotiations are necessary in their different modalities with the central objective of reaching the solution to disputes.

(Sepúlveda, 2019) points out the following:

> International legal negotiations are understood as those relations between States that produce a legal norm -whether general or particular- or else, that repeal it. These legal negotiations take many different forms, and the main ones are Congresses and Conferences, Declarations, Resignations, Protests, and, most notably, Treaties. (p.121)

International organizations for the administration of justice

United Nations

> Among the great achievements of the United Nations stands out the development of a corpus of fundamental international law both for the promotion of economic and social development and for international peace and security. International law is enshrined in conventions, treaties, and norms. Many of the treaties created by the UN form the basis of the law governing interstate relations. Although the UN's work in this field does not always receive much attention, it has a daily impact on the lives of everyone around the world. (UN, n.d.)

International Court of Justice

> Permanent Court of International Justice

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Article 14 of the Covenant of the League of Nations made the Council of the League responsible for formulating the plans for the establishment of the Permanent Court of International Justice, a tribunal that would be competent not only to hear and resolve any controversy of an international nature that before it presented by the opposing parties, but also to give an advisory opinion on any controversy or question raised by the Council or the Assembly. It only remained for the Council of the Society to take the necessary measures to comply with Article 14. (International Court of Justice [ICJ], s.d.)

International Criminal Court

The idea of an international criminal court to prosecute crimes against humanity was first conceived at the UN during the process of approving the 1948 Genocide Convention; however, the lack of consensus hampered its further development. In 1992 the General Assembly entrusted the International Law Commission with preparing a draft statute for such a court. The massacres in Cambodia, the former Yugoslavia, and Rwanda made the need for this court even more urgent. (International Criminal Court [ICC], s.f.)

The role of international arbitration

From my point of view, I consider in a very significant way the importance and usefulness of international arbitration to solve the various controversies that are carried out in international matters and given the prevailing need to apply expedited justice.

(Heftye, 2020) maintains regarding arbitration:

Legal conflicts can be resolved through the courts (through the ICJ) or through international arbitration, which in recent decades has re-emerged to become today, undoubtedly, after negotiation, the means of solution of legal disputes most used. We can define arbitration as a means of imparting justice, agreed by the parties, alternative to the judicial procedure, in which a particular jurisdictional power is granted to resolve a legal dispute in a binding manner. (p.224)

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(Kissinger, 1995) argues the following:

> For decades historians have argued over who was responsible for the outbreak of the First World War. And yet, it is not possible to point to a single country as guilty of this senseless race towards disaster. Each of the great powers contributed its share of shortsightedness and irresponsibility, and it did so with a nonchalance that would never be possible again once the disaster caused entered the collective memory of Europe. (p.164)

"International organizations can submit to arbitration, since they enjoy the ius tractatum, but not the ius standi, which prevents them from going to litigation before the International Court of Justice (ICJ)" (López-Bassols, 2014, p. 365).

(Gaviria, 2005) in this regard argues the following:

> International responsibility can also be configured for unlawful acts stemming from the behavior of the judiciary. This responsibility may come from acts of judicial bodies for direct violation of an international obligation; of a ruling that declares the claim of a foreigner inadmissible from the point of view of its content; or exceptionally, when the decision of the judicial body is contrary to domestic law. Therefore, the acts of the judicial body and the "denial of justice" are not synonymous. (p.281)

(Ubiarco, 2011) regarding the jurisprudence that was in force in the Ninth and Eighth Epochs, issued by the Plenary of the Supreme Court of Justice of the Nation of Mexico, states that:

> Regarding normative hierarchy, one of the decisions generated in the Ninth Epoch of the Mexican Supreme Court, which is very relevant in Federalism, is the one that affirms that international treaties should prevail over federal laws.
>
> Regarding the respective Eighth Epoch, this thesis indicated that both the Federal Law and the international treaty had the same hierarchy, so that in order to know in case of conflict which one should prevail, it was necessary to know if the international treaty was constitutional, and also analyze if the Federal Law was constitutional, but it was not resolved much if the two systems were constitutional, because in that case which one should prevail.

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> Now, as of October 28, 2000, the "Plenary of the Supreme Court in the thesis P. LXXVII/99, under the heading: <<INTERNATIONAL TREATIES ARE LOCATED HIERARCHICALLY ABOVE FEDERAL LAWS AND IN A SECOND PLANE WITH RESPECT OF THE FEDERAL CONSTITUTION.>>, has decided to suspend the previous thesis C/92, and in this new criterion, the Court considers that international treaties are in the background after the Federal Constitution, above federal laws and derived from the fact that the treaty is an attribution allowed to the Federal Executive, representative of the Mexican State, which commits all the authorities of the country, and the ratification granted by the Senate of the Republic, compromises the will of the federal entities. (pp. 254-255)

Although it is true, if we review what the current Mexican Constitutional Article 133 establishes, it stipulates that:

> This Constitution, the laws of the Congress of the Union that emanate from it and all the treaties that are in accordance with it, celebrated and that are celebrated by the President of the Republic, with the approval of the Senate, will be the Supreme Law of all the Union. The judges of each federative entity will conform to said Constitution, laws and treaties, despite the provisions to the contrary that may exist in the Constitutions or laws of the federative entities. (Political Constitution of the United Mexican States, 2021, p. 148)

Therefore, in the end we can appreciate the evolution that all this subject related to the hierarchy of the various legal provisions has had in order to have a broader panoramic vision in its understanding and interpretation.

T-MEC/USMCA

The tripartite aspiration of the three countries that make up the North American region to make the area the most prosperous and secure at the international level makes joint efforts increasingly in tune to achieve that desired goal. However, the present situation, needs and idiosyncrasies of each of them mean that on certain occasions, the relationship has its certain discrepancies with respect to the joint objectives. Naturally, what was previously commented is understandable for reasons of common sense, but it is very remarkable that despite these situations, the necessary agreements are finally found to achieve the objectives set.

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> In reference to its legal systems, the Judiciary in the United States has a great impact on its foreign policy. The Judiciary, through its rulings on interstate commerce, the constitutionality of immigration laws, the education of Spanish-speakers, for example, significantly affects relations between Mexico and the United States.
>
> On the other hand, due to the Romanesque roots of our legal system, "casuismo" in Mexico does not have the relevance that it has in Anglo-Saxon law. It should be remembered that in many countries, particularly the Anglo-Saxon ones, the fact that is intended to be regulated precedes the legal norm; In Mexico, it is often the other way around, the legal provision is created and then reality gradually adjusts.
>
> It would be convenient to strengthen the relations between the judicial powers of both countries, in order to promote a greater coincidence of their differences and the implications that their decisions have for the other country, in order to warn us, since justice has its own regulations. (de Olloqui, 1994, p. 62)

Therefore, and once analyzed what the prominent Mexican diplomat José Juan de Olloqui sustains, it is very convenient to strengthen the links and relations between the judicial powers of both countries. Additionally, and from my personal perception, I believe that it should also be carried out with the other nations of the international community, highlighting the one that is closest to our geographical region first, as well as including, in addition to the already mentioned United States of America, to Canada given the relationship of commercial partners of the most important treaty that we have in force at the moment.

Results

The results obtained mainly and in a generalized way are the great need to strengthen the administration of justice at the international level given the different areas of opportunity observable in the different cases analyzed.

Within the seventeen sustainable development goals that the United Nations Organization has currently proposed, they all definitely have a certain link to a greater or lesser extent, but number sixteen is the one that directly concerns the central theme of this article. Peace, justice and solid institutions are the great challenge to meet. Peacekeeping missions and the Office of the United

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Nations High Commissioner for Refugees have strengthened their actions to deal with and resolve the growing crisis in this area.

According to the (UN, s.f.) "promoting the rule of law at the national and international levels and guaranteeing equal access to justice for all" is fundamental and strategic. Of course I share that same vision given the urgency to first resolve the needs in this regard in the most pressing regions at the international level.

Legal regulations at the international level, as well as its full compliance with each and every one of its provisions has an enormous challenge with humanity. After researching, analyzing, studying and meditating on everything previously described regarding the different authors mentioned in this article, they make us think in a more responsible, comprehensive, sensitive and creative way about the solutions that must be applied immediately in the international concert of nations given the results that have been obtained so far.

(Jiménez de Aréchaga, 1989) commenting on the Project report states:

> …damage is not part of the primary rules, it is linked to the secondary rules of State responsibility, since it refers to its implementation at the diplomatic and judicial level. The damage requirement is, in reality, an expression of a fundamental legal set that prescribes that no one has an action without an interest of a legal nature. The damage suffered by a State is always the element that authorizes a particular State to formulate a claim against another and to request reparation.

(Ortiz, 2018) states the following:

> Traditionally, the international responsibility of States has been classified as:
>
> a) Direct or immediate: the damage comes from an act of the State, through the organs or entities that are part of it or individuals that are in its territory, and
>
> b) Indirect or mediate: the State is responsible for the damage caused, in violation of international norms, by other States that are in a situation of dependency on it; For example, in the cases of trusteeship agreements, the administering State is responsible for the trust territory, for acts that violate international law. In other words, there is a transfer of international responsibility from one subject to another.

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The previous classification, already surpassed, is based on the subject whose action produces an international responsibility. However, we consider that international liability must be classified according to the fact or act that has given rise to an international claim. (pp. 138-139)

Conclusions

Once this topic has been analyzed, the administration of justice in international law, as well as its international legal regulations, are essential for the correct application of international legal provisions.

Of course, from my particular point of view, the set of international conventions that have been celebrated have contributed to strengthening what has been sought in international matters. I consider the analysis of the various positions of the authors consulted to be of great interest, as well as the work of international organizations for the administration of justice.

The solution of the various conflicts and controversies, highlighting arbitration, in addition to international mediation and conciliation, constitutes one of the most successful ways to reach settlement agreements in an expeditious manner given the great need that exists in various cases obtained in this article and that for the same must be intensified its immediate solution.

In general, the arbitration procedure consists of two stages: a written one, in which the parties' reports on the facts and the applicable law are provided through the presentation of pleadings, replies and rejoinders, and an oral one, in which the parties formulate verbal presentations before the members of the arbitral tribunal, being usual to include the statements of experts and witnesses.

Once the procedure is concluded, the members of the arbitral tribunal deliberate among themselves in secret and the draft judgment or arbitral award is formulated. The award is adopted by a majority of the arbitrators, who reserve the right to formulate individual and dissenting opinions.

The award is drawn up in writing, motivating all the decision points to which individual and dissenting opinions may be added. Let us remember that since it is mandatory, the award must be complied with by the parties in accordance with the principle

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of good faith during the agreed term, under penalty of incurring international responsibility in the event of non-compliance.

Article 33 of the UN Charter indicates the dispute resolution means available to Member States. However, it also states that controversies may be resolved -through "other peaceful means of their choice"- From the above it follows that the list contemplated in said precept is merely illustrative and does not exclude the possibility of using other mechanisms to settle differences. by peaceful way.

The parties to the disputes can choose to go to an international body, be it technical or political, to decide which is right in a given dispute, committing themselves in advance to abide by its decision. Such is the case of the differences that have arisen around the interpretation or application of numerous bilateral air treaties, in which the ICAO (and within it, its Council) is usually designated as the body indicated to resolve this type of issue of controversies. Likewise, the Secretary General of the UN has been appointed, on occasions by the States party to a dispute, to decide who is right. (Heftye, 2020, pp. 227-230)

Therefore, I also consider highlighting the importance of remaining very attentive both in the analysis, study, discussion and proposals on these major issues in order to be able to cohabit in a better way and thus guarantee the best coexistence between peoples.

From my particular point of view, our current reality in a world increasingly integrated into the intense and dynamic globalization in economic, commercial, political, social and other matters makes it necessary to delve into the most professional and detailed way possible joint legal analysis.

Of course, at the same time its foundation and support in legal matters in its international jurisdiction is structural and essential to provide legality, certainty and confidence in this regard. In this sense lies the intention of this documentary research work, which I hope and thank you for having been to your liking.

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