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CHAPTER 41

INTERNATIONAL ADJUDICATIVE BODIES

CHIARA GIORGETTI

The past fifty years have seen a tremendous rise in international litigation. There are more parties who are more prone to use international law mechanisms to resolve their disputes, and more international actors have more forums available to them to which they can bring their disputes. Indeed, the multifaceted growth of international dispute resolution is one of international law’s most important and interesting recent developments.

At the heart of this development are international adjudicative bodies, a diverse group of international bodies that have a common dispute settlement function, the outcome of which is binding on the parties. This chapter examines how, when, and over whom these bodies can exercise their function, as well as the nature and enforceability of their decisions.¹

INTERNATIONAL ADJUDICATIVE BODIES: THE BASICS

International adjudicative bodies include a variety of international courts and tribunals, claims and compensation commissions, arbitral tribunals, and ad hoc bodies. At their core and as a minimum, these bodies can issue decisions that are binding for the parties to which the decision is directed. The constitution of each body, applicable rules of procedure, the number and nomination procedure of decision-makers, and the way in which binding decisions are reached and become enforceable, however, differ greatly among these bodies.

Indeed, the types of adjudicative bodies also vary greatly in terms of their subject matter jurisdiction, which can be general or specific; personal jurisdiction, which can encompass individuals, states, international organizations, and corporations; and geographical and temporal jurisdictions.

The binding nature of their decisions differentiates adjudicative bodies from other international organization bodies that may exercise similar review and monitoring functions and possess some nonadjudicative means, but whose decisions are ultimately not legally binding. These bodies include international review, accountability, oversight, and audit mechanisms; human rights treaties and United Nations (UN) Charter bodies; and the compliance mechanisms of several multilateral environmental treaties.

Because they are parts of international organizations, international adjudicative bodies also share some of the essential characteristics of international organizations: they are international actors, which means that they are generally created by international law and they are bound by it, and are generally detached from domestic law. Being international actors, their staff is constituted by international civil servants whose conditions of service are regulated by international instruments.

Within their respective international organizations, adjudicative bodies resolve disputes between actors, and their decisions can result in an enforceable and mandatory act. However, the relevance of their dispute resolution function can vary

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3 Romano explains that "All bodies in the class of Non-Adjudicative Means share the trait of producing outcome that are not binding. They are called 'reports' or 'recommendations' and do not create a legal obligation on their recipients who remain free to adopt them or ignore them"; Romano, "A Taxonomy of International Rule of Law Institutions," 1.
substantially, from playing a core role within the organization to being in a peripheral, supportive position.

Diversity of Adjudicative Bodies

International adjudicative bodies share several common characteristics. At their core, they are all neutral and independent bodies that resolve disputes through binding adjudicative means. These bodies are "made up of independent judges who are entrusted with adjudicating international disputes on the basis of international law according to a pre-determined set of rules of procedures and rendering decisions which are binding on the parties."\(^4\) The adjudicative process may vary substantially and include judicial and arbitral proceedings and decisions on international claims and compensations. Eventually, the outcome of the process is always legally binding for the parties. Adjudicative bodies typically hear cases where at least one of the parties is a state or an international organization. The parties to the dispute are also ensured a certain degree of participation in the process by some form of oral and written submissions.

Because of the diverse nature, structure, jurisdiction, and competence of existing adjudicative bodies, a shared systematization is difficult. Still, it is possible to group them according to several common characteristics.

International Courts and Tribunals v. Arbitral and Other ad hoc Bodies

First, it is possible to distinguish between judicial bodies, such as international courts and tribunals, and other arbitral and ad hoc bodies. Note that this difference is essentially descriptive, and not outcome-determinative, as all these bodies ultimately issue binding decisions.

Judicial Bodies

The paradigmatic example of an international judicial body is the International Court of Justice (ICJ), which Article 92 of the UN Charter defines as the "principle judicial organ" of the UN.\(^5\)

Judicial bodies include international courts and tribunals which are permanent institutions made up of an existing and permanent judiciary. These kinds of bodies are generally created before the dispute between the parties arose.\(^6\)

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Judicial bodies include diverse kinds of international courts and tribunals such as the International Criminal Court (ICC), the European Court of Human Rights (ECtHR), International Tribunal for the Law of Sea (ITLOS), and the Administrative Tribunal of the International Monetary Fund.

Arbitral Bodies and Other ad hoc Bodies

Separate from pure judicial bodies are other kinds of dispute resolution bodies that can issue legally binding decisions, but do not enjoy the characteristics of judicial bodies as described above. Typically, these bodies are not permanent, but temporary, and are often created after the dispute has arisen, with the aim of deciding one particular issue or dispute. These bodies include international arbitration tribunals, international claims and compensation bodies and other ad hoc bodies whose final decision, regardless of whether it is issued as an award, decision or report, is ultimately binding on the parties.7

International arbitration tribunals are temporary tribunals in which the parties enjoy a high degree of freedom and control. Parties can choose the arbitrators who decide the dispute—who, once appointed, must decide independently.8 Parties are also generally free to decide both the substantial and procedural applicable law. Arbitral tribunals cease to exist once the reason for their creation is exhausted and the award issued. International organizations include several structures that facilitate the formation and work of international arbitration, including the International Centre for Settlement of Investment Disputes (ICSID), an autonomous international institution which is part of the World Bank Group established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention).9 Similarly, the Permanent Court of Arbitration (PCA), established in 1899 to facilitate arbitration and other forms of dispute resolution between states, offers a permanent framework to constitute international arbitral tribunals to resolve many different kinds of disputes involving states, state entities, intergovernmental organizations, and private parties.

Other ad hoc bodies are created by agreement of the parties after a dispute has arisen between them. Because of their unique genesis, their jurisdiction and rules of procedure vary. Important examples of ad hoc quasi-judicial bodies include several international claims and compensation bodies. For example, the Iran–US Claims Tribunal was created in 1981 to adjudicate thousands of complex commercial and

international law claims between Iran and the United States and their nationals arising out of the 1979 Revolution in Iran. Another important ad hoc judicial body, the UN Compensation Commission (UNCC), was created by a UN Security Council (UNSC) resolution to compensate individuals, international organizations, corporations, and UN member states for losses resulting from Iraq’s unlawful invasion and occupation of Kuwait in 1991. Also, several important ad hoc bodies were created under the aegis of the PCA, including the Eritrea–Ethiopia Boundary Commission and the Eritrea–Ethiopia Claims Commission—both created to resolve dispute arising from the Ethiopia–Eritrea 1998–2000 war.

**Subject Matter Jurisdiction**

Second, international adjudicative bodies can also be usefully distinguished by focusing on their subject matter jurisdiction. Most of these bodies have very specific jurisdiction, while the competence of others is more general.

**General Jurisdiction**

The ICJ, the “principle judicial organ” of the UN, is the main example of court of general jurisdiction. In contentious proceedings, the court is open to states parties to its Statute. Article 36 of the Statute specifies that the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the UN Charter or in treaties and conventions in force. States parties can also accept at any time compulsory jurisdiction of the Court for specific legal disputes concerning the interpretation of treaties or other questions of international law. The ICJ has decided cases related to territorial and maritime boundaries, rules on state responsibility, the immunities of states and state officials, the use of force, diplomatic and consular law, and the law of the sea and environmental law.

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11) Note that the ICJ is also entrusted with advisory jurisdiction, see “Advisory Opinions” later in this chapter.


13) Ibid. This states at paras. 1 and 2 that: “1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. 2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation.”
Adjudicative bodies with general jurisdiction can also be established under the aegis of the PCA. The PCA provides maximum flexibility to the parties and is an “administrative organization with the object of having permanent and readily available means to serve as the registry for the purpose of international arbitration.”

The PCA provides administrative support and secretarial and registry services for many international investment tribunals, state–state arbitration, and several ad hoc bodies.

Specific Subject Matter Jurisdiction

The great majority of adjudicative bodies have a much more specialized subject-matter jurisdiction, including international criminal law, human rights, international trade law, and law of the sea.

International criminal law

Three international judicial bodies have specific jurisdiction on certain international criminal law violations. The ICC is located in The Hague, in The Netherlands, and presently has jurisdiction to prosecute certain individuals for three specific international crimes: genocide, crimes against humanity, and war crimes. Similarly, two other specialized international tribunals have jurisdiction over certain international crimes. The International Criminal Tribunal for the former Yugoslavia (ICTY) was created by the UN Security Council in 1993 to prosecute and try individuals on four categories of crimes: grave breaches of the 1949 Geneva Conventions, violations of the laws and customs of war, genocide, and crimes against humanity committed in the territory of the former Yugoslavia.


17 In general for the ICC, see David Stewart, “The International Criminal Court,” in The Rules, Practice, and Jurisprudence of International Courts and Tribunals, ed. Chiara Giorgetti (Leiden: Martinus Nijhoff, 2012). Note that the jurisdiction of the ICC is limited to individuals who are nationals of a state party to the ICC Statute, or to crimes that took place in the territory of a state party. Under limited circumstances the UN Security Council can refer situations to the ICC. The complementary principle further reduces the scope of the jurisdiction of the ICC. Starting in 2017, the jurisdiction of the ICC will also include limited forms of aggression. See also the website of the ICC, which contains all main and relevant legal documents as well as information on all of its cases: http://www.icc-cpi.int/Pages/default.aspx. For an overview of the jurisdiction of the ICC on the crime of aggression, see M. Politi, “The ICC and the Crime of Aggression: A Dream that Came through and the Reality Ahead,” Journal of International Criminal Justice 10 (2012): 263, as well as the website of the ICC.

Finally, the International Criminal Tribunal for Rwanda (ICTR) was created in 1994 to prosecute all alleged perpetrators of genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and of Rwandan citizens responsible for the same acts also in the territory of neighboring states between January 1, 1994 and December 31, 1994.19

Human rights
A number of regional courts also have specialized subject matter jurisdiction over allegations of human rights violations brought by individuals against a state. The ECtHR, for example, can hear cases brought by individuals related to alleged violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by one of the member states.20 All forty-seven members of the Council of Europe have ratified the ECHR, extending its protections to about 800 million people who live in Europe. The jurisdiction of the ECtHR includes violations of the right to life; the right to a fair hearing; the right to respect for private life and family; freedoms of expression, thought, conscience, and religion; and the protection of property.21

Similarly, the Inter-American Court of Human Rights has specialized jurisdiction over the interpretation and application of the American Convention on Human Rights, which grants individuals certain basic human rights.22 The Court has heard cases concerning forced disappearances, the death penalty, armed conflict, judicial independence, amnesty laws, and freedom of expression.

International administrative tribunals
A group of increasingly relevant tribunals are competent to hear cases brought by the employees of international organizations against their employers on issues related to their employment with the organization.23 Such tribunals are important because international organizations generally enjoy immunity from suit or legal process, and employees would not therefore be able to sue their employer in domestic courts. Moreover, the creation of specialized administrative tribunals also

21 See website of the ECtHR: http://www.echr.coe.int/Pages/home.aspx?p=home.
allows a certain degree of uniformity in the application of employment contracts common to staff members from many different domestic jurisdictions. Because of the specialized nature of these tribunals, the peculiarity of their procedure, the increasingly relevant case law, and the lack of alternative forums, international administrative tribunals constitute an important group of judicial bodies. Most international organizations include such tribunals. Main examples include: the UN Dispute Tribunal, the UN Appeals Tribunal, the Administrative Tribunals of the International Monetary Fund, the World Bank, the Inter-American Development Bank, the African Development Bank, and the International Labour Organization Administrative Tribunal, which also acts as a tribunal for fifty-eight other international organizations. 24

Other judicial bodies of specialized jurisdiction
Other bodies enjoying specialized subject matter jurisdiction include ITLOS, which has jurisdiction on law of the sea issues arising out of the UN Convention on the Law of the Sea (UNCLOS), and the Appellate Body of the World Trade Organization (WTO) which is competent to hear appeals from decisions of panels concerning violations of the WTO agreements. 25

Territorial Scope: Global v. Regional Bodies
Another useful way to group adjudicative bodies is to distinguish between global and regional bodies. The ICJ, WTO Dispute Settlement Body (DSB), and ITLOS are all examples of global bodies. Their jurisdiction is not regionally based or regionally restricted.

Conversely, regional bodies cover disputes in specific and limited geographic areas. Human rights judicial bodies are typically regionally based. The jurisdiction of the ECtHR is limited to matters “concerning the interpretation and application” of the European Convention on Human Rights and its protocols, which is only open to ratification by members of the Council of Europe and to accession by the European Union. 26 The jurisdiction of the Inter-American Commission on Human Rights is likewise limited to member states of the Organization of American States.

24 Including the World Health Organization, the International Telecommunication Union, the World Trade Organization, and the Food and Agriculture Organization, see Elias and Thomas, “Administrative Tribunals.”
Similarly, several specialized judicial bodies hear disputes pertaining to regional economic and political integration agreements. For example, the European Court of Justice is competent to hear cases related to the implementation of European Union treaties, whose members are European states. Other judicial bodies of regional economic integration agreements include the Court of Justice of the Andean Community, which is the dispute resolution body of the Andean Community; the Permanent Review Tribunal of the Southern Common Market, established by the governments of Argentina, Brazil, Paraguay and Uruguay; and the Court of Justice of the Common Market for Eastern and Southern Africa, which includes nineteen African countries.27

The restriction of territorial scope can also result from the specialized jurisdiction of particular judicial or quasi-judicial bodies. For example, the territorial jurisdiction of the ICTY is limited to the territory of the former Yugoslavia. The ICTR can only prosecute individuals responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda in 1994, and Rwandan citizens responsible for the same crimes committed in the territory of neighboring states in the same period.

Temporal Scope: Prospective v. Retrospective Bodies

International adjudicative bodies can be also usefully categorized by the temporal scope of their jurisdiction. Certain adjudicative bodies enjoy general prospective jurisdiction, so that they only hear disputes that arose after they were created. These include the ICJ, ITLOS, ICC, ECtHR, and administrative tribunals of international organizations.

Conversely, the jurisdiction of other bodies is limited and retrospective, so that it applies to events that took place prior to the creation of the body. Retrospective jurisdiction is common to the ICTR, ICTY, the UNCC, and the Iran–US Claims Tribunal.28

The instrument creating the specific adjudicative body generally provides for the temporal scope. Of note, the 1993 Security Council resolution creating the ICTY provided that it had jurisdiction for crimes committed "since 1991" leaving the end date for the tribunal to determine.29

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Creation and Structural Arrangements

The diversity of international adjudicative bodies is also reflected in their varied designs and structural arrangements. This is exemplified by the different ways in which these bodies are created and by the place they occupy within the international legal system.

How Are Judicial and Quasi-Judicial Bodies Created?

Adjudicative bodies can be created in a variety of different ways: by a specific international treaty, through the instrument that created their parent international organization, by resolution of the UN Security Council, or by the parties to the dispute themselves.

Only a few international adjudicative bodies have been purposely created by a specific treaty, after extensive negotiations between the parties. For example, the Rome Statute of the International Criminal Court is a treaty that created the ICC. The Statute is the result of years of intense negotiations, and was adopted at a diplomatic conference held in Rome in 1998 and entered into force in July 2002.30

More often, the establishment of such bodies is provided for in the instrument that created the international organization within which the body exercises its functions. So, for example, as mentioned above, the ICJ was established by the UN Charter, the instrument that created the UN.31 Similarly, the creation of ITLOS is included in UNCLOS.32 Other international treaties that create international organizations and that establish one or more adjudicative bodies include the WTO, which created a dispute settlement system and the WTO Appellate Body, and the ECHR, which established the ECtHR. Treaties that created the European Union also established a system of courts to monitor the implementation of their obligations.

Often the parties themselves create ad hoc adjudicative bodies, following applicable international obligations and rules of procedure. This is the case of international arbitral tribunals constituted under the ICSID Convention, for example, and arbitral tribunals constituted under the North American Free Trade Agreement (NAFTA).

Rarely, high-profile adjudicative bodies can be created by UN Security Council resolutions. For example, both the ICTY and ICTR were created by resolutions of the Security Council acting under Chapter VII of the UN Charter.

Some adjudicative bodies are created by unique means. Among the most peculiar are the Iran–US Claims Tribunal and the Eritrea–Ethiopia Claims and Boundaries Commissions. The establishment of the Iran–US Claims Tribunal was incorporated

31 The text of the UN Charter is available at the website of the UN: http://www.un.org/en/.
in a 1981 Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Disputes, to which Iran and the US formally adhered. Algeria acted as a broker and mediator between the United States and Iran, who were at the time unwilling to negotiate directly. The Eritrea–Ethiopia Boundary and Claims Commissions were created and operated as independent bodies pursuant to Articles 4 and 5 of the Agreement between the Governments of the State of Eritrea and the Federal Democratic Republic of Ethiopia, signed in Algiers on December 12, 2000 and which also included several other commitments related to the cessation of hostilities between the two countries.

The Place of Adjudicative Bodies in the International Community

International adjudicative bodies occupy diverse places within the international community and other international legal actors. Essentially, they can either stand alone, as a distinct international actor, or can be embedded in an international organization with broader functions.

Stand-Alone Bodies

Some judicial or quasi-judicial bodies stand alone. Though they may engage in relationships with other members of the international community, they do not depend on or report to them, and are not functionally or financially attached to any other international organization. This is the case of the ICC, which is an independent organization. The Assembly of State Parties, composed of the states that have ratified or acceded to the Rome Statute, is the Court’s management, oversight, and legislative body. Uniquely, the UN Security Council can refer specific situations of concern to the Prosecutor for possible actions. This special relation is provided in the ICC Statute and does not derive from a dependent relation with the UN.

Another important example of a stand-alone judicial body is the Iran–US Claims Tribunal, which was created by the parties with a specific mandate to hear cases between them.

Ad hoc arbitration tribunals are also often independent bodies that act separately from other international organizations, though they may be assisted by them. The Eritrea–Ethiopia Boundary and Claims Commissions are examples of these


35 See ICC, “About the Court,” http://www.icc-cpi.int. The ICC Statute specifies that the Court “shall have international legal personality” (Art. 4). Article 2 provides that “The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.”
arrangements, as they were created as independent bodies, though the PCA provided secretarial and other administrative support.

**Part of an International Organization**

More often, adjudicative bodies are part of an international organization and function within it. In these instances, the dispute resolution function can be directed to either external or internal matters.

Certain bodies are organs of the international organization. The ICJ, as provided in Article 7 of the UN Charter, is a principal organ of the UN, while both the ICTY and ICTR are subsidiary organs of the Security Council. Importantly, these bodies maintain significant links to the organization to which they are parties, including on issues of funding and personnel.

The dispute resolution system of the WTO is peculiar as it contains elements of both categories. It comprises two bodies. At first, disputes between WTO member states are submitted to a DSB panel, whose expert members are selected in consultation with the parties to the dispute. The Appellate Body, conversely, is a standing organ composed of seven members who sit in three-person panels, and that can hear appeals on legal issues covered in the report of the ad hoc panel.

Another group of adjudicative bodies provides internal justice. Administrative tribunals of international organizations are standing organs, composed of permanent judges who can only hear cases related to personnel issues. They provide justice on matters that are internal and proper to the specific international organization.

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**What Do International Adjudicative Bodies Do?**

The primary function of international adjudicative bodies is to provide a final and legally binding outcome to specific international disputes brought to them by eligible parties. Naturally, the scope of the disputes depends on the jurisdiction of the specific body, and thus differs substantially from body to body.

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36 Art. 7, UN Charter—stating "1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, and Economic and Social Counsel, a Trusteeship Council, and International Court of Justice, and a Secretariat. 2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter."

Overall, international law disputes often concern alleged violations of international obligations and the interpretation of general or specific treaties applicable to the parties. These can include human rights conventions, international criminal law treaties, general instruments like the UN Charter, or international customary law and general principles of law. It may also include the interpretation of other international instruments in force between the parties, including contract terms in case of investment arbitration, or labor law for administrative tribunals.

As provided by Article 38 of the ICJ Statute, in taking its decisions, the ICJ applies:

international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; and ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.38

Other judicial and quasi-judicial bodies often refer to this provision and take it into consideration in their decisions, together with other applicable sources of law.

Procedures and competence are specific to each judicial and quasi-judicial body and require a focused analysis.39 Several common issues, however, can be usefully considered.

**Proceedings**

By and large, proceedings include a written and oral phase. Written pleadings can either be simultaneously exchanged or can be sequential. There is always an opportunity to reply. At the ICJ, for example, the written phase includes a Memorial submitted by the applicant, a Counter-Memorial submitted by respondent, generally followed by a Reply by the applicant and a Rejoinder by the respondent.40 Parties submit substantial evidence to support their cases, including primary and contemporary documents, historical records, and expert and legal opinions. The initial written phase can take quite a long time, often a couple of years, especially if the respondent challenges the tribunal’s jurisdiction and the proceedings are bifurcated

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38 Art. 38 of the ICJ Statute.


40 Art. 45 of the Rules of the Court provides that “the pleadings in a case begun by means of an application shall consist, in the following order, of: a Memorial by the applicant; a Counter-Memorial by the respondent.” And that “the Court may authorize or direct that there shall be a Reply by the applicant and a Rejoinder by the respondent if the parties are so agreed, or if the Court decides, proprio motu or at the request of one of the parties, that these pleadings are necessary”: Rules of The Court (1978), http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0.
between the jurisdictional and merits phases. Oral proceedings follow the written exchanges and provide an opportunity for parties to plead their case directly in front of the decision-makers and answer any questions they may have. Depending on the tribunal, during the hearings experts and witnesses may be heard and examined. Hearings are rarely confrontational, though. They are often condensed to a few full days or weeks and require intense preparation by all involved.

Issuing Judgments and Orders

International adjudicative bodies can issue a variety of decisions.

Orders are interlocutory decisions taken to administer proceedings, including procedural calendars or the collection of evidence. Orders can also be issued in response to a request for preliminary (or interim) measures of protection to preserve the respective rights of the parties. In the *LaGrand* case, the ICJ confirmed that preliminary measures have a binding effect on the parties to the case and must be applied.

If the proceedings are bifurcated, the court or tribunal first decides on whether it has jurisdiction to decide the case, and decides then on the merits of the case. Final judgment must include the reasons for the decision.

Deliberations are secret and decisions are taken by a majority of judges, with a casting vote of the President when necessary. Dissenting and separate opinions are often appended to the final decisions.

Limited Appeals

International judicial proceedings do not normally include the possibility of appeal. However, there are some exceptions. Decisions by the trial chambers of international criminal bodies, for example, can be appealed by both the defendant and the prosecutor to the Appeal Chamber. The Grand Chamber of the ECtHR can hear cases referred to it by one of the parties within three months of the decision of a

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41 e.g., see Art. 41 of the ICJ Statute.
chamber, if it decides that the case raises a “serious question” of general importance or of interpretation or application of the ECHR.\(^{43}\) The Appellate Body of the WTO can hear appeals on legal issues covered in the report of the experts’ panel.\(^{45}\)

Proceedings may also include other forms of post-judgment remedies. At the ICJ, for example, parties may apply for interpretation or revision of the judgment if decisive new facts are discovered.\(^{46}\) The ICSID Convention provides for limited review of a decision in special annulment proceedings based on limited grounds enumerated in the ICSID Convention itself.\(^{47}\)

### Remedies and Reparations

When an international adjudicative body finds that there has been a violation of international law, it can issue a judgment, award, or decision ordering different types of reparation. Article 34 of the International Law Commission’s Draft Articles on State Responsibility provides that reparation for the injury caused by an internationally wrongful act can take the form of “restitution, compensation and satisfaction.”\(^{48}\) Full restitution (restitutio ad integrum) is the preferred method in international proceedings, but often re-establishing the situation which existed before the wrongful act was committed is either materially impossible or excessively burdensome on the parties. In such cases, monetary compensation for the damage caused is often used as a form of reparation in proceedings between states, arbitration tribunals, and many judicial and quasi-judicial bodies.

In addition to compensation for damages and restitution, human rights tribunals can also request that states which have violated the convention prevent similar violations in the future. This will require the state to adopt the necessary individual or general measures, including amendment of domestic legislation. In the *Barrios Altos* case, for example, in addition to requiring the payment of compensation, the Inter-American Court of Human Rights required Peru to grant families of the victims free health care and educational support; repeal two amnesty laws; establish the crime of extrajudicial killing domestically; ratify a relevant international convention; publish the judgment in the national media; publicly apologize and undertake to prevent similar events in the future; and erect a memorial monument to the victims.\(^{49}\)

\(^{43}\) Art. 43 of the ECHR.

\(^{45}\) See Romano, "A Taxonomy of International Rule of Law Institutions," 18.

\(^{46}\) Arts. 61 and 62 of the ICJ Statute.

\(^{47}\) Art. 52 of the ICSID Convention.


International criminal tribunals are of course very different in this respect. Individuals who are found guilty of violations of international criminal law are given prison terms that can go up to life imprisonment. Because international criminal tribunals lack a prison system, prison sentences are carried out in facilities situated in member states.

**Enforcement and Implementation Mechanisms**

Compliance with international decisions relies substantially on general respect for international law, peer pressure, and possible political or financial repercussions for non-compliance. Despite skepticism, the great majority of decisions are implemented and enforced voluntarily by the parties, who have generally agreed to be bound by the adjudicative body’s decision.

When compliance does not come voluntarily, however, it may be difficult to compel. Indeed, the lack of effective enforcement procedures is probably one of the weakest points of the adjudicative system. For example, under Article 94 of the UN Charter, member states undertake to comply with the decisions of the ICJ in cases in which they are party. If a party fails to perform its obligations “the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

The Security Council was only going to be asked once, by Nicaragua, to make a recommendation in this respect, but the decision was vetoed by the United States, a permanent member, against which the ICJ judgment had been given *in absentia*.

Some bodies have established stricter and more efficient enforcement proceedings. For example, judgments of the ECtHR finding violations are transmitted to the Committee of Ministers of the Council of Europe for execution. The judgment then remains on the agenda of the Committee until it is satisfied that it has been properly enforced. In several ad hoc proceedings, including those of the Iran–US Claims Tribunal and the UNCC, the parties provided for special mechanisms to enforce payment of compensation. Awards issued under the ICSID Convention are enforceable in the territory of all contracting states as if they were final judgment of a court in that state.

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50 Art. 94 of the UN Charter.
52 Art. 54 of the ICSID Convention.
Advisory Opinions

In addition to their adjudicative function, some judicial bodies can also give advisory opinions on certain legal questions. For example, the ICJ can issue advisory opinions on legal questions at the request of the organs of the UN or specialized agencies authorized to make such a request. ITLOS, ECtHR, and the Inter-American Court of Human Rights can also render nonbinding advisory opinions, when requested by authorized actors.53

How Do Judicial and Quasi-Judicial Bodies Work?

Structure of Judicial and Quasi-Judicial Bodies

The essential constitutive components of international adjudicative bodies are similar and include a number of decisions-makers; a secretariat, who acts as a support structure that enables the body to function; and, often an assembly body comprising member states.

Who Are the Decision-Makers?

At the center of all adjudicative bodies are the decision-makers, who can be given a variety of titles, including judges, arbitrators, members, and commissioners. They are responsible for the final decision and resolution of a dispute. Decisions-makers in international adjudicative bodies are often called to decide complex and sensitive issues and are highly regarded and respected individuals, often at the pinnacle of their legal careers.

Importantly, they all sit in their personal capacity and independently from any government, appointing authority, or domestic court. The Statute of ITLOS, for example, requires all judges to be “independent members” of the Tribunal.54 Similarly, the ICSID Convention requires that all arbitrators “may be relied upon to exercise independent judgment.”55

53 See Art. 138 of the ITLOS Rules, Art. 47 of the ECHR, and Art. 64 of the American Human Rights Convention.
The composition of these collective bodies varies. The ICJ, for example, has fifteen members, while ITLOS has twenty-one members. Uniquely, the ECtHR is composed of the same numbers of judges as there are state parties to the ECHR, presently forty-seven. Membership is often restricted by nationality and geographical distribution, so that, in the case of the ICJ for example, "no two [members] may be nationals of the same State." Additionally, a fair representation of "the main forms of civilizations and of the principle legal systems of the world" is often required in international bodies.

There are three overall mechanisms to select international judges, arbitrators, or commissioners: by election, by a neutral authority, or by the parties to the dispute. First, judges in international courts are nominated, often by a national nominating committee, and then elected by a decision-making body of an international organization, for example the General Assembly and the Security Council of the UN. Judges of the ECtHR are elected by majority of the Parliamentary Assembly of the Council of Europe from lists of three candidates proposed by each state party. Because of the prestige and status of international decisions-makers, especially within the UN system, elections are complex and important, and states can spend significant resources to get their candidates elected. The election of judges takes place in all international courts and tribunals, including ITLOS, ICC, ICTY, ICTR, ECtHR. Judges are elected for a specific amount of time. For example, judges at the ICJ and ITLOS are elected for nine years and can be re-elected. Judges at the ECtHR serve for one non-renewable term of nine years. Elections are typically staggered, so that a small number of judges are elected every three years or so, so as to allow both renewal and consistency.

Second, arbitrators can be selected by a neutral third party under certain circumstances, including inaction by one of the disputing parties, the selection of the president of the tribunal, and the selection of members of ad hoc committees. A neutral appointing authority can also be tasked with the selection of specific arbitrators.

Third, and finally, in most international arbitrations, the parties themselves can select their own arbitrators, as it happens in ICSID and NAFTA proceedings. Parties can also select ad hoc judges at the ICJ in certain circumstances.

59 Art. 3 of the ICJ Statute.
60 See Art. 9 of the ICJ Statute and Art. 2 of the ITLOS Statute.
In some cases two methods are used to select the final members of the arbitral tribunal. International investment tribunals, for example, are generally composed of three members. Commonly, two of the three arbitrators are unilaterally selected by the parties, with each party appointing one arbitrator. The third arbitrator and presiding arbitrator is selected by agreement of the party, or, more often, by an appointing authority.\(^{63}\)

In addition to providing a framework that specifies how to select judges and arbitrators, applicable rules of procedure also require judges and arbitrators to possess certain legal qualifications and competences, which are often quite general. Judges of the ICJ, for example are “elected regardless of their nationality, from among persons of high moral character, which possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competences in international law.”\(^{64}\) Judges of the ECtHR must be “of high moral character” and “either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.”\(^{65}\) Under the ICSID Convention, arbitrators must be persons of “recognized competence” in the fields of law in particular, and commerce industry or finance.\(^{66}\)

More recently, newly constituted courts and tribunals have added more detailed requirements. For example, the ICC Statute requires judges to have expertise in criminal law and procedure or, alternatively, to have expertise in international humanitarian law and human rights law.\(^{67}\) ITLOS’s judges are elected from among persons “enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.”\(^{68}\)

The elections and nominations of international judges and arbitrators have at times been criticized for lack of diversity, and especially for the paucity of women judges and arbitrators. Uniquely, the ICC Statute has tried to address this issue by requiring a fair representation of female and male judges in its Court.\(^{69}\)

**Secretariats and Registries**

Secretariats and registries provide essential, albeit often underestimated, support to the work of international adjudicative bodies. In addition to administrative support, they also register, service, and keep track of all cases, deal with requests from the parties, and manage financial issues. For example, the tasks of

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\(^{63}\) Art. 37 of the ICSID Convention.  
\(^{64}\) Art. 2 of the ICJ Statute.  
\(^{65}\) Art. 21 of the ECHR Statute.  
\(^{67}\) Art. 36 of the ICC Statute, A/CONF.183/9, adopted on July 17, 1998 and entered into force July 1, 2002 (requiring geographical distribution and representation of the principle legal systems of the world, as well as a fair representation of female and male judges).  
\(^{69}\) Art. 36 of the ICC Statute.
the Registrar of the ICJ "are not only those of a service helping in the administration of justice—with sovereign States as litigants—but also those of a secretariat of an international commission. Its activities are both judicial and diplomatic, as well as administrative."70

In certain instances, mainly in arbitration, the services of the secretariats can be flexible. The Secretariat of the PCA, the International Bureau, provides full registry services and legal and administrative support to tribunals and commissions. The extent of its services can be agreed upon by the parties.71 Similarly, the ICSID Secretariat provides services to ICSID tribunals that are essential for their success and functioning.72

Assembly Body
In conjunction with decision-makers and support bodies, the structures of the adjudicative bodies often include an assembly body comprising all member states. The assembly body provides general management guidance, decides on budgetary issues, reviews periodic reports, can often approve rules of procedures, and is involved in the selection of decision-makers. For example, the Assembly of State Parties of the ICC is composed of representatives of the states that have ratified or acceded to the Rome Statute, and decides on items such as "the adoption of normative texts and of the budget, the election of the judges and of the Prosecutor and the Deputy Prosecutor."73 For the ICJ, and other UN judicial bodies, that function is provided by the UN General Assembly. The Administrative Council of the PCA, whose membership includes representatives of all 115 member states, oversees its policies and budgets.74 The Administrative Council, composed of one representative of each of the ICSID Contracting States, is the governing body of ICSID.75

Who Can Bring a Claim?
Traditionally, the personal jurisdiction of international courts and tribunals was limited to states. States are the main subjects of international law and they have typically been granted access to the majority of international courts and tribunals. For example, the ICJ can only hear cases between states. Other judicial bodies whose personal jurisdiction is limited to states include the WTO and ITLOS.

One of the most interesting recent developments in international law is the increasing direct access given to individuals and other nonstate actors to numerous international adjudicative bodies. In fact, individuals now have direct access to multiple bodies and can directly bring claims related to human rights, international investments, and international labor law. Thus, individuals can bring direct claims to the ECtHR and natural and juridical persons could also bring claims directly at the UNCC, at the Iran–US Claims Tribunal, and in international investment arbitrations.76

The jurisdiction on international criminal tribunal and courts, like the ICC, ICTY, and ICTR is based on individual responsibility for conduct defined as criminal under international law. These courts mirror domestic criminal courts, and provide for a specially elected prosecutor to bring cases against individuals on behalf of the international community.

In international administrative tribunals, claims are brought by staff members against the international organization that employs them.

International adjudicative bodies afford only limited participation to third parties. Amicus briefs are not allowed in most courts, with the exception of some international investment arbitration bodies.

**Conclusion**

The exponential growth of international adjudicative bodies is recent, and has not been organic or systematic. Indeed, they are not organized hierarchically and there is no structured international judicial system.77

The unsystematic proliferation of these bodies has generated much discussion among international lawyers. These discussions have focused on possible consequences of the proliferation of adjudicative bodies for the development of international law; the need for formal or informal coordination between judicial actors; and whether proliferation as a legal phenomenon is positive or whether it would result in excessive fragmentation of the international judicial system.78 Indeed, the proliferation of judicial bodies has led to concerns about

the risk of atomization of international law into separate areas, and about the possible weakening of international law by competing decisions of different tribunals deciding on the same or similar legal issues.79

In reality, time has shown that concerns are mostly unjustified: the jurisdiction of these bodies is sufficiently specific to avoid real conflict. Moreover, more complex disputes have required a more sophisticated use of the system, whereby different aspects of a case are presented in front of different adjudicative bodies.

Assessing the effectiveness of international adjudicative bodies is also an important and complex exercise. On one side, some critics have focused on the fact that, contrary to conventional wisdom, the most successful international tribunals are those where judges are appointed by parties for the purpose of resolving a particular dispute.80 On the other side, experts have argued that assessing the effectiveness of international adjudicative bodies requires a more complex analysis, which must include not only judicial independence, but also the tribunal's composition, the caseload and functional capacity, the quality of legal reasoning and independent fact-finding capabilities, and the nature of the violations.81

Assessing the effectiveness of international adjudicative bodies necessarily includes many different variables and is perforce dependent on these variables. Issues to consider include compliance with the decision by the parties, usage rates, impact on state conduct, impact on the parties and other stakeholders, the complexity of the issues decided, existing case law and the decision's relationship with it, available remedies, and the sophistication of the legal reasoning. Moreover, states have many different reasons to create adjudicative bodies, from addressing pressing legal violations (ICTR and ICTY), to concluding long negotiations (ICC), to the aftermath of unique political processes, like the end of the Cold War—which in many ways changed the international legal landscape.82 All these issues must be taken into consideration when assessing the effectiveness and usefulness of international adjudicative bodies.


79 Indeed, the UN International Law Commission (one of the main codification bodies on international law) addressed the issue at length and created a special Working Group to study the challenges ensuing from the diversification and expansion of international law. See the final 2006 report, "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law," GA Res. 61/34 of December 4, 2006, http://legal.un.org/ilc/guide/1_9.htm.

