

STUDY AND DISCUSSION GUIDE

for

TRANSFORMING THE UNITED NATIONS SYSTEM: DESIGNS FOR A WORKABLE WORLD

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Unit 7: A Strengthened Judicial System

(p. 129-148)

Why Is This Important? (p. 129-130)

Every orderly society depends on: a) *law*, to define minimum standards of behavior; b) *courts*, to peacefully settle disputes involving legal matters; and c) an effective system of *law enforcement*. Laws and their enforcement are dealt with in Units 6 and 12 respectively; here we focus on courts, an as yet under-developed link between the two at the global level.

Modest Beginnings (p. 130-143)

Not until 1907, when the Permanent Court of Arbitration was established in The Hague, was there any judicial body capable of settling international legal disputes. That still functioning body, however, was not a true court but rather a group of arbitrators available, as needed, to mediate or arbitrate disputes (mostly relatively minor) between two willing States. A more effective Permanent Court of International Justice was also established in The Hague in 1921, but it lacked compulsory jurisdiction and enforcement capability, and arguably it was never successful in averting a war or establishing the basis for a lasting peace among rival states. Its successor, the International Court of Justice (ICJ), established in 1945 as a key agency in the United Nations system, suffered from the same defects. However, its membership is virtually universal since being a member of the UN makes a nation, *ipso facto*, a member of the ICJ. The ICJ is also noteworthy for including justices from all of the world's major cultures and judicial systems and, belatedly, a number of female justices. In addition to rendering theoretically binding, but often flouted, verdicts in "contentious" cases, the ICJ may convey "advisory opinions." The latter carry substantial moral, if not legally binding, force.

In addition to the ICJ, the post-World War II period witnessed the birth of other internationally constituted judicial institutions. Of particular importance was the establishment in 2002 of the International Criminal Court (ICC). Its Statute has 124 adhering nations (as of 2016).

Headquartered in The Hague and independent of the UN, the ICC is the first standing court to make the actions of *individuals* subject to criminal prosecution, thereby instituting a new global norm that no person, no matter how high in rank, should be above the law. But, despite this path-

breaking change, the ICC works very slowly. It has issued only 39 indictments, and only four convictions have been imposed as of this writing. Moreover, it has been criticized for an obvious double standard focusing almost exclusively on crimes committed in Africa and ignoring the alleged crimes of leaders from the global North. Neither the US, nor Russia, nor China are members. Thus (as of 2016) three African nations (including South Africa) have declared their intention to renounce their adherence to the ICC statute.

Globalization has expanded the need to regulate economic and other transnational activities, and it has led to the creation of hundreds of global and regional specialized agencies. The most prominent of these is the World Trade Organization (WTO) with 164 member nations as of 2016. Founded in 1995 – outside the UN system – it is adhered to by nations accounting for the vast majority of the world’s production and commerce. The WTO’s principal mandate, the liberalization of international trade, inevitably results in numerous legal disputes. To resolve these disputes evidence is secretly reviewed by appointed “appellate bodies,” and the decisions rendered, based on relevant treaties, are almost universally followed despite the absence of formal enforcement mechanisms.

Recommendations (p. 143-146)

1. Over the next few decades greatly expand the world’s judicial infrastructure. The following are needed:
 - a. courts to adjudicate trans-national political disputes in the major regions and sub-regions of the world.
 - b. specialized courts to deal with human rights disputes, environmental disputes, economic disputes, etc.
 - c. universal compulsory jurisdiction for the ICJ and a broader purview in regard to criminal offenses.
 - d. enhanced access to adjudication by non-state parties (international governmental organizations (IGOs) and international NGOs).
2. Make the ICJ an appellate court, limiting its caseload to disputes that cannot be resolved at the regional level or by an appropriate specialized court.
3. Where practicable, divide the ICJ into chambers, thereby enabling it to increase its caseload.
4. Establish the principle that court decisions in contentious cases shall be binding and enforceable.

5. Resort more frequently to the ICJ and regional courts for advisory opinions.
6. As circumstances permit, codify world, regional and sub-regional law.
7. Engage more women in the judiciary.

QUESTIONS:

1. *The recommendations noted above will be neither cheap nor easy. What are the chief obstacles to be overcome in implementing them? In what ways might the benefits of doing so justify the investment? Which recommendations should be accorded top priority for action?*
2. *Judgments that are “legal” are not necessarily just (see top of p. 144). How should one deal with this problem?*
3. *The book notes perceived criticisms of the current ICC (p. 136-7). Are these criticisms warranted? If so, would implementation of the author’s recommendations resolve the problem? If not, what other systemic changes do you recommend?*



The Peace Palace in The Hague, seat of the International Court of Justice