

**Recognising the Conflict Between “Legal Formalism”
and “Legal Realism” in Proceedings before the
International Court of Justice
(Original Research)**

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Extended Abstract

Introduction

The International Court of Justice is the main international institution dealing with disputes between States, and its main purpose is to resolve the disputes in contentious cases and answer questions from competent institutions via Advisory Opinions. The development of international law is one of the consequences of the Court's judicial work, as supported by the Court's opinions. In this process, the Court uses the two procedures of legal formalism and realism, but the adoption of each of these procedures has consequences for the process of dealing with claims and field of international law. This research attempts to examine the consequences of the Court's tendency towards each of these procedures, especially legal formalism and its effects and results. The results show that the refusal to confirm jurisdiction increasingly weakens the legitimacy and effectiveness of the Court as the best judicial institution in the world because it deprives itself of the opportunities available in the field of international legal development as it is influenced by political realities. Therefore, in order to overcome political considerations, it is necessary for the Court to be effective in the development of international law by referring to the Mavrommatis Principle and adopting a realist approach.

Research issue

The primary focus of this research is to examine the implications of formalism in the judicial process. In this regard, it is pertinent to inquire as to the extent

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to which the Court's shift towards formalism has resulted in the relinquishment of certain responsibilities, with the advancement of international law being a particularly salient example. From this perspective, the present study can be seen as an analysis of the Court's procedural shortcomings when viewed in comparison to alternative approaches, such as realism, the Mavrommatis Principle, and other conservative and formalistic methods.

1. Methodology

This article employs a qualitative research methodology. The research method is descriptive-analytical and employs the use of library tools. The researchers have collated and examined relevant materials from documentary and legal sources, employing a scientific process to evaluate them.

2. Key Finding

Findings of the research indicate that the refusal to confirm the competence of the Court is eroding its legitimacy and effectiveness as a leading judicial institution. This is due to a lack of opportunities for international law development and a lack of effectiveness and strength in light of the prevailing political circumstances, the slow pace of legal formalism has resulted in a lack of progress, rigidity, excessive formalism and the adoption of a cautious and politicised approach across different courts, a trend that gathered momentum particularly in the 1990s. It is therefore evident that the Court's capacity to transcend considerations and political interests in matters pertaining to jurisdiction may be enhanced through the adoption of a realism approach and a return to the Mavrommatis Principle. This, in turn, will facilitate the advancement of international law and the resolution of cases and disputes. An efficacious methodology that eschews selective intervention is thus required.

3. Participation

In order to contribute to the knowledge of the law, or to add to the scientific and legal debates, it should be said that the research at hand presents the following results: the refusal to qualify increasingly undermines the legitimacy and effectiveness of the Court as the best judicial institution in the world, by depriving it of the opportunities existing in the field of the development of international law, as well as weakening its effectiveness and weakness in relation to political realities. Legal formalism has led to immobility, inflexibility, excessive formalism and the adoption of a cautious and politicised approach from court to court, which gained momentum especially in the 1990s. Therefore, the ability of the Court to overcome considerations and political interests in matters of jurisdiction may be possible by adopting a realist approach and returning to the Mavrommatis Principle, which in turn will be effective in the development of international law. Therefore, while criticising the formalist approach that governs the

Court, we should also focus on the political work of the Court, the caution and consideration in some cases, the influence of the United Nations Security Council and inaction of the UN General Assembly.

The current solution is to return to the principle of Mavrommatis, and pay attention to the realities of contemporary society and avoid consideration in the relations between States and institutions, such as the United Nations Security Council. In this way, the international credibility of the Court will be justified in the eyes of States, and the development of international law between States in their disputes and cases will be realised in a more favorable way. This research can also contribute to a better understanding of international law with regard to the role of the Court; in order to reduce this unacceptable ambiguity, the Court should decisively and comprehensively adopt a unique jurisprudential paradigm. The procedural merits of the realist approach, together with the need for the Court to play a central role in the development of international law, dictate that it explicitly abandons the doctrine of formalism and instead apply the principle of Mavrommatis wherever possible.

4. Conclusion

From one perspective, the current research has focused on the pathology of the International Court of Justice in terms of its tendency towards legal formalism on the one hand, and the recommendation to return to the principle of Mavrommatis, or realism in the field of international law on the other. In short, these principles represent conservative and dynamic approaches, respectively, in the field of international law.

The present study has shown that what can be considered as the roadmap of the Court as an institution for the defense of international law, its development and the peaceful and fair settlement of international disputes is the return of the Court to the principle of Mavrommatis and lack of attention to political considerations and the influence of world powers

For examples, the recent decisions, as well as the 2011 decision in Georgia against the Russian Federation represents a clear turning point in the approach of the International Court of Justice in determining the date of the dispute in assessing jurisdiction. In the Georgia decision, the Court denied jurisdiction by adopting a formalistic approach that assessed jurisdiction solely by reference to the date of the filing of the application.

This approach culminated in the Marshall decision.

From the point of view of international law, it seems that the recent adherence of the Court to the formalistic approach in assessing the occurrence of a dispute is worthy of reflection and comment from two aspects: First, it deprives the Court of forthcoming opportunities to fulfil one of its secondary duties, namely the development of international law, and secondly, it degrades the position of the Court as an institution that uses the formalistic mechanism on a case-by-case basis only for political reasons. Therefore, the recommendation of the current

research that the Court should explicitly abandon the doctrine of formalism and apply the *Mavromatis* Principle wherever possible, so that it can defend the development of international law and resolve cases in an impartial manner.

Keywords

Legal Formalism, International Court of Justice, *Mavromatis*, Realism, International Law.

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