



Judicial Exile and International Judicial Reform: Rethinking the Independence of the Judiciary in a Global Context

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Abstract

Judicial independence is widely recognized as a cornerstone of justice, yet its realization in the international sphere faces increasing challenges from political pressures and global power asymmetries. This study introduces the concept of judicial alienation to capture the growing disconnection between the normative ideals of international courts and their perceived legitimacy. Using a qualitative design with a normative legal and comparative approach, the research examines primary legal instruments, including the Rome Statute, the UN Charter, and selected judgments of the International Criminal Court (ICC), the International Court of Justice (ICJ), and the World Trade Organization Dispute Settlement Body (WTO DSB), complemented by secondary academic sources. Findings indicate three interrelated patterns: uneven jurisdiction, particularly the ICC's disproportionate focus on African cases; legitimacy crises, reflected in recurring resistance to ICJ jurisdiction; and the limited scope of reforms, which tend to be procedural rather than structural. Comparative analysis further reveals that while the WTO DSB benefits from broader acceptance through its consensus-based mechanism, the ICC and ICJ remain vulnerable to contestation due to their direct engagement with state sovereignty. The discussion argues that judicial independence should be reconceptualized not only as a normative principle but also as a socio-political practice embedded in global governance. The study contributes theoretically by advancing an interdisciplinary framework and practically by offering reform-oriented recommendations for more inclusive, transparent, and sustainable international judicial institutions.

Keywords: Judicial Independence; Judicial Alienation; International Courts; Global Governance; Institutional Reform; Legitimacy Crisis

1. INTRODUCTION

Since classical times, legal philosophers such as Aristotle have emphasized that justice can only be upheld if judges are free from external influences that cloud their rationality (Halliwell, 2000). Judicial independence is not merely a technical instrument in the legal system, but a manifestation of universal ideals of truth and justice (Galib et al., 2025; Habermas, 2001; Hovell, 2018; Peters & Schwenke, 2000; Salzberger, 1993). In the contemporary global context, this idea is increasingly important because the judiciary no longer operates only in the domestic sphere, but also as an instrument for resolving disputes between states and between individuals and states. In other words, the independence of the international judiciary is one of the foundations of a fair and just world legal order (Fontanelli & Busco, 2016; Petersmann, 2008; Stone Sweet & Brunell, 2013; von Bogdandy & Venzke, 2011, 2012).

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However, reality shows that there is a wide gap between this idealism and actual practice. Data from the International Criminal Court (ICC) shows that more than 70% of cases brought to court until 2022 originated from the African continent, while cases involving large countries rarely reached international courts. This phenomenon creates a perception of injustice and undermines the legitimacy of international courts. A survey conducted by the Coalition for the International Criminal Court even shows a decline in global public trust in the ICC, especially among developing countries. This condition reinforces the discourse on the alienation of the judiciary—that is, when international judicial institutions are considered separate from the socio-political realities they are supposed to serve.

The urgency of this research stems from the escalating geopolitical tensions that are eroding the authority of international courts (Han & Li, 2024; Newman & Visoka, 2023; Tiemessen, 2014; Verdier, 2025). Political intervention in the selection of judges, selectivity in the cases handled, and implicit bias toward the interests of large countries show that the independence of the judiciary is now at a critical point (Helmke & Rosenbluth, 2009; Lustig & Weiler, 2018). If this condition is allowed to continue, the risk of delegitimizing international courts will become even greater, and ultimately weaken the international community's trust in the global legal system. Reform of international courts is urgent so that the judiciary remains relevant and functions as the final guardian of justice.

Although the issue of judicial independence has been widely studied, most previous studies have focused on normative and procedural aspects, such as transparency in the appointment of judges or internal oversight mechanisms within judicial institutions (J. L. Dunoff & Pollack, 2017; Garoupa & Ginsburg, 2009; Koskenniemi & Leino, 2002; Spáč et al., 2018; von Staden, 2012). Meanwhile, studies that raise the sociopolitical dimension of judicial alienation are still limited. In fact, understanding judicial independence in a global context requires a more interdisciplinary analysis, involving perspectives from international law, political science, and international relations. This is the research gap that this article attempts to address.

Thus, this study aims to analyze the phenomenon of judicial isolation in the international legal system, evaluate the relevance of international judicial reform as a response to the crisis of independence, and offer a new conceptual framework for thinking about global judicial independence. Its scientific contribution lies in presenting an interdisciplinary analysis that connects international law and politics, while its practical contribution is to provide input for global policymakers in formulating international judicial reforms that are more inclusive, fair, and sustainable.

Research Objectives



The main objective of this study is to critically reexamine the meaning and practice of judicial independence in the evolving landscape of international law. By highlighting the phenomenon of judicial alienation, this study aims to expose how international courts, designed initially as neutral arbiters of justice, are often entangled in political dynamics that can erode perceptions of their impartiality. Through this framework, this study aims to reveal the structural and contextual factors that contribute to the erosion of independence in international judicial institutions.

In addition to mapping these challenges, this study also seeks to assess the extent to which existing reform initiatives and proposals can adequately address these issues. This includes an in-depth analysis of institutional frameworks, comparisons between international regimes, and a critical evaluation of whether existing measures are sufficient to restore legitimacy and strengthen public trust in global judicial mechanisms. With this approach, the study can go beyond abstract normative debates and provide evidence-based insights into possible directions for reform.

Furthermore, this research aims to develop a conceptual framework that positions judicial independence not only as a normative legal principle, but also as a socio-political practice embedded in the dynamics of global governance. In this way, this research contributes to bridging the gap between international law and political science studies, offering a more comprehensive perspective on how judicial institutions can remain resilient in the face of geopolitical pressures.

Ultimately, this study is expected to make both theoretical and practical contributions. Theoretically, this study enriches academic discourse by introducing an interdisciplinary perspective on judicial independence. Practically, this study provides valuable insights for the formulation of reform strategies aimed at establishing a more inclusive, transparent, and sustainable international judicial order.

2. IMPLEMENTATION METHOD

This study employs a qualitative approach, grounded in a normative legal framework (Taekema, 2018), which is reinforced through a comparative analysis of several international judicial institutions. This method was chosen to capture both the normative dimension of judicial independence and the socio-political dynamics that influence its practice in a global context. Thus, this study does not focus solely on doctrinal aspects, but also connects legal norms with the surrounding geopolitical reality.

The research data were obtained from primary and secondary sources. Primary sources include international legal instruments such as the Rome Statute, the Charter of the United Nations, the Statute of the International Court of Justice (ICJ), as well as decisions and procedural documents from the International Criminal Court (ICC), the International Court of Justice (ICJ), and the Dispute Settlement Body (DSB) of the World Trade Organization (WTO). Secondary sources include scientific articles published in reputable journals, academic monographs, policy reports, and official publications from international organizations. Sources were selected based on their relevance to the issues of judicial independence, legitimacy, and institutional reform, as well as the recency of publications in the last two decades, to ensure that the analysis remained contextual.

Data collection was conducted through a document review using international academic databases, including JSTOR, HeinOnline, Taylor & Francis Online, and SpringerLink. The analysis was then carried out in three stages. First, content analysis was used to identify language patterns, principles, and practices related to judicial independence in decisions and institutional documents. Second, a comparative approach was employed to assess the differences and similarities between existing institutional models, particularly those of the ICC, ICJ, and WTO DSB, to identify variations in independence and accountability mechanisms. Third, a critical approach grounded in international law and political science theory was employed to examine how judicial isolation reflects power dynamics in global politics.

All stages of analysis are carried out systematically with the principle of transparency so that other researchers can replicate the research. Source documentation is carried out comprehensively with precise bibliographic details, while the analysis process is reinforced with triangulation techniques, namely connecting findings from primary sources with explanations in secondary literature. In this way, the reliability of the research is maintained, and the results obtained do not depend on a single source but on the consistency of various pieces of evidence.

Through this methodology, the research aims to provide a comprehensive understanding of the phenomenon of judicial exile, offering a theoretical and empirical basis for reforming international judicial institutions to be more just, transparent, and sustainable.

3. RESULTS AND DISCUSSION

Jurisdictional Imbalance

The results of the study show that the International Criminal Court (ICC) faces serious problems related to jurisdictional imbalance (Alni et al., 2024; Ambos, 2012; Bekou & Cryer, 2007; Chowdhury, 2003; Danner, 2003; Huneeus, 2013; Méndez, 2001; Muhammad Ghozali et al., 2025; Qasim Bayz, 2024; Sarkin, 2020; Totten & Tyler, 2008). Most of the cases handled originate from African countries, while cases involving large countries rarely enter the realm of international justice. This pattern reveals a double standard that creates a perception of injustice.

This phenomenon confirms that the independence of international courts is tested not only through internal procedures but also through the external perceptions of the global community. Furthermore, ICC statistics clearly confirm this jurisdictional bias.

Since its establishment, the vast majority of investigations and prosecutions—more than 80%—have focused solely on situations in Africa. Meanwhile, several allegations of serious crimes involving prominent and influential countries, such as investigations into US forces in Afghanistan or Israeli military operations in Palestine, have been stalled, weakened, or even halted altogether due to intense political pressure (Crenshaw, 2007). This glaring imbalance is not a statistical coincidence, but rather a reflection of



international realpolitik, in which geopolitical power and the capacity for effective retaliation become a “de facto immunity” that hinders the legal process. In other words, the ICC's jurisdiction does not apply to the powerful, thereby burying the principle of equality before the law, which is the foundation of any judiciary.

As a result, this systemic inequality not only undermines the ICC's legitimacy as an impartial institution but also actively deepens the cycle of injustice and violence. The perception of a “court for Africa” or a court for the defeated has become a dominant narrative that has triggered a symbolic and legal withdrawal by several African countries, further marginalizing the court's role. Even more dangerously, impunity for powerful actors sends a destructive message: that international humanitarian law is an instrument of the weak, which can only be enforced when it suits the geopolitical interests of superpowers. Thus, the ICC is caught in a deadly paradox: an institution established to eradicate impunity has, through its powerlessness in the face of realpolitik, become the most tangible evidence and reinforcement of the practice of impunity itself.

Institutional Legitimacy Crisis

The second finding is the crisis of legitimacy experienced by the International Court of Justice (ICJ) and other international judicial institutions (Alschner & Charlotin, 2018; Helfer & Alter, 2013; Llamzon, 2007; Madsen et al., 2018; Shany, 2009; Vagle, 2025). Although the ICJ is normatively recognized as a forum for resolving disputes between states, several parties often reject its jurisdiction. This rejection is not solely based on legal grounds, but also on doubts about the neutrality of judges, who are considered to be influenced by the interests of their home countries. This shows that the legitimacy of the judiciary does not only stem from legal norms, but also from the level of political acceptance of the states involved.

Operationally, this crisis of legitimacy manifests itself in the behavior of major countries that selectively utilize—or ignore—the ICJ's authority according to their national interests. For example, after losing the *Nicaragua v. United States* case in 1986, the United States openly rejected the court's jurisdiction (Gray, 2003). It vetoed a UN Security Council resolution demanding compliance with the ruling. A similar pattern was seen when Russia rejected provisional measures in the *Ukraine v. Russia* case related to the 2022 invasion (Bahiru, 2022; Driedger, 2023; Rabinovych, 2022). These open rejections are not merely violations of international law, but a demonstration of power (power play) that deliberately humiliates judicial institutions and reveals the limits of legal sovereignty in the face of realpolitik. Therefore, the ICJ is often faced with a paradoxical situation: its decisions are most needed to resolve the most complex disputes, but it is in these cases that its authority is most vulnerable to being trampled on by countries that feel they have the power to avoid accountability.

As a result, this crisis of confidence not only harms the ICJ as an institution, but also systemically undermines the foundations of the entire fragile international legal order. When superpowers arbitrarily choose to comply with or reject court rulings, they set a dangerous precedent for other countries, which then view international law as an “à la carte” system—to be obeyed only when convenient and ignored when not. Worse still,



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this creates a toxic environment for peaceful dispute resolution, in which force and coercive threats (such as unilateral sanctions or military intervention) once again take center stage, replacing impartial legal mechanisms. Thus, the ICJ is caught in a vicious circle: it is needed to uphold the law, but its lack of political legitimacy often renders it powerless, which in turn further weakens its legitimacy and reinforces the perception that it is merely a symbolic forum without real teeth.

Limitations of Institutional Reform

Research also finds that the discourse on international judicial reform remains partial. Efforts tend to focus on procedural aspects, such as increasing transparency or strengthening internal oversight mechanisms (Donaldson & Kingsbury, 2013; J. L. Dunoff & Pollack, 2017; J. Dunoff & Pollack, 2018; Shany, 2009). However, fundamental issues such as the imbalance of state representation in the selection of judges and the dominance of global politics in the judicial agenda are rarely addressed. As a result, reforms are often cosmetic and do not touch on the root of the problem.

What happens instead is a sterile cycle of reform, in which procedural changes are promoted as solutions to deep-seated political problems. For example, efforts to increase transparency in the selection process of judges at the ICJ and ICC, while commendable, do not in any way challenge the hegemony of the Permanent Five (P5) of the UN Security Council, which de facto controls the nomination and selection of candidates from large countries. As a result, the composition of judges remains dominated by behind-the-scenes political negotiations that prioritize national interests and political blocs, rather than meritocracy and independence. This model of reform is akin to beautifying the dashboard of a ship heading towards an iceberg, but refusing to address the wrong course. Focusing on these technicalities conveniently distracts attention from the more uncomfortable questions about the redistribution of power within the structure of international judicial governance.

Therefore, this cosmetic approach to reform ultimately serves as a self-preservation mechanism for powerful countries, allowing them to maintain the status quo. By preoccupying themselves with procedural improvements, judicial institutions and member states can create the illusion of progress and commitment to law enforcement, while avoiding structural changes that could erode their privileges and immunities. In other words, the discourse of partial reform has itself become part of the problem, as it normalizes and institutionalizes existing power imbalances rather than challenging them. As a result, international justice is threatened with even deeper erosion of its legitimacy, as the global community becomes increasingly aware that “reform” is merely a buzzword used to cover up the complete failure to create a truly fair and equitable judicial system.

Differences in Institutional Models

A comparative analysis of the ICC, ICJ, and World Trade Organization Dispute Settlement Body (WTO DSB) shows variations in models of international judicial



independence (Elsig & Pollack, 2014; Paine, 2020). The WTO DSB is relatively more accepted because its mechanisms are based on multilateral consensus and are technical in nature (Narlikar, 2022). At the same time, the ICC and ICJ more often face resistance because they touch on highly sensitive issues of state sovereignty (Eberechi, 2011; Odermatt, 2018). This difference indicates that judicial independence is more likely to be accepted when judicial institutions operate within a framework of representation that is considered inclusive by the international community.

Concretely, acceptance of the WTO DSB stems from its unique self-contained nature. This institution operates within a scope limited to trade rules that members have strictly negotiated, and most importantly, it has a direct and tangible enforcement mechanism, primarily through the authorization to impose trade sanctions (retaliatory measures). In contrast, ICJ rulings often deal with highly sovereign issues such as territorial boundaries or the use of military force, while ICC rulings strike at the core of state sovereignty by prosecuting individuals for the most serious crimes. Thus, this difference in acceptance is not merely a matter of the issues raised, but rather a matter of structured incentives and disincentives: the WTO offers clear material benefits for compliance and equally clear disadvantages for violations, while the ICJ and ICC rely on moral legitimacy and political pressure, which are far more abstract and easy for powerful countries to ignore.

Discussion

The findings of this study confirm that the phenomenon of international judicial alienation cannot be understood solely as a procedural failure, but rather as a multidimensional problem involving law, politics, and the dynamics of international relations. Judicial independence is determined not only by the normative legal framework, but also by the socio-political legitimacy granted by member states.

Compared to previous studies that have tended to emphasize normative aspects, this study contributes by introducing an interdisciplinary perspective that views judicial independence within the context of global power distribution. This perspective aligns with Gramsci's theory of hegemony, which emphasizes how the political and ideological domination of powerful countries can shape and internalize international institutional structures.

Furthermore, this discussion illustrates that international judicial reform should prioritize structural change over procedural change. More balanced representation of countries in the selection of judges, reduced political domination by large countries, and substantive transparency are necessary steps. Without such reforms, the risk of delegitimizing international courts will continue to rise, ultimately threatening the sustainability of international law as a tool for global justice.

Thus, this discussion broadens the understanding that judicial independence is not a static concept, but rather a dynamic one that is constantly influenced by the interaction between legal norms, political legitimacy, and the distribution of international power.

Scientific Novelty and Research Contribution



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This study presents scientific innovation by introducing the concept of judicial isolation as a new analytical framework for understanding the crisis of international judicial independence. Unlike previous studies that emphasized normative and procedural aspects, this study positions judicial independence as a socio-political practice influenced by the global distribution of power. An interdisciplinary approach that integrates international law, political science, and hegemony theory makes this study more comprehensive in explaining the limitations of contemporary international judicial institutions.

The theoretical contribution of this study lies in expanding the discourse on international judicial independence through an interdisciplinary perspective that emphasizes the relationship between legal legitimacy and global political dynamics. Meanwhile, its practical contribution is to provide recommendations for structural and inclusive reforms, including through more balanced state representation mechanisms, reduced political dominance of large states, and strengthened substantive legitimacy of international courts. Thus, this research not only enriches academic literature but also offers strategic input for global policymakers in formulating an agenda for international judicial reform.

4. CONCLUSION

This study confirms that the independence of international courts cannot be understood narrowly as a normative legal principle, but rather as a multidimensional phenomenon that is vulnerable to geopolitical pressures and the distribution of global power. Findings regarding jurisdictional inequality, institutional legitimacy crises, limitations on institutional reform, and differences in institutional models demonstrate that judicial alienation is an increasingly real reality in contemporary international legal practice.

Reflection on the results of this study shows that international judicial reform cannot stop at technical or procedural aspects alone, but must include more fundamental structural changes. Such reforms include fairer representation of countries in the selection of judges, restrictions on the political dominance of large countries, and the strengthening of substantive legitimacy to enable judicial institutions to regain the trust of the international community.

Theoretically, this research expands the academic discourse by proposing an interdisciplinary perspective that links international law with global politics. Practically, this research offers recommendations for reform that can serve as a reference for international policymakers in strengthening an inclusive, transparent, and sustainable global judiciary. Thus, this research contributes not only to the development of scientific literature but also to the search for real solutions to the challenges of international law sustainability in the contemporary era.



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