1

Standing

> Hardly a day passes without the Registry receiving applications from private individuals. However distressing the facts in such applications may be, the ICJ is unable to entertain them, and a standard reply is always sent: 'Under Article 34 of the Statute, only States may be parties in cases before the Court.'[1]

Over the last century, the individual's participation in the international legal system has considerably expanded. Indeed, they now participate as a party with legal standing (also referred to as *locus standi* or *jus standi*) in international adjudication before human rights courts, international criminal tribunals, and investment and mixed claims tribunals. Standing is a one's entitlement to be a part of judicial proceedings. However, Article 34 (1) of the Statute of the International Court of Justice (ICJ) reads that '[o]nly States may be parties in cases before the Court.'[2]

Article 34(1) is one of the essential pillars of the Court's jurisdiction insofar as it is one of the oldest rules, unaltered since the days of its predecessor. This clause illustrates the jurisdictional component of having access to the ICJ – in other words, the right to appear before the Court as a party to proceedings.[3] Article 34(1) has been described as the 'entrance door' to the settlement of its disputes[4] and by the Permanent Court of International Justice (PCIJ, Permanent Court) as 'one of the essential conditions of procedure before the Court'.[5] Indeed, Article 34 under the PCIJ Statute stipulated almost the same words that

[1] *The International Court of Justice: Handbook* (6th edn, ICJ, 2018) 33 [hereafter ICJ Handbook].
[2] Statute of the International Court of Justice, Article 34.
[3] Juan José Quintana Aranguren, *Litigation at the International Court of Justice: Practice and Procedure* (Brill/Nijhoff 2015) 3.
[4] Pierre-Marie Dupuy and Cristina Hoss, 'Article 34' in Andreas Zimmermann et al (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn, OUP 2019) 674.
[5] *Serbian Loans* (Judgment) [1929] PCIJ Series A, 17.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

we find today in Article 34 of the ICJ Statute: 'Only States or Members of the League of Nations can be parties in cases before the Court.'[6]

Article 34(1) has been criticised for being '... if not definitely outdated, at least somewhat disconnected from the contemporary developments characterising the international community at a time when actual participation of active members of the "international civil society" in international cooperation for international law-making and monitoring has become one of the basic features of modern international relations'.[7] Similarly, former ICJ Judge Robert Jennings observed in 1995 that the 'change in effect and perspectives of Article 34(1)' had changed in a 'quiet and gradual (...) generally unremarked' way due to 'a very considerable part of international law directly affects individuals, corporations and legal entities other than States'.[8]

The Court itself has described the implications of Article 34(1) as follows:

> The Court has no jurisdiction to deal with applications from individuals, non-governmental organizations, corporations or any other private entity. It cannot provide them with legal counselling or help them in their dealings with the authorities of any State whatever. However, a State may take up the case of one of its nationals and invoke against another State the wrongs which its national claims to have suffered at the hands of the latter; the dispute then becomes one between States.[9]

Despite its clear wording, the Court often receives requests from individuals, as encapsulated in the quote that opens this chapter. A proposition of amending Article 34(1) to allow individuals to be parties has been contemplated by the likes of Hersch Lauterpacht, Shabtai Rosenne, and Rosalyn Higgins.[10] Indeed, many have penned their concerns about this clause, arguing that efforts should be made to open the

[6] Statute of the Permanent Court of International Justice, Article 34.
[7] Dupuy and Hoss (n. 4) 666.
[8] Robert Jennings, 'The International Court of Justice after Fifty Years' (1995) 89(3) *The American Journal of International Law* 493, 504.
[9] International Court of Justice, 'Frequently Asked Questions' www.icj-cij.org/en/frequently-asked-questions.
[10] Hersch Lauterpacht, 'The Revision of the Statute of the International Court of Justice' (2002) 1(1) *The Law & Practice of International Courts and Tribunals* 109; Shabtai Rosenne, 'Reflections on the Position of the Individual in Inter-state Litigation in the International Court of Justice' in Pieter Sanders (ed), *International Arbitration Liber Amicorum for Martin Domke* (Springer 1967) 240–51; Rosalyn Higgins, *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (OUP 2009) 908. See also Mark Janis, 'Individuals and the International Court' in David Raic Muller and

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

Court's jurisdiction to entities other than states. W. Paul Gormley has even stated that '[t]he greatest single innovation required in international law is the liberalization of Article 34(1) of the Court's Statute in order that private parties may appear before the Hague Tribunal'.[11]

Yet, such propositions are often justified by theoretical observations of individuals' budding roles in the international legal system, falling short of examining the stakes, issues and procedural technicalities involved. In this chapter, I argue that despite the role of individuals in the international legal order justifying their legal standing at the Court, the practicalities of this endeavour make it an undesirable proposition. I first present how Article 34(1) was drafted, explaining that the principal reason for not granting the individual *locus standi* was largely due to the primacy of states, characteristic of the traditional positivist doctrine in the nineteenth and the early twentieth centuries (Section 1.1). Second, I speculate on the necessary adjustments to be made for this proposition to go forward – with respect to Statute amendments, workload, jurisdiction, and legal interest – to illustrate its practical infeasibility (Section 1.2). I then conclude (Section 1.3).

1.1 To Be or Not to Be a Party? Discussions within the Advisory Committee of Jurists

Article 34(1) was drafted by the Advisory Committee of Jurists, a group of ten jurists established on 12–13 February 1920 by the Council of the League of Nations, pursuant to Article 14 of the Covenant of the League of Nations.[12] To facilitate the debates within the Advisory Committee, several projects from governments and other entities were submitted regarding the broad question of *locus standi* at the PCIJ. They also submitted separate projects addressing a specific question: whether the Permanent Court may take cognisance of conflicts in which one or two of the parties are private persons.

Regarding the broad question of *locus standi* at the Court, most projects argued whether Members of the League (contracting parties)

J. M. Thuránszky (eds), *The International Court of Justice: Its Future Role after Fifty Years* (Brill 1996) 205–18.

[11] W. Paul Gormley, *The Procedural Status of the Individual before International and Supranational Tribunals* (Springer 1966) 62.

[12] Gleider Hernández, *The International Court of Justice and the Judicial Function* (OUP 2014) 20–22.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

should be the only states with *locus standi*, or if other states that are not Members of the League should as well. Despite the restriction of this topic to the types of *states* to be granted *locus standi*, two propositions were made in relation to states' nationals: the Dutch project stated that '[t]he Court is open only to states Members of the League of Nations, *and to nationals of such states*',[13] while the Swedish project upheld the principle of diplomatic protection (the focus of Chapter 2): 'The Court is only to deal with disputes between states. A state can institute proceedings before the Court to establish a claim *on behalf of one of its nationals* against another.'[14]

Regarding the specific question of whether the Court may take cognisance of conflicts in which one or two of the parties are private persons, the responses were varied. The International Law Union, Denmark, Norway, Sweden, Switzerland, and Austria all stated in their projects that disputes should only be inter-state.[15] On the other hand, the Interparliamentary Union (an international organisation of national parliaments), the Netherlands, and Germany supported that private parties should have direct access to the Permanent Court.[16] Both the Five Neutral Powers' project[17] (proposed by Norway, Denmark, the Netherlands, Sweden, and Switzerland) and the Root–Phillimore plan[18] (proposed by former US Secretary of State Elihu Root and Lord Walter Phillimore of the UK) supported the concept of diplomatic protection that the state can bring a claim on behalf of one of its citizens.

Following this discussion, the next session of the Advisory Committee's meetings centred on the following question: 'Shall the Court constitute essentially a jurisdiction between states, or shall its competence extend to litigation concerning individuals? Under what conditions can the latter eventually occur?'[19] This question was raised in the first place mainly because Article 4(2) of the International Prize Court had recently established an international precedent of assuming jurisdiction over claims made by individuals.[20] Although this was the only precedent explicitly

[13] PCIJ Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee* (16 June–24 July 1920) 79 (emphasis added).
[14] Ibid 79.
[15] Ibid 79–81.
[16] Ibid.
[17] Ibid 79.
[18] Ibid 523.
[19] Ibid 218.
[20] Ibid 205.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

mentioned in the Advisory Committee's discussions, it is pertinent to note other then-existing international precedents, such as the Central American Court of Justice and the various Post-World War One Mixed Arbitral Tribunals.[21]

Two of the ten members of the Advisory Committee argued in favour of granting individuals access to an eventual Permanent Court: Dr. Bernard Loder, former Dutch Supreme Court judge and first president of the PCIJ, and Albert de Lapradelle, French Law Professor at the University of Sorbonne.[22] The other eight members were in favour of a strictly inter-state court. Despite the evident majority, the proposal was still debated, with several arguments being raised for and against it. I argue that the principal motive underpinning arguments against *locus standi* of the individual was the predominant positivist perception of the individual as no more than an 'object' of international law in the nineteenth and the early twentieth centuries.

There were three main arguments raised in favour of granting the individual *locus standi* at the Court: denial of justice, double nationality, and commercial relations. The first argument was the denial of justice. Early in the discussion, Albert de Lapradelle stated his concern about cases in which private individuals were faced with a denial of justice from their state. 'It sometimes happens that a private individual who has made a contract with a State, finds it impossible to obtain justice against it on account of a species of privileged right of sovereignty recognized by the legislation and jurisprudence of some countries, such as France,' he said.[23] Under these circumstances, individual access to the Court would be a worthy exception to make, giving the Court 'supplementary jurisdiction' as it was called, 'provided that the case was not of a political nature'.[24] It is interesting to note that this argument appears to prioritise the individual's needs over state sovereignty, placing a limit on what a state can or cannot do to its citizens and adopting consequences, should it surpass its moral obligation to uphold justice.

However, the argument of the denial of justice was refuted by the Committee; it was argued by British lawyer and judge Lord Walter

[21] Edward Hambro and Edgar Turlington, 'Individuals before International Tribunals' (1941) 35 *Proceedings of the American Society of International Law* 22, 24.
[22] Astrid Kjeldgaard-Pedersen, 'The Influence of the Concept of International Legal Personality in the Drafting of the Statute of the Permanent Court of International Justice' (2014) 16(1) *Journal of the History of International Law* 9, 7.
[23] *Procès-verbaux* (n. 13) 205.
[24] Ibid.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

Phillimore that the PCIJ would not be able to do anything about a denial of justice on a national level, as it was not a Court of Appeal over national courts.[25] Furthermore, if an individual was not authorised to sue the government in a certain nation, 'the individual [will have] entered into the contract with the State, in full knowledge of this fact'.[26]

In relation to this argument, the question was raised whether the principle of subsidiarity – that an individual must have exhausted domestic judicial avenues and been denied justice from them, in order to seize an international judicial body – should be applicable if individuals were to have access to the Court. The President of the Committee had suggested the 'possibility of including a special clause demanding that, before a State take up the defense of its subject, national jurisdiction should have been exhausted'.[27] However, it was argued by former Brazilian delegate to the 1919 Versailles Peace Conference Raoul Fernandes that it would be a difficult principle to sustain in this context, as certain national jurisdictions of the world do not permit individuals to appeal against the government or allow it but not through judicial means *stricto sensu*, but rather through administrative procedure. This connects to a comment earlier made by Lord Phillimore that 'municipal law, according to the country, either gives or does not give to individuals the right to sue the State at law. If this right did not exist it was not admissible that it should be introduced by a roundabout method of international jurisdiction'.[28] Mr. Fernandes thus further considered that adding a clause about the denial of justice may be interpreted in 'too narrow a sense', as 'it might be concluded from this that no suit could be brought when it was not allowed to sue the State at law before the national Courts and, consequently, there would be no degrees of internal jurisdiction to be exhausted'.[29]

The second argument in favour of granting the individual *locus standi* at the Court was double nationality. In other words, as explained by Albert de Lapradelle,

> if each of two States claimed the same person as a subject, there would be no means of settling the dispute, except by a higher jurisdiction. Since there is a conflict of constitutional laws, it is extremely improbable that

[25] Ibid 214.
[26] Ibid.
[27] Ibid 215.
[28] Ibid 206.
[29] Ibid 216.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

> the States would resort to arbitration; the individual in order to define his position must therefore have the power of bringing suit against the two States.[30]

In response, former Norwegian prime minister Francis Hagerup argued that 'cases of double nationality could not be taken before a Court, without a previous Convention between the two States concerned'.[31] Another more supported response was by Lord Phillimore who claimed that the individual who was the subject of such a dispute was not considered as a *civis mundi*, but rather the subject of one or two particular states. Thus, it was not for the Court to decide on the matter, but rather for the national legislations of the respective countries to feature a clause dealing with this situation.[32]

The third argument in favour of granting the individual *locus standi* at the Court was that commercial relations between an individual and other governments would create a certain equality between them, despite the doctrine of state sovereignty. In this case, it would be difficult for the individual to find justice on a national level because of the independence of that state. It would therefore be more logical for him to directly appeal to international justice.[33] In response, the President considered whether these cases could not be dealt with by national jurisdictions, also citing the principal obstacle of state consent (to be discussed in Section 1.2.1).[34] It was finally decided that with regard to the two special cases of double nationality and commercial relations, 'These problems may be interesting, but at the moment they are premature, because they tend to affect the sovereignty, independence and even existence of States.'[35] This sentence alone perfectly epitomises the influence of the traditional positivist doctrine prevalent at the time.

This influence is further reflected in the three main arguments raised against granting the individual *locus standi* before the PCIJ: the limits of Article 14 of the League Covenant, the issue of international legal personality, and the issue of state consent. The first argument raised against granting the individual *locus standi* before the PCIJ was anchored in a

[30] Ibid 210.
[31] Ibid 212.
[32] Ibid 214.
[33] Ibid 210.
[34] Ibid 212.
[35] Ibid 723.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

restrictive interpretation of Article 14 of the Covenant of the League of Nations. This provision read as follows:

> The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.[36]

Much reference was made to Article 14 during discussions, the Committee members seeming to have taken the text as indicative of certain restrictions or permissions regarding the Court's competence. For instance, Dr. Loder stated that the word 'parties' was written with a small 'p', which showed that 'the persons who drew up the Covenant had no intention of limiting only to States the right to be a party to a case before the Court'.[37] However, in the Committee's final decision, it was stated that 'parties' cannot be private individuals. The reasoning of the Committee was based on precedent: 'This answer, which was given in 1899 and 1907, and which was evidently intended to apply not only to the Court of Arbitration, but also to the Court of Arbitral Justice, was expressly laid down in the Five-Power Plan: "The Court shall take cognisance only of inter-state litigation."'[38]

The interpretation of the word 'international' in Article 14 was also a point of discussion. Elihu Root believed that this term indicated that 'the Court could deal with private individual interests, but only if the Government of the country of which the individual was the subject made them international by adopting them as its own'.[39] Lord Phillimore stated that 'the word "international" must be interpreted as having regard exclusively to relations between States' and 'based this interpretation on Articles 18 and 19 of the Covenant, which dealt with engagements between States and relations among States'.[40]

There is no clear answer as to whether Article 14 intended to carve the limits of the Court's competence.[41] Renowned PCIJ chronicler Manley O'Hudson interpreted that 'the terminology in Article 14 intended

[36] League of Nations, Covenant of the League of Nations.
[37] *Procès-verbaux* (n. 13) 206.
[38] Ibid 208.
[39] Ibid.
[40] Ibid.
[41] Hernández (n. 12) 21.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

merely for the Council to give effect to the competence of a court as set forth by the Members of the League; nothing was to preclude them from later establishing a court "of lesser or greater competence"'.[42] However, the types of argument invoked reflect the positivist sentiment of the nineteenth and the early twentieth centuries that the individual does not have a place in the international legal system, reserved exclusively for states. Mr. Root's comment particularly reflects the doctrine of dualism, a characteristic of positivism at the time: international law was reserved for governments, while municipal law was reserved for individuals. The latter could only acquire international rights if they derived from municipal laws.[43]

The second argument against the individual's access to the PCIJ was centred on the concept of international legal personality. International legal personality is a concept that serves to distinguish between entities that are relevant to the international legal system and those excluded from it.[44] In and of itself a neutral theoretical concept, the inclusion and exclusion of entities is subject to many interpretations depending on one's perspective of international law.[45] While it is undisputed that states have international legal personality, the role of other entities has historically 'given rise to controversy'.[46] The exclusivity of international legal personality to states was long advocated by the traditional positivist doctrine. Indeed, they held that states are the sole 'subjects' of international law and, consequently, individuals are 'objects' of international law. Certain arguments invoked by Committee members were centred on this premise – for instance, 'States alone constituted legal persons in international matters',[47] 'the State should always be the *dominus litis*',[48] or 'in international affairs the State as always considered as a whole, and in the fullness of its attributes of sovereignty'.[49]

[42] Ibid.
[43] Lassa Francis Lawrence Oppenheim, *International Law: A Treatise* (3rd edn, Longmans, Green and Company 1920) 17–18 [13].
[44] Roland Portmann, *Legal Personality in International Law* (CUP 2010) 1.
[45] Astrid Kjeldgaard-Pedersen, *The International Legal Personality of the Individual* (OUP 2018) 1–13.
[46] *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174, 178.
[47] *Procès-verbaux* (n. 13) 215.
[48] Ibid 214.
[49] Ibid.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

Mr. de Lapradelle opined, 'One must not remain too much in the realm of theories; wrongs done to individuals resulting from the chaotic conditions of international relations must be taken into account.'[50] However, he clearly stood as a minority against the likes of Arturo Ricci-Busatti, legal advisor to the Italian Ministry of Foreign Affairs, who very plainly stated that 'it is impossible to put States and private individuals on the same footing; private individuals are not subjects of international law and it is entirely within the realm of that law that the Court is called upon to act'.[51] Senator, Belgian Minister of State, and President of the Advisory Committee Baron Edouard Descamps also commented that

> [t]he real object of the law of nations, of *jus inter gentes*, is the relation of State to State considered as sovereign groups, and, as such, Members of the League of Nations. The conditions of subjects of each State in another country, the co-ordination of public and private law of each State with that of the other nations, these are the concerns of nations in their mutual relations, but these questions enter only indirectly into the realm of the law of nations.[52]

The third argument raised against granting the individual *locus standi* before the PCIJ was in relation to state consent. In the discussions of the Advisory Committee, consent was the principal argument against the proposal for individuals to have access to the Court. Indeed, jurisdiction of the Court in contentious cases is always dependent on state consent. Therefore, not only does a state have to fulfil the conditions laid down in Articles 34 and 35 to be eligible, but it must also, as a preliminary condition, *accept* the jurisdiction of the Court. It is the combination of the eligibility of access and state consent, which will give the Court jurisdiction to entertain a certain dispute.

The principle of consent was already envisaged during the drafting of the PCIJ Statute. It was repeated that due to 'the principle of sovereignty of States, no State could be summoned before the Court without its previous consent'.[53] Mr. Root 'did not think that a private individual would gain any advantage by taking before the International Court a case which his Government did not consider justified'.[54] He also 'doubted

[50] Ibid 211.
[51] Ibid 208.
[52] Ibid 209.
[53] Ibid 207.
[54] Ibid.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

whether the claim of a private individual which was not supported by his Government would carry enough weight before an international Court'.[55] Lord Phillimore went even further in claiming that '[a] State would never permit itself to be sued before a Court by a private individual'.[56]

To conclude, the issue of *locus standi* of the individual before the Permanent Court of International Justice was considered and examined from a number of angles. While there were arguments in favour and against granting the individual *locus standi* before the PCIJ, the majority of the Advisory Committee of Jurists opposed the proposition.

What can also be concluded after examining these exchanges is that no particular circumstance at the time dictated that the Court had to be inter-state in its nature, but for the sovereign sentiment at the time. The idea of creating a Permanent Court of International Justice first appeared in a British Draft Convention presented at the Paris Peace Conference after the First World War.[57] The Commission of the League of Nations, established in January 1919,[58] had before it several similar proposals.[59] Article 14 of the League Covenant ended up making no explicit statement about the competence of the Court. Certain members of the Advisory Committee had their interpretations, but a literary interpretation provided no decisive indication. While Article 13 of the League Covenant read that '[t]he *Members of the League* agree that whenever any dispute shall arise *between them* (. . .) they will submit the whole subject-matter to (. . .) judicial settlement',[60] the phrasing of Article 14 did not exclude an individual from being part of proceedings before the Permanent Court as well, provided that the individual is a party to a dispute of an international character. The fact that the issue was even debated was testimony that the answer was not clear-cut. Indeed, during that period, various other forms of judicial settlement involving individuals existed in practice. As well as the examples mentioned earlier, the Treaty of Versailles gave nationals of the Allied Powers the right to put forward claims for compensation, in their own name, against Germany.[61] From a

[55] Ibid 208.
[56] Ibid 207.
[57] David Hunter Miller, *The Drafting of the Covenant* (W.S. Hein 2002) 106.
[58] Manley O. Hudson, *The Permanent Court of International Justice, 1920–1942: A Treatise* (The Macmillan Company 1943) 96.
[59] Ibid 96.
[60] Covenant of the League of Nations, Article 13.
[61] Treaty of Versailles, UKTS 4, Articles 297 and 304(b)(2).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

legal standpoint, there was every possibility for such a Court to be one that was open to individuals as well as states.

However, it appears that the reasons for opposition were anchored in the need to preserve state sovereignty. The aforementioned arguments reflect this common theme: favourable arguments about double nationality and commercial relations were refuted as they would affect the sovereignty of states. Arguments against the proposition were explicitly about the international legal personality of individuals and the absence of state consent. Even the interpretation of Article 14 of the League Covenant was informed by positivist perceptions about states being the principal litigators on the international plane.

Astrid Kjeldgaard-Pedersen argues that the specific concept of international legal personality did not influence the outcome of Article 34(1) as much as would be expected, given the positivist sentiment at the time. In her view, the concept mostly held no more than academic value.[62] This might be true – but the understanding of international legal personality through the state-dominant lens and in the wider context of other state-dominant arguments indicate that the need to preserve state sovereignty was the overriding factor barring individuals from *locus standi* before the Permanent Court. Indeed, the overarching traditional positivist doctrine, wherein international legal personality dwells as a defining feature, was a driving force behind the deliberations, underpinning their outcome and largely explaining Article 34 still embedded in the ICJ Statute today.

Following this decision made by the Advisory Committee of Jurists, the PCIJ was closed off to litigating individuals, despite issuing a host of decisions stemming from conflicts between states and minority groups. Indeed, due to the remapping of borders, birth of new states, and movement of self-determination after the First World War, certain groups found themselves as minorities of a state with significant ethnic, linguistic, or cultural differences than their own.[63] Woodrow Wilson, founder of the League of Nations, had originally intended to incorporate minority rights into the League Covenant, but this was rejected by the

[62] Kjeldgaard-Pedersen (n. 22) 16, 20.

[63] See Catherine Brölmann, 'The PCIJ and International Rights of Groups and Individuals' in Christian Tams and Malgosia Fitzmaurice (eds), *Legacies of the Permanent Court of International Justice* (Martinus Nijhoff Publishers 2013) 124.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

Council of the League.[64] Therefore, the issue was left to be implemented in a piecemeal fashion, through numerous bilateral treaties. These treaties were the legal basis upon which the League of Nations could get involved in establishing a minorities' petition system, as the League Council could be seized if any obligation therein was breached. These treaties also provided that any conflict of opinion regarding them would be submitted to the PCIJ.[65] The PCIJ therefore dealt with a number of cases in which it was requested to interpret bilateral treaty clauses related to minority rights.

Minority groups would submit their petitions to the League Secretariat, and a lengthy procedural process would ensue until the petitions arrived at the Permanent Court's docket. However, this was different than an individual party seizing an international court or tribunal, as minority groups were not granted *locus standi*. It was in fact the Council of the League requesting the Permanent Court to give an advisory opinion, and not the minority group itself making this request. The possibility for minority groups to have any formal international legal standing had been strongly refuted.[66] The League Council itself affirmed that 'the minorities treaties did not create organisations possessing the right to speak and act on behalf of the "minorities", but placed their protection in the hands of the members of the Council'.[67] The minorities were not considered to be organised entities with international legal personality. Furthermore, the petition itself had no legal value. As stipulated in a report detailing the League's connection with minorities entitled the Tittoni Report:[68] 'this act [of minorities seizing the League Secretariat] must retain the nature of a petition (. . .) pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene'.[69] Furthermore, the Members of the Council had no obligation to use the information sent to them in the form of a petition from a minority group; they could ignore

[64] Mary Gardiner Jones, 'National Minorities: A Case Study in International Protection' (1949) 14 *Law and Contemporary Problems* 599, 605.
[65] Ibid 608.
[66] Nathaniel Berman, '"But the Alternative Is Despair": European Nationalism and the Modernist Renewal of International Law' (1993) 106(8) *Harvard Law Review* 1792, 1860.
[67] League of Nations Official Journal (July 1923) 717–18. See also Julius Stone, 'The Legal Nature of Minorities Petition' (1931) 12 *British Yearbook of International Law* 76, 81.
[68] League of Nations Official Journal, vol 7 (November–December 1920); Giuseppe Motta, *Less than Nations: Central-Eastern European Minorities after WWI* (Cambridge Scholars Publishing 2013) 260.
[69] League of Nations Official Journal, vol 1 (February 1920) 8.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

it or use it, as they pleased.[70] Still, this was the closest that private persons came to having *locus standi* before the Court's predecessor.

1.2 Practical Considerations when Contemplating *Locus Standi* of the Individual before the Court

As the necessity to preserve state sovereignty appeared to be the main reason in refusing *locus standi* to individuals under Article 34(1), it is no surprise that relatively recent scholarship has argued for Article 34(1)'s amendment. Indeed, arguments that the Court's jurisdiction should be open to entities other than states are based on the rationale that non-state actors have played an increasingly important role during the course of the twentieth century. While I agree with the latter claim, a closer examination of the practical considerations indicates that such a proposal lacks in feasibility. Four issues will be considered in turn: consent and jurisdiction, legal interest, treaty amendment and implications for the Court's workload.

1.2.1 Consent to Jurisdiction

Granting the individual *locus standi* would radically alter the jurisdiction of the Court as we know it, which is 'very likely the most important aspect of the work of the ICJ'.[71] As it stands, there are many different avenues that states may use to seize the Court's jurisdiction, contemplated in Article 36 of its Statute. Article 36(1) provides for both consensual and treaty-based jurisdiction. The Court has *consensual jurisdiction* when states in a dispute on a particular matter spontaneously submit a special agreement, an arrangement concluded by the two parties particularly for the purpose of the subject under dispute. The Court will have *treaty-based jurisdiction* when the states in dispute rely on an already-existing treaty providing (in a compromissory clause) that in case a dispute arises, they may refer it to the Court. Another form of jurisdiction is *compulsory jurisdiction*, provided in Article 36(2). This is when a state submits a unilateral declaration recognising the jurisdiction of the Court as binding, with respect to any other state that also accepts it as binding, for any dispute in the future.

[70] Stone (n. 67) 79.
[71] Quintana Aranguren (n. 3) 40.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

The lynchpin of all of these types of jurisdiction is the principle of consent. This cardinal principle of international adjudication means that the Court can only hear a dispute if it is requested to do so by the states in question. Its Statute does not allow the Court to take up a matter of international law and rule on it *proprio motu*. Without state consent, the Court has no jurisdiction. All of the types of jurisdiction examined here are expressions of consent by states.

The principle of consent has been recalled in various PCIJ and ICJ judgments. In the *Mavrommatis* judgment, the Court's predecessor commented that jurisdiction is 'invariably based on the consent of the respondent and only exists insofar as this consent has been given'.[72] The Court has also recalled the principle in a number of its judgments,[73] describing it as a 'well-established principle of international law'[74] and 'one of the fundamental principles of its Statute'.[75]

Indeed, the principle of consent is a natural component in the practice of the peaceful settlement of disputes. In Article 33 of the UN Charter alone, we find a panoply of choices at states' disposal for peacefully resolving their issues, judicial settlement being but one of them. States are not compelled to resort to any of these forms of dispute settlement, but rather they choose to do so. This quintessential premise is also featured in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations, another important international legal source describing the peaceful settlement of disputes.[76] It derives from this that the principle of consent is also an expression

[72] *Mavrommatis Palestine Concessions* (Judgment) [1924] PCIJ Series A, 16. Other PCIJ judgments mentioning the principle of consent are: *Rights of Minorities in Upper Silesia (Minority Schools)* (Judgment) [1928] PCIJ Series A, 22; *Eastern Carelia* (Advisory Opinion) [1923] PCIJ Series B.

[73] *Corfu Channel (United Kingdom v. Albania)* (Preliminary Objection) (Judgment) [1948] ICJ Rep 15, 24; *Anglo-Iranian Oil Co. (United Kingdom v. Iran)* (Preliminary Objections) (Judgment) [1952] ICJ Rep 93, 102–3; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* (Jurisdiction and Admissibility II) (Judgment) [1995] ICJ Rep 6, 23–24 [43]; *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Merits) (Judgment) [2003] ICJ Rep 161, 182–83 [42].

[74] *Aerial Incident (Israel v. Bulgaria)* (Preliminary Objections) (Judgment) [1959] ICJ Rep 127, 142.

[75] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)* (Order of 10 July 2002) [2002] ICJ Rep 219, 241 [57].

[76] A/RES/2625 (XXV).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

of the principle of sovereign equality of states, which is the cornerstone of international law.

Considering this, the Court's jurisdiction would significantly change if individuals had *locus standi* before it. Notably, both consensual jurisdiction (by special agreement) and treaty-based jurisdiction require the existence of a treaty, defined by Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties (VCLT) as an international agreement concluded between states in written form and governed by international law.[77] Such treaties must reflect commitments to which the parties consented and thus create international legal rights and obligations.[78]

An agreement between an individual and the state of their nationality would not meet these specific requirements to qualify as a treaty. Accordingly, consensual jurisdiction and treaty-based jurisdiction could not work in the context of a dispute between an individual and a state. Even if these two types of jurisdiction could work from an international legal perspective, accepting *locus standi* of individuals would require an amendment of these jurisdictional provisions in Article 36(1) of the ICJ Statute, where 'treaties and conventions in force' are explicitly mentioned. A phrase providing for 'agreements between individuals and States' would have to be added. As for consensual jurisdiction, the admittedly more imprecise phrase '[t]he jurisdiction of the Court comprises all cases which the *parties* refer to' still could not apply to individuals as the latter are not parties to the Court's Statute (pursuant to Article 34). This, too, would therefore require an amendment permitting individuals to also refer cases to the Court. This raises many multifarious questions as to which individuals could qualify to refer to such cases and under what grounds. Such issues preemptively erode the system of jurisdiction established by the Statute and manifestly alter the entire character of the Court.

It appears that if Article 34(1) were to ever be amended, then the only type of jurisdictional avenue available to such private persons would be compulsory jurisdiction, which appears to be somewhat different. Here, what can be imagined is that states are given the option to confer general compulsory jurisdiction to cases in which the claim is from an individual. An example of this can be found in the African Court on Human and

[77] Vienna Convention on the Law of Treaties, 1155 UNTS 331.

[78] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* (Jurisdiction and Admissibility) (Judgment) [1994] ICJ Rep 112, 121 [25].

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

Peoples' Rights (ACtHPR), which accepts applications from states and individuals, provided that the defendant state has accepted the jurisdiction of this court to receive individual cases. Thus, the first case of the ACtHPR, *Michelot Yogogombaye v. Republic of Senegal* (15 December 2009), was deemed inadmissible as Senegal had not accepted jurisdiction over cases initiated by individuals.[79] In theory, this type of jurisdiction could still be exercised at the World Court.

Yet, the issue is the question of willingness; would states ever accept this option? The idea of an 'International Court of Human Rights' was proposed by Australia in 1948.[80] It was based 'to a large extent' on the Statute of the International Court of Justice, although both 'individuals' and 'groups of individuals' were to be given standing.[81] However, this was rejected by states, and subsequent initiatives to carry the idea forward were no more successful.[82] Even at the ACtHPR where it is possible for individuals to sue states, only eight out of thirty states Parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the ACtHPR have consented to this.[83] Therefore, most African states appear to be opposed to it. If states have adopted this approach in face of a human rights court with the very purpose of upholding individuals' rights, what hope is there for them to accept it for a court that was established as a bastion of their own sovereignty?

The issue of compulsory jurisdiction was already historically controversial. While the Statute was drafted under the illusion that the PCIJ would enjoy compulsory jurisdiction, this did not come to fruition as the idea of one state bringing another state before the Court and condemning it without its acquiescence made most states uncomfortable.[84] The concept as featured in the Statute was therefore the compromise, enabling states to be seized at the Court on matters to which they had consented. Indeed, states may place reservations on the Court's jurisdiction, and many have done so in order to exclude matters that are essentially within

[79] *Michelot Yogogombaye v. Senegal* (Judgment) [2009] ACtHPR, Appl. No. 1/2008, [37].
[80] E/CN.4/AC.1/27.
[81] E/CN.4/AC.1/27, Article 17.
[82] Philip Alston, 'Against a World Court for Human Rights' 28(2) (2014) *Ethics & International Affairs* 197–212.
[83] African Court on Human and Peoples' Rights, 'Basic Information' www.african-court.org/wpafc/basic-information.
[84] Hernández (n. 12) 25.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

the domestic jurisdiction of the state.[85] Individuals' claims against states towards the Court most certainly could be subject to such reservations, greatly limiting the number of states that would subject themselves to the ICJ's jurisdiction.[86]

Hersch Lauterpacht asked, '[I]s there a good reason, other than the persistence of certain traditional modes of thinking, why the Court should not be able to adjudicate upon a dispute which involves a question of international law and in which one party to the dispute is a state - provided that that state agrees in the specific case to the exercise of jurisdiction by the Court?'[87] The answer to this question would essentially be negative. The general reluctance of states to recognise individuals as subjects of international law,[88] which largely influenced the debates around Article 34 in the Advisory Committee of Jurists, arguably prevails to this very day.[89] As UN expert Paul Szasz aptly summarised,

> The development of international law is an objective that states tend to praise rather than seriously pursue. In particular, governments generally prefer to keep all law-creating and even law-defining processes firmly within their control, even at the cost of significantly retarding this work. Therefore, while political theorists and unengaged international lawyers might welcome increased activity by the World Court, just because the judgments and opinions of the Court will contribute to the still scant body of international law, the enthusiasm of states for even modest judicial legislation has always been most limited. That is one reason why access to the Court has jealously been restricted to states, whether acting individuals as parties to contentious proceedings or collectively through the organs of worldwide intergovernmental organizations authorized to request opinions. Thus the prospect that increased activity by the Court will help find interstices in the international legal fabric or even expand its bund, is likely to constitute, among diplomats, a negative rather than a positive argument for the proposals here under examination.[90]

[85] See International Court of Justice, 'Declarations Recognizing the Jurisdiction of the Court as Compulsory' www.icj-cij.org/en/declarations.

[86] Hersch Lauterpacht, 'The Subjects of the Law of Nations' (1947) 63(4) *Law Quarterly Review* 438, 456.

[87] Institut de Droit International, *Annuaire de l'Institut de Droit International* (Session d'Aix-en-Provence, 1954, vol 45(i)) 535.

[88] Gormley (n. 11) 64.

[89] Ibid.

[90] Paul C. Szasz, 'Enhancing the Advisory Competence of the World Court' in Leo Gross (ed), *The Future of the International Court of Justice*, vol 2 (Oceana Publications 1976) 511.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

Ultimately, in connection to the unavoidable matter of consent and sovereignty, recourse to the World Court will take place if politically appropriate for the state in question. This can be seen as early as the minority system under the PCIJ, which was a political, rather than a humanitarian, novelty, designed to ensure international political peace and state security.[91] Rather than the Court's predecessor being a "champion of minorities", as some doctrine claims, it is perhaps more suitable and modest to describe it as a simple interlocutor, assisting sovereign governments to tackle their own domestic issues.[92] The Permanent Court was also significantly crippled by the lack of cooperation from the victors of the First World War, who were not interested in taking part,[93] despite their own issues and violations of minority rights,[94] making the system arbitrarily confined to a handful of Eastern and Central European nations 'obliged to participate as a result of wartime defeat or as a condition for receiving additions of territory or recognition of independence'.[95] There were repeated proposals to extend the system to be applicable to all states, but this was strongly refuted. This resulted in a strong feeling of resentment from the involved nations, leading to certain among them, such as Poland, eventually opting out of the system altogether.[96]

The PCIJ's experience with minority groups – coupled with contemporary examples such as the ACtHR mentioned earlier – demonstrates that states are generally reluctant to engage in international litigation against individuals. Therefore, although compulsory jurisdiction may be a possible avenue of consent for disputes between states and individuals, the attitude of states makes it difficult to envisage the individual being granted *locus standi* before the ICJ.

1.2.2 Legal Interest

A second complex issue is that of legal interest, which forms a part of standing. In establishing its standing to institute proceedings, a state may

[91] Tennent Harrington Bagley, *General Principles and Problems in the International Protection of Minorities: A Political Study* (Georg 1950) 42; Mark Mazower, 'Minorities and the League of Nations in Interwar Europe' (1997) 126(2) *Daedalus* 47, 51.

[92] Ibid (Mazower) 51.

[93] Jones (n. 64) 604–6. See also Peter Hilpold, 'The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment' (2013) 17 *Max Planck Yearbook of United Nations Law* 87, 96.

[94] Ibid (Hilpold) 94.

[95] Alfred de Zayas, 'The International Judicial Protection of Peoples and Minorities' in Catherine Brölmann, René Lefeber and Marjoleine Zieck (eds), *Peoples and Minorities in International Law* (Nijhoff 1993) 258.

[96] See, generally: Hilpold (n. 93).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

be required to demonstrate that it has a specific legal interest in the matter under consideration.[97] The legal interest of the state applicant has not been defined in the law nor practice of the Court. It has, however, been described in the context of third-party intervention governed by Articles 62 and 63 of its Statute. A necessary requirement for this practice is defined here as an 'interest of a legal nature which may be affected by the decision in the case'.[98] This must be of a legal nature, meaning 'a real and concrete claim (. . .) based on law',[99] and the state must demonstrate that its interest 'may be affected by the decision of the Court' in that case.[100] Although such conditions have only been elaborated in the context of third-party intervention, and not for the main applicant, it may logically be assumed that such conditions are also required for the main parties in the case.[101]

Therefore, were an individual wishing to seize the Court, they would not be exempt from the requirement of legal interest. Human rights, for instance, are undisputedly owed to individuals, putting them in a position to seize international tribunals over the violation of human rights treaties. In such instances, such individuals have a clear legal interest if they are victims of the alleged violation. Higgins explains that maritime or territorial disputes, for example, have traditionally been qualified as states' interests,[102] meaning that individuals would not be considered to have legal interests in such contexts. However, I argue in Part II of this monograph that individuals do in fact have such interests due to the repercussions of such disputes on their lives. Nonetheless, this will not

[97] Quintana Aranguren (n. 3) 15.

[98] Statute of the International Court of Justice, Article 62(1).

[99] *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (Application for Permission to Intervene by the Government of Honduras) [2010], [37]. The Court made the same distinction in the decision concerning Application by Costa Rica, *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (Application for Permission to Intervene by the Government of Costa Rica) [2010] [26].

[100] Ibid (Application by Honduras) [37]; Ibid (Application by Costa Rica) [26].

[101] *South West Africa (Liberia v. South Africa; Ethiopia v. South Africa)* (Preliminary Objections) (Judgment) [1962] ICJ Rep 319, 455–56 (Dissenting opinion of Judge Winiarski). For opposing views, see Malcolm Shaw, *Rosenne's Law and Practice of the International Court: 1920–2015*, vol 3 (5th edn, Brill/Nijhoff 2016) 1212; see also generally, Brian McGarry, 'Obligations *Erga Omnes* (*Partes*) and the Participation of Third States in Inter-State Litigation' (2023) 22(2) *The Law & Practice of International Courts and Tribunals* 273.

[102] Rosalyn Higgins, 'Remedies and the International Court of Justice' in Rosalyn Higgins (ed), *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (OUP 2009) 893.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

automatically translate into the fulfilment of a jurisdictional requirement. Indeed, proving their legal interest may be difficult as it hinges on how the threshold were to be assessed, which is unclear in the Court's practice.

1.2.3 *Amending the ICJ Statute*

As the Court itself has stated, 'Like any other court, the ICJ can only operate within the constitutional limits that have been laid down for it'.[103] These constitutional limits are carved out in the Court's Statute. Thus, any change regarding *locus standi* would require the Statute's amendment.

According to Article 69 of the ICJ Statute, 'Amendments shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter (. . .)'.[104] Article 108 of the Charter provides that it may only be amended if there is a two-thirds majority of the United Nations General Assembly and if the clause in question has been ratified by two-thirds of Member States, including all permanent members of the Security Council.[105] Therefore, the amendment process is much heavier than for other international courts and tribunals. European states, for instance, have adopted protocols that make fundamental changes to the procedure of the European Court of Human Rights (ECtHR).[106] The ICJ Statute was not constituted to be easily amended. This holds particularly true as all Members of the United Nations are *ipso facto* parties to the Statute of the ICJ,[107] meaning that 193 Member States are bound to it. It is one of the multilateral treaties with the most ratifications in the world. It is difficult to amend a treaty with such a wide membership, and only two attempts to do so have been recorded in its history.[108]

Furthermore, it is very unlikely that this procedure could be successful for a change that poses no serious political problem for states.[109] Considering that so many other issues have also been raised and pushed

[103] ICJ Handbook (n. 1) 33.
[104] Statute of the International Court of Justice, Article 69.
[105] Charter of the United Nations, 1 UNTS XVI, Article 108 [hereafter UN Charter].
[106] For example, Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention, CETS 194.
[107] See UN Charter, Article 93,
[108] Wolfram Karl, 'Article 69' in Andreas Zimmermann et al (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn, OUP 2019) 1873.
[109] Szasz (n. 90) 509.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

for amendment, such as doing away with the permanent members of the Security Council and their veto, amending one provision would be 'opening Pandora's Box' to amend several provisions that have been subject to complaint in the past. Many – if not most – Member States would be opposed to any extension of the activities of the Court. Judges would also most likely not accept to fundamentally change the essence of the Court's activity.

Thus, any proposals made to animate the Court's functions could only be implemented if they did not implicate any substantial changes in its constitution, the Statute.[110] The Court cannot appropriate powers that the international community did not vest in it.[111] Changes seem complicated and at a high cost.

This is particularly true if we recall that Article 34(1) is one of three pillars of the ICJ's jurisdiction, along with the principle of consent and its broad jurisdiction *ratione materiae*.[112] Being a pillar of the ICJ Statute, Article 34 has precast the parameters of the Court and has determined a number of other articles in the Statute (such as Articles 4(3), 5(1), 35, 36 or 40(3)) that were drafted upon its underlying logic. The very structure and function of the Court are largely based upon the assumption that only states can be parties in cases before it.[113] Revisiting and possibly reviewing one of these pillars would therefore possibly require a revision of many other articles as well, which would alter its entire judicial structure as we know it.[114]

1.2.4 Implications for the Court's Workload

Another key concern in response to the proposition of the individual's *locus standi* before the Court is the 'opening of the floodgates' to a Court that is not short of activity.[115] Individuals may not exercise the same

[110] Ibid.

[111] Kaiyan Homi Kaikobad, *The International Court of Justice and Judicial Review: A Study of the Court's Powers with Respect to Judgments of the ILO and UN Administrative Tribunals* (Kluwer Law International 2000) 302.

[112] Christian Tams and Malgosia Fitzmaurice (eds), *Legacies of the Permanent Court of International Justice* (Martinus Nijhoff Publishers 2013) 13.

[113] Gleider Hernández, 'Non-state Actors from the Perspective of the International Court of Justice' in Jean d'Aspremont (ed), *Participants in the International Legal System: Multiple Perspectives on Non-state Actors in International Law* (Routledge 2011) 154.

[114] Ibid. See also Lauterpacht (n. 10) 55.

[115] See, e.g., Judge Joan E. Donoghue, 'Speech by H.E. Judge Joan E. Donoghue, President of the International Court of Justice, on the Occasion of the Seventy-Seventh Session of the

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

degree of restraint that states have when it comes to international adjudication. A pertinent example is the ECtHR, whose policy of accepting individual petitions alleging human rights violations has resulted in tens of thousands of applications spanning all European countries.[116]

The lack of hesitance of individuals may, in part, have to do with their political motives to attract international attention on an issue of concern, to gain notoriety, or even to cause embarrassment to the state.[117] Indeed, during the era of the Court's predecessor, the Council of the League of Nations was completely overwhelmed by the petitions it received from minority groups, many of which – especially those from the German minorities – were used for political purposes, namely, to embarrass the Polish government.[118] A consequential fear is that "a constant agenda of trivial cases would lower the prestige of the organ."[119]

Lauterpacht has suggested that 'the heavy cost of international litigation would act as an effective deterrent against rash or malicious recourse to the machinery put at the disposal of private persons'.[120] It is also a possibility for the Court to open its doors yet choose to only hear a fraction of cases brought before it, as does the ECtHR.[121]

Filtering mechanisms could also be instituted, as seen under the League's minority petition system. A minority petition would pass through the Minorities Section[122] of the League Secretariat, followed by the 'Minorities Committee' (consisting of three members of the League Council) and finally, if negotiations between the state and the minority group could not settle the problem,[123] the League Council would ask the Permanent Court for a decision.[124] This dense procedural process meant

United Nations General Assembly' (77th Session of the United Nations General Assembly, New York City, 27 October 2022) 1 www.icj-cij.org/sites/default/files/press-releases/0/000-20221027-STA-01-00-EN.pdf.

[116] See, e.g., European Court of Human Rights, *Annual Report 2022* (Council of Europe, 2023) 141.

[117] See also Lauterpacht (n. 86) 458.

[118] Gormley (n. 11) 42.

[119] Szasz (n. 90) 510.

[120] Lauterpacht (n. 86) 458. Leo Gross also reflects on the use of 'sensible safeguards' as deterrents to individuals. Leo Gross, *The Future of the International Court of Justice*, vol II (Oceana Publications 1976) 510.

[121] E.g., 77.8 per cent of cases were declared inadmissible in 2022. European Court of Human Rights, *Analysis of Statistics 2022* (Council of Europe, January 2023) 3.

[122] Jones (n. 64) 611. See also Carole Fink, 'The League of Nations and the Minorities Question' (1995) 157(4) *World Affairs* 197.

[123] de Zayas (n. 95) 255.

[124] A/2909, 7–12 [9]–[25]; 43–44 [21].

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

that very few petitions would actually arrive at the Permanent Court's docket.

It is difficult to provide accurate statistics from the first ten years of the PCIJ's lifespan. However, between 1920 and 1929, an estimated 345 petitions were submitted to the League, 143 of which were deemed admissible by the Minorities Section, and 18 of those were approved by the Minorities Committee (Committee of Three) and forwarded to the Council for consideration (as no reconciliation was reached between the state and the minority group).[125] In 1929, the League Council decided, through the Madrid Resolution (Council Resolution of 13 June 1929) that the minorities' petitions system should become transparent with annually published statistics.[126] Thus, between 1929 and 1939, statistics show that 950 petitions were filed, of which 758 were declared admissible by the Minorities Section, with 16 finally reaching the agenda of the Council to seize the PCIJ for an Advisory Opinion.[127] This is 1.68 per cent of the deposited petitions. Therefore, the heavy procedural channels significantly hampered the practice of minorities' petitions at the PCIJ and impeded the PCIJ from drowning from this floodgate effect. As was summarised by Professor Mark Mazower: 'It was difficult to bring cases to the League's attention, and even more difficult to push them through the Geneva machine and have them taken up by the Council'.[128]

In the case of the Inter-American Court of Human Rights, individuals must first file their petitions with the Inter-American *Commission* on Human Rights, an autonomous organ of the Organization of American States that receives and investigates such individual petitions alleging violations of provisions in the American Convention on Human Rights. The African human rights system follows this model, with its own African Commission on Human and Peoples' Rights considering individual petitions before they reach the African Court. A similar filtering mechanism could be established for the ICJ, safeguarded by the UN. However, this would not be free from its own bureaucratic and budgetary difficulties. It would imply a financial investment from the UN, undergoing financial strain at the time of writing. Furthermore, such a procedure would be more complicated as there would not be one

[125] Malcolm Evans, *Religious Liberty and International Law in Europe* (CUP 1997) 157–58.
[126] Ibid 154–55. League of Nations Official Journal, vol X (1929) 1005–6.
[127] Brölmann (n. 63) 130 n. 32.
[128] Mazower (n. 91) 51.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

specific convention nor substantive regime to govern, due to the ICJ's jurisdiction *ratione materiae*.[129] Unlike the World Trade Organization Dispute Settlement Body, the Court of Justice of the European Union, or regional human rights courts, the ICJ is not the guardian over one specific legal corpus. In this sense, its scope is unlimited, which poses challenges for a hypothetical mechanism in terms of volume and diversity of applications to manage.

Another possible way to filter and manage the presumably increased number of cases from individuals could be an increased use of the Court's Chambers. According to Article 26(2) of the Statute, the Court has the power to form a special *ad hoc* chamber for the hearing of particular cases. Thus, a smaller number of judges from the 15 may be selected by the parties to deal with a particular matter. Article 26(1) provides that the Court could also form a chamber on a more permanent basis to deal with a particular category of cases; the Statute provides the examples of 'labour cases and cases relating to transit and communications'.[130] An example of this practice elsewhere may be found in the International Tribunal for the Law of the Sea (ITLOS), which has chambers for fisheries disputes, marine environment disputes, and maritime delimitation disputes. The Court has exercised this facility once, establishing a permanent chamber for environmental matters in 1993, but despite the growing number of environmental disputes in international law,[131] this chamber has never been used.[132] Another possibility is the use of the Chamber of Summary Procedure. Composed of five judges, it is established annually by the Court 'with a view to the speedy dispatch of business'.[133] Governed by Article 29 of the Court's Statute, the Chamber of Summary Procedure's objective is to provide parties with the option to have their case treated expeditiously, if desired.

The idea behind this ability to form chambers is to give the parties more flexible, efficient, and cost-effective ways of resolving their disputes. It also allows for the bench to be catered to the technical or regional expertise required for a particular matter. It could be a useful tool to resolve disputes between a state and an individual as it would be much

[129] Tams and Fitzmaurice (n. 112) 16.
[130] International Court of Justice Statute, Article 26.
[131] See Chapter 8.
[132] International Court of Justice, 'Chambers and Committees' www.icj-cij.org/en/chambers-and-committees.
[133] Ibid.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

faster, also combining 'the advantage of the authoritative decision and the preservation of the continuity of the law with the requirements of expeditious disposal of claims'.[134] Despite these advantages, chambers have only been exercised six times in the Court's history.[135] A reason that could explain why this is not a popular choice for state litigants is their desire to be able to plead in front of *all* of the judges as opposed to some of them, and thus receive a judgment buttressed by the full Court. If individuals would be seeking international attention or notoriety, then they, too, would prefer the pre-eminence of the full bench. In sum, while filtering mechanisms are theoretically possible in response to a potentially higher workload, they appear to be financially and politically unfeasible in practice.

1.3 Conclusions

To conclude, the legal standing of individuals before the World Court's predecessor – and, consequently, the Court itself – was motivated by concerns about state sovereignty informed by dominant positivist legal thought. Today, Higgins has opined that were the individual to have access to the gates of the Peace Palace, the international legal system would conceptually survive.[136] This explains literature from abovementioned eminent scholars seeing no reason why the Court could not accommodate individuals as parties, at par with states, in proceedings.

There are many sound reasons to plead for this. Nonetheless, having discussed and explored the possibility of individuals acquiring *locus standi* at the Court, it has been noted that many difficulties would arise with regards to treaty law and, more specifically, amendments to be made to the Court's Statute. The hypotheses regarding treaty-based and consensual jurisdiction are also fraught with problems. As for compulsory jurisdiction, states would likely not be willing to bind themselves to claims brought by individuals. Beyond additional problems raised by the requirement of legal interest, one must consider the inevitable floodgates that the Court would open if individuals had *locus standi*. While

[134] Lauterpacht (n. 86) 458.

[135] International Court of Justice, 'Chambers and Committees' www.icj-cij.org/en/chambers-and-committees.

[136] Rosalyn Higgins, 'Conceptual Thinking about the Individual in International Law' in Rosalyn Higgins (ed), *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (OUP 2009) 76.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005

there have been scholarly suggestions to establish filtering mechanisms, this would entail a high bureaucratic and financial investment from the UN and most certainly increase the Court's workload, already high at the time of writing.

The somewhat audacious proposal of *locus standi* of the individual before the ICJ is one that suggests the carnage of the roots that ground the Court. Certain proposals here would imply an overhaul of the budget, financing and staffing of the Court. The fundamental structure of the Court would have to be dismantled, to accommodate the changes necessary for the individual's *locus standi* to come to fruition. While this would still be feasible, it is a jurisdictional amendment that would reflect a deeper shift in the Court's character and role in the international legal system as the unique venue for inter-state disputes. This would therefore transmute the World Court into, in essence, another tribunal altogether.[137]

Inasmuch as this proposal remains implausible, the Court is a master of its own procedure with all of the freedom to create and amend its own rules and reinterpret its powers through the Rules of the Court and the Practice Directions, so long as they do not contradict the Statute. Thus, the remainder of Part I explores how the Court may adjust its procedural mechanisms in a variety of contexts to circumvent its Article 34(1) and allow for the integration of concerned individuals in its proceedings to the best of its ability, where necessary or desirable.

[137] Kaikobad (n. 111) 302.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 14 Nov 2026 at 20:00:57, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009394512.005