

CHAPTER TWELVE

JURISDICTIONAL BASIS AND STATUS OF INTERNATIONAL COURT OF JUSTICE (ICJ) APPRAISED

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Summary of the Chapter

The International Court of Justice (ICJ) was established as a successor to the Permanent Court of International Justice in 1945 at the inception of the United Nations after the First World War established by the League of Nations after the conclusion of the First World War. The Court referred to as the 'World Court' is one of the principal organs and primary judicial branch of the United Nations saddled with the responsibility of resolving legal disputes submitted to it by States that have accepted its jurisdiction. This chapter therefore examines the status and jurisdiction of the ICJ with a view to knowing the extent of its jurisdiction. The paper adopts doctrinal legal research which includes sourcing materials from both primary and secondary sources of law. This article will therefore examine the status and jurisdiction of the ICJ, and as well, examine the key features and provisions of the Statute of the ICJ. The criticisms against the ICJ will equally be examined and appropriate recommendations will be made.

Introduction

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations based in the Peace Palace in The Hague.¹

¹ The ICJ is the only principal organ of the United Nations not located in New York (United States of America) <<http://www.icj-cij.org/court/index.php?pl=1>> accessed on 7 July 2014

It was established in June 1945 by the Charter of the United Nations² and began work in April 1946³. The Creation of the International Court of Justice represented a culmination of long process in which methods for pacific settlement of international disputes were gradually developed and evolved⁴. The idea of settling disputes peacefully at the international level is a very old one. Although, there were some systems and forms of mediation and arbitration, there was no permanent establishment of a bench of judges to settle disputes employing strict judicial techniques⁵. Mediation and arbitration preceded judicial settlement in history. The former was known in ancient India and in the Islamic world, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes, in maritime customary law in medieval Europe and in Papal practice⁶. In 1899, the Hague Peace Conference⁷ was convened and this Conference marked a significant development in the modern history of international arbitration. The high point of the Conference was the adoption of the Convention for the Pacific Settlement of International

² Charter of the United Nations and Statute of the International Court of Justice
<<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> accessed on 7 July 2014

³ The History of the International Court of Justice <> accessed on July 7 2014

⁴ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj.cij.org>> accessed on 7 July 2014

⁵ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003)
<<http://www.unctad.org>> accessed on 7 July 2014

⁶ The History of the International Court of Justice
<<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7 2014

⁷ Baker B. 'Hague Peace Conferences (1899 and 1907)' (2009) Max Planck Encyclopedia of Public International Law (MPEPIL) 1

Disputes⁸ which included the creation of a Permanent Court of Arbitration⁹ which exists to this day. The Permanent Court of Arbitration was established in 1900 and began full operations in 1902¹⁰.

At the end of the First World War¹¹ and with the creation of the League of Nations¹², a concrete shape was given to the idea of the establishment of a Permanent Court of International Justice (PCIJ). After many deliberations, the PCIJ was established with 15 judges elected by the Assembly and the Council of the League of Nations¹³ and the PCIJ was situated at The Hague. However, it was only States that could be parties before the PCIJ but it was also empowered to give advisory opinions to the Assembly and the Council of the League of Nations.¹⁴

⁸ The Convention for the Pacific Settlement of International Disputes was one of the 3 main conventions signed at the Hague Peace Conference. The other treaties signed at the Conference include 'Convention with respect to land laws and customs of War on land' and 'Convention for the adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864' <http://www.pca-cpa.org/showfile.asp?fil_id_and <http://www.avalon.law.yale.edu/19th.../hague01.asp>> accessed on 11 July 2014

⁹ The Permanent Court of Arbitration (PCA) is an international organization based in The Hague in the Netherlands. It was established in 1899 at the first Hague Peace Conference. It provides services for the arbitration and resolution of dispute involving States, States entities, inter-governmental organization and private parties. The PCA is different from the International Court of Justice which is housed in the same building, the Peace Palace in The Hague <http://www.pca-cpa.org/showfile.asp?fil_id> accessed on 11 July 2014

¹⁰ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7 2014)

¹¹ The first World War was a global war centered in Europe that began on 28 July 1914 and lasted until 11 November 1918 <http://www.en.m.wikipedia.org/wiki/World_War_1> accessed on 11 July 2014

¹² The League of Nations was an intergovernmental organization founded on 10 January 1920 as a result of the Paris Peace Conference that ended the First World War. It was the first international organization whose principal mission was to maintain World peace <<http://www.un.org/pubs/.../unitro3.html>> accessed on 11 July 2014

¹³ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) <<http://www.unctad.org>> accessed on 7 July 2014

¹⁴ Ibid

The outbreak of the Second World War¹⁵ in 1939 inevitably affected the activities of the PCIJ. After its last public sitting on 4 December 1939, the PCIJ did not in fact deal with any judicial business and no further elections of judges were held¹⁶. The pressure of the War coupled with the diminished activities of the PCIJ called into question the future of the Court as well as the creation of a new permanent international court to handle international disputes¹⁷. By the time the PCIJ ceased functioning in 1940; it had dealt with 29 contentious cases and gave 27 advisory opinions¹⁸.

In 1942, the United States Secretary of State¹⁹ and the Foreign Secretary of the United Kingdom²⁰ declared themselves in favour of the establishment or re-establishment of an international court after the war²¹. Early in 1943, the United Kingdom Government took the initiative of inviting a number of experts to London to constitute an informal inter-allied Committee to examine the matter. This Committee, under the chairmanship of Sir William Malkin (United Kingdom), held 19 meetings, which were attended by jurists from 11 countries. In its report, which was published on 10 February 1944, it recommended among other things that the Statute of any new international court should be based on that of the Permanent Court of International Justice²².

¹⁵ The Second World War was a global war that lasted from 1939-1945
<http://www.en.m.wikipedia.org/wiki/World_War_II> accessed on 11 July 2014

¹⁶ The History of the International Court of Justice
<<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7 2014

¹⁷ Ibid

¹⁸ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 5 <<http://www.icj-cij.org>> accessed on 7 July 2014

¹⁹ Cordell Hull was the 47th United States Secretary of State and was in office between 4 March 1933 and 30 November 1944

²⁰ Anthony Eden was the United Kingdom Foreign Secretary and was in office between 22 December 1940-26 July 1945

²¹ The History of the International Court of Justice
<<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on 7 July 2014

²² Ibid

The next step was the convening of a meeting in Washington, in April 1945, of a committee of jurists representing 44 States. This Committee, under the chairmanship of G. H. Hackworth (United States), was entrusted with the preparation of a draft Statute for the future international Court of Justice, for submission at the San Francisco Conference, which during the months of April to June 1945 was to draw up the United Nations Charter.²³

The PCIJ was eventually dissolved in 1946 following a decision at the San Francisco Conference²⁴ to create a new International Court of Justice (ICJ) on the same lines as the PCIJ, but as a principal judicial organ of the United Nations²⁵. Contrary to the Statute of the PCIJ, the Statute of the ICJ was an integral part of the Charter of the United Nations²⁶. The implication of this is that States members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice²⁷.

In addition, a State which is not a member of the United Nations may become party to the Statute of the ICJ on conditions to be determined in each case by the General Assembly upon recommendation of the Security Council.²⁸

²³ Ibid

²⁴ The San Francisco Conference also known as the United Nations Conference on International Organization (UNCIO) was a convention of delegates from 50 Allied nations that took place from 25 April to 26 June 1945 in San Francisco, United States. The Convention resulted in the creation of the United Nations Charter which was opened for signature on 26 June 1945 <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014

²⁵ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) <<http://www.unctad.org>> accessed on 7 July 2014

²⁶ Chapter XIV and Article 92 of the United Nations Charter established the ICJ while most of the provisions that relates to the ICJ are contained in the Statute of the International Court of Justice which is annexed to the Charter <<http://www.un.org/en/about/index.shtml>> and <<http://www.un.org/en/documents/charter/chapter14.shtml>> accessed on 13 July 2014

²⁷ All 193 United Nations member States are parties to the Statute of the ICJ by virtue of their ratification of the United Nations Charter, See Article 93(1) of the United Nations Charter 1945 <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014

²⁸ Article 93(2) of the United Nations Charter 1945 <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014

The Charter however does not preclude members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future²⁹.

It is important to note that the Statute of the ICJ did not repeal the Statute of the PCIJ; rather, the Statute of the PCIJ was the basis upon which the Statute of the ICJ was drawn. Necessary steps were taken to transfer the jurisdiction of the PCIJ so far as was possible to the ICJ³⁰. The Charter of the United Nations therefore plainly stated that the Statute of the ICJ was based upon that of the PCIJ.³¹

An Overview of The Statute And Rules of The International Court of Justice

The ICJ functions in accordance with the provisions of its Statute and Rules. The Statute of the ICJ is annexed to the Charter of the United Nations and thus forms an integral part of the Charter³². Its main objective is to organize the composition and function of the ICJ³³. The Rules of the ICJ are framed up pursuant to Article 30 of the ICJ Statute to enable the ICJ carry out its function. The Rules were adopted on 14 April 1978 and entered into force on 1 July 1978³⁴.

²⁹Article 95 of the United Nations Charter 1945<> accessed on 13 July 2014

³⁰ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on 7 July 2014

³¹Article 92 of the United Nations Charter 1945 provides thus 'The International Court of Justice shall be the principal organ of the United Nations. It shall function in accordance with the annexed statute which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter

³²Article 92 of the United Nations Charter 1945

³³International Court of Justice, Statute of the Court <<http://www.icj-cij.org/documents/?p1=4&p2=2&p3=0>> accessed on 7 July 2014

³⁴International Court of Justice, Rules of the Court <<http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>> accessed on 7 July 2014

The Rules are intended to supplement the general rules set forth in the ICJ Statute and to make detailed provisions for the steps to be taken to comply with them. The Rules of the ICJ were framed up.

Structure of the ICJ Statute and Rules

Structurally, ICJ Statute is divided into five (5) chapters, consisting of 70 articles. These include, organization of the Court³⁵, competence of the Court³⁶, procedure³⁷, advisory opinions³⁸ and amendment³⁹. The Rules of the ICJ consists of a Preamble⁴⁰, three (3) parts⁴¹ and 109 Articles.

The seat of the ICJ is at The Hague. This, however, does not prevent the ICJ from sitting and exercising its functions elsewhere whenever the ICJ considers it desirable⁴².

Membership and Composition of the Court

All Member States of the United Nations are automatically parties to the ICJ Statute⁴³.

³⁵ Chapter 1, Articles 2-33 of the United Nations Charter 1945

³⁶ Chapter 2, Articles 34-38 of the United Nations Charter 1945

³⁷ Chapter 3, Articles 39-64 of the United Nations Charter 1945

³⁸ Chapter 4, Articles 64-68 of the United Nations Charter 1945

³⁹ Chapter 5, Articles 69-70 of the United Nations Charter 1945

⁴⁰ The Preamble of the Rules of the ICJ provides as follows 'The Court, Having regard to Chapter XIV of the Charter of the United Nations; Having regard to the Statute of the Court annexed thereto; Acting in pursuance of Article 30 of the Statute; Adopts the following Rules'. <<http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>> accessed on 7 July 2014

⁴¹ Part I of the Rules of the ICJ which consist of Articles 1-21 made provisions with regards to the Court, Presidency, Chambers and International functions of the Court. Part II of the Rules of the ICJ which consist of Articles 22-29 made provisions with regards to the Registry of the ICJ while Part III of the ICJ consisting of Articles 30-109 made provisions for the proceedings before the ICJ <<http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>> accessed on 7 July 2014

⁴² Article 22 (1) of the United Nations Charter 1945

⁴³ Article 93(1) of the United Nations Charter 1945

Although, States that are not Members of the UN can become members of the Court only with the approval of the General Assembly on the recommendation of the Security Council⁴⁴. It is important to note that only States can be parties in a proceeding before the Court⁴⁵. The Court is composed of 15 judges elected for a period of nine-year terms by the United Nations' General Assembly and the United Nations' Security Council⁴⁶. The election is held simultaneously both in the General Assembly and in the Security Council, each voting independently of the other and in order to get elected, a candidate must obtain an absolute majority in both forums⁴⁷. Eligible as judges are persons of high moral character and possessing the qualifications required in their respective countries for appointment to the highest judicial offices, or recognised competence in international laws⁴⁸. The ICJ is assisted by a Registry, headed by a Registrar⁴⁹.

The Bench

All the judges including ad-hoc judges⁵⁰ constitute the Bench of the Court in a case. No member can be dismissed unless, in the opinion of other members, he/she has ceased to fulfill the required conditions⁵¹.

⁴⁴ Article 93(2) of the United Nations Charter 1945

⁴⁵ Article 34(1) of the Statute of the International Court of Justice 1945

⁴⁶ Article 3(1) of the Statute of the International Court of Justice 1945. The election process of the judges is set out in Articles 4-19 of the Statute

⁴⁷ Article 21 of the Statute of the International Court of Justice 1945

⁴⁸ Although no specific quota to different regions of the world is assigned, so far the practice has been to elect one judge from each of the States which are Permanent Members of the Security Council, three judges from Asia, three judges from Africa, two judges from Latin America and one judge each from Western Europe and other States and from the Eastern European States

⁴⁹ Article 21(2) of the Statute of the International Court of Justice 1945

⁵⁰ In order to maintain equality in the status of the parties, the Statute provides that where a judge of the nationality of one of the parties is sitting on the bench, the opposing party may choose an additional judge. Such a judge need not be a national judge, but should be a national of the party which is not represented on the bench. Further, each of the parties may choose such a judge if neither of them has its national sitting on the bench. Judges so chosen by the parties have the same rights and duties as the members of the Court for the duration of the proceedings. See Article 31 of the Statute of the International Court of Justice 1945

⁵¹ Article 25(1) of the Statute of the International Court of Justice 1945

The full Court shall sit except when it is expressly provided otherwise in the Statute⁵². A quorum of nine judges shall suffice to constitute the Court⁵³.

During his/her term of office, no judge is allowed to engage in any political or administrative functions or in any other occupation of a professional nature⁵⁴. Further to this, no judge may participate in a case brought before the ICJ in which he/she has previously been involved as agent or counsel for one of the parties, as a member of a commission of inquiry, or as a member of a national or international tribunal or arbitration⁵⁵.

The Registry

The Court is assisted by a Registry headed by a Registrar⁵⁶ who is elected by secret ballot from amongst candidates proposed by Members of the Court. The Registrar shall be elected for a term of seven years and may be re-elected⁵⁷. The Court can also elect a Deputy-Registrar⁵⁸.

The function of the Registry include but are not limited to transmitting to the parties copies of all pleadings and documents annexed upon receipt thereof in the Registry⁵⁹, keep under the supervision of the President, and in such form as may be laid down by the Court, a general list of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry⁶⁰,

⁵² Article 25(1) of the Statute of the International Court of Justice 1945

⁵³ Article 25(2) of the Statute of the International Court of Justice 1945

⁵⁴ Article 16 of the Statute of the International Court of Justice 1945

⁵⁵ Article 17(1-3) of the Statute of the International Court of Justice 1945

⁵⁶ Article 21(2) of the Statute of the International Court of Justice 1945

⁵⁷ Article 22(1) of the Rules of the International Court of Justice 1978

⁵⁸ Article 23 of the Rules of the International Court of Justice 1978

⁵⁹ Article 26(1) (d) of the Rules of the International Court of Justice 1978

⁶⁰ Article 26(1) (b) of the Rules of the International Court of Justice 1978

communicate to the government of the country in which the ICJ or a Chamber is sitting⁶¹ and so on⁶².

Official and Working Languages

The official languages of the Court are English and French. If the parties agree, the case can be conducted and the judgment delivered exclusively in either English or French. The Court may also authorize, at the request of a party, a language other than French or English to be used by that party. In such a case, an English or French translation has to be attached to the judgment⁶³.

Applicable Law

Article 38 of the Court's Statute sets out the sources of international law that the ICJ is to apply in reaching its decisions. These includes international conventions, whether general or particular, establishing rules expressly recognized by the contesting states, international custom, as evidence of a general practice accepted as law, the general principles of law recognized by civilized nations subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.⁶⁴

Judgment and Appeal

The judgment of the Court is final. However, in the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party⁶⁵.

⁶¹ Article 26(1) (e) of the Rules of the International Court of Justice 1978

⁶² Other functions of the Registry can be found in Article 26(1) (a-n) of the Rules of the International Court of Justice 1978

⁶³ Article 39(1-3) of the Statute of the International Court of Justice 1945

⁶⁴ Article 38(1)(a-d) of the Statute of the International Court of Justice 1945

⁶⁵ Article 60 of the Statute of the International Court of Justice 1945

An application for revision of the judgment may also be made only when it is based upon the discovery of some facts of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the ICJ and also to the party claiming revision and that such ignorance was not due to negligence⁶⁶.

Status of The International Court of Justice Within The United Nations

As has been mentioned earlier, the basis on which the ICJ was created is the UN Charter, The ICJ constitutes an integral part of the UN and this organic relationship has been confirmed by various provisions in the UN Charter and in the ICJ's Statute.

First, Article 7 (1) of the UN Charter crystallizes the position of the Court within the framework of the UN. It stipulates that the Court is one of the six principal organs, together with the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, and the Secretariat. This enumeration is exhaustive and does not place these organs in a hierarchical order, since each has an equal status in its capacity as a principal organ of the UN⁶⁷.

Article 92 of the Charter further complements Article 7(1) above and reflects the constitutional position of the Court within the UN. It provides that the ICJ is the principal judicial organ of the UN and that it should function in accordance with its Statute, which is considered an integral part of the Charter.

In addition, Article 33 (1) of the Charter imposes an obligation on UN members to achieve first of all a peaceful solution by various means, including judicial settlement, of any dispute that is likely to endanger the maintenance of international peace and security.

⁶⁶ Article 61 of the Statute of the International Court of Justice 1945

⁶⁷ Jaenicke, G., "Article 7" in Simma, B., et al. (eds.), 'The Charter of the United Nations: A Commentary' (1994) 195-6.

This article means that the drafters of the Charter considered the position of the ICJ as the judicial organ within the framework of the UN as an appropriate means to achieve one of the main objectives of the UN, namely the settlement of international disputes by peaceful means.

This position is further confirmed by Article 36(3) of the Charter, which provides that the Security Council when making a decision should consider that legal disputes should, as a general rule, be referred by the parties to the ICJ in accordance with the provisions of the Statute. Article 96 of the Charter also reflects the position of the Court within the UN. Pursuant to this article, the Court is the only competent organ among the UN's organs to give advisory opinions on any legal question referred to it by any political organ or specialized agency of the UN. In this regard it has been noted by that this article is 'central to relations between the Court and the United Nations'.⁶⁸

Jurisdiction of The International Court Of Justice

Generally, the ICJ Statute empowers the Court to exercise two forms of jurisdiction. These include jurisdiction in respect of disputes of a legal nature that are submitted to it by the States, this is otherwise known as jurisdiction in contentious cases and it also has jurisdiction to give advisory opinions on legal questions submitted to it by the organs of the United Nations or specialized agencies authorized to make such a request otherwise known as advisory jurisdiction.⁶⁹

The jurisdiction of the Court in contentious cases is simply the consideration of legal disputes submitted to it by the States⁷⁰.

⁶⁸ Schwebel, S., 'Relations Between the International Court of Justice and the United Nations' in Virally, M. (ed.), *Le Droit International au Service de la Paix, de la Justice et du Developpement*, 1991, p. 435.

⁶⁹ The Jurisdiction of the International Court of Justice, <> accessed on 14 July 2014

⁷⁰ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26, <<http://www.icj.cij.org>> accessed on 7 July 2014

What this portends is that the ICJ in its contentious jurisdiction cannot consider legal disputes between a state and International organization or between two international organizations and also, the ICJ cannot deal with any written or oral applications from private entities (e.g. corporations and non-governmental organizations) or individuals that are received at the Registry, however meritorious or moving they may be⁷¹.

The States that can submit legal disputes to trigger the contentious jurisdiction of the Court include States members of the United Nations who by ratifying the Charter of the United Nations, accepted its obligations and thus automatically becomes parties to the Statute of the ICJ which forms an integral part of the Charter⁷². In addition, a State can trigger the contentious jurisdiction of the ICJ even if it is not a member of the United Nations but it is a party to the Statute of the ICJ⁷³ while a State that is neither a member of the United Nations nor is a party to the Statute of the ICJ can also activate the contentious jurisdiction of the ICJ if the State deposited with the Registry of the ICJ a declaration laid down by the Security Council whereby it accepts the jurisdiction of the ICJ and undertakes to comply in good faith with the ICJ's decision⁷⁴.

⁷¹ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26 <<http://www.icj.cij.org>> accessed on 7 July 2014

⁷² Article 93(1) of the Statute of the International Court of Justice 1945

⁷³ Article 93(2) of the Statute of the International Court of Justice 1945, Example of this is Switzerland which only joined the United Nations in 2002 but had been a party to the Statute of the ICJ since 1948

⁷⁴ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26 <<http://www.icj.cij.org>> accessed on 7 July 2014

However, the fact that it is only a State that can submit legal disputes to activate the contentious jurisdiction of the Court does not preclude non-state interests from being the subject of proceedings before the Court if one State brings the case against another. Example of this can be found in the case of diplomatic protection where a State can bring a case on behalf of one of its nationals or corporations.⁷⁵

It is important to note that the mere fact that a State is a member of the United Nations or a party to the Statute of the ICJ does not automatically confers jurisdiction on the Court. The Court can only exercise its jurisdiction in contentious cases if the States involved have in some manner or the other consented to be made a party to the proceedings before the Court. This is a fundamental principle governing the international settlement of dispute as States being sovereign are free to choose the means of resolving their disputes.⁷⁶

Accordingly, the basis for jurisdiction of the Court in contentious cases is the consent of the States parties to a dispute⁷⁷. Consent in this regard can be expressed either through a Special Agreement a Compromiser Clause.

Jurisdiction conferred on the Court by special agreement arises when the disputing States agree to submit their dispute to the Court.

⁷⁵ The *Nottebohm Case (Liechtenstein V. Guatemala)* is a good example of where a State can bring a case on behalf of its national. The contentious case was brought before the ICJ by Liechtenstein on behalf of its national Friedrich Nottebohm against Guatemala and sought for a ruling of the ICJ to force Guatemalan recognition of Friedrich Nottebohm as a Liechtenstein national. For the summary of the case, see <<http://www.icj-cij.org/docket/index.php?sum=215&p1=3&p2=3&case=18&p3=5>> accessed on 14 July 2014

⁷⁶ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26 <<http://www.icj-cij.org>> accessed on 7 July 2014

⁷⁷ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) 12, Available online at <<http://www.unctad.org>> accessed on 7 July 2014

This method is based on explicit consent of the States and is, perhaps, the most effective basis for the Court's jurisdiction. It is effective because the parties concerned have a desire for the ICJ to resolve the dispute, and are thus more likely to comply with the ICJ's judgment⁷⁸. For example, a special agreement was concluded between Hungary and Slovakia on 7 April 1993, by which they submitted to the ICJ, the dispute concerning the Gabčíkovo Nagymaros Project⁷⁹.

Jurisdiction can also be conferred on the Court in contentious cases by Compromissory Clause whereby disputes are specifically provided for in treaties and conventions in force⁸⁰. In other words, many treaties contain clauses (known as jurisdictional clauses) by which a State party⁸¹ undertakes in advance to accept jurisdiction of the ICJ should a dispute in interpretation or application of the treaty arise in the future with another State party. Some of the Treaties include, the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation⁸², the International Convention against the taking of Hostages⁸³,

⁷⁸ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) 12 <<http://www.unctad.org>> accessed on 7 July 2014

⁷⁹ The dispute concerned the construction and operation of the Gabčíkovo-Nagymaros Barrage system. See Gabčíkovo-Nagymaros Project (*Hungary v. Slovakia*), ICJ Reports, 1997, 7 <<http://www.icj-cij.org/docket/index.php?sum=483&p1=3&p2=3&case=92&p3=5>> accessed on 15 July 2014

⁸⁰ Article 36(1) of the Statute of the International Court of Justice 1945

⁸¹ Posner E. A., 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics

⁸² The Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation was signed on 23 September 1971 in Montreal, Canada and became effective from 26 January 1973

⁸³ The International Convention against the taking of Hostages was signed on 18 December 1979 in New York and became effective on 3 June 1983

The United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment⁸⁴, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances⁸⁵, the United Nations Framework Convention on Climate Change, Convention on Biological Diversity⁸⁶, Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and their Destruction⁸⁷. All these treaties usually provide that if a dispute arises under the treaty, the ICJ will have jurisdiction⁸⁸.

However, cases founded on compromiser clauses have not been as effective as cases founded on special agreement, since a State may have no interest in having the matter examined by the ICJ and may refuse to comply with any judgment in this regard⁸⁹. Therefore, the use of compromiser clauses has declined⁹⁰. For example, during the Iran hostage crisis⁹¹, Iran did not participate in a case brought by the United States based on a compromissory

⁸⁴ The United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment was signed on 10 December 1984 in New York and became effective on 26 June 1987

⁸⁵ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances was in Vienna on 20 December 1988 and became effective on 11 November 1990

⁸⁶ The United Nations Framework Convention on Climate Change, Convention on Biological Diversity was signed in New York on 9 May 1992 and became effective on 21 March 1994

⁸⁷ The Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and their Destruction was signed on 13 January 1993 in Paris and became effective on 29 April 1997

⁸⁸ Ibid

⁸⁹ Contentious Jurisdiction of the International Court of Justice, <http://www.en.wikipedia.org/wiki/international_Court_of_Justice> accessed on 14 July 2014

⁹⁰ Ibid

⁹¹ The Iran hostage crisis was a diplomatic crisis between Iran and the United States between 4 November 1979 and 20 January 1981 in which 52 American diplomats and citizens were held hostage for 444 days after a group of Iranian students belonging to Muslim Student Followers of the Imam's line who were supporting the Iranian Revolution took over the United States embassy in Tehran

clause contained in the Vienna Convention on Diplomatic Relations⁹² nor did it comply with the judgment⁹³

It is equally important to note apart from the above, jurisdiction may also be conferred on the Court in contentious case through the use of an optional clause system otherwise known as compulsory jurisdiction. Although, in the strict sense, the Court does not have a compulsory jurisdiction, however, the States parties to the Statute of the Court may opt to make a unilateral declaration recognizing the jurisdiction of the Court as compulsory in relation to any other State accepting the same obligation.⁹⁴

However, the jurisdiction of the Court under the optional clause system is limited to certain legal dispute including the interpretation of a treaty⁹⁵, any question of international law⁹⁶, the existence of any fact which if established, would constitute a breach of an international obligation⁹⁷, the nature or extent of the reparation to be made for the breach of an international obligation⁹⁸.

Unlike the jurisdiction of the Court in contentious cases whereby only States can be party to proceedings before the Court while individuals, corporations and organizations cannot be a

⁹² The Vienna Convention on Diplomatic Relations of 1961 is an international treaty that defines a framework for diplomatic relations between independent countries. It specifies the privileges of a diplomatic mission that enable diplomats to perform their function without fear of coercion or harassment by the host country. This forms the legal basis for diplomatic immunity. Its articles are considered a cornerstone of modern international relations. As of April 2014, it has been ratified by 190 states

⁹³ Case Concerning United States Diplomatic and Consular Staff in Tehran (*USA Vs. Iran*) 1979 ICJ Reports 7 <<http://www.icj.org/docket/index.php?sum=334&p1=3&p2=3&case=642&p3=5>> accessed on 15 July 2014

⁹⁴ Article 36(2) of the Statute of the International Court of Justice 1945

⁹⁵ Article 36(2) (a) of the Statute of the International Court of Justice 1945

⁹⁶ Article 36(2) (b) of the Statute of the International Court of Justice 1945

⁹⁷ Article 36(2) (c) of the Statute of the International Court of Justice 1945

⁹⁸ Article 36(2) (d) of the Statute of the International Court of Justice 1945

party before it, the Court however has jurisdiction to provide advisory opinions to certain public international organizations and as such, public international organization can request an advisory opinion from the Court on a legal question⁹⁹.

In accordance with the Article 96(1) of the Charter of the United Nations¹⁰⁰, the General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question while Article 96(2) of the Charter provides that other organs of the United Nations and specialized agencies¹⁰¹, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the ICJ on legal questions arising within the scope of their activities.

It should be noted that States members of the ICJ cannot request for an advisory opinion of the ICJ. Such request can only be submitted by an international public organization even if the request is sometimes the result of an initiative by a State or groups of States members of that organization¹⁰².

⁹⁹ Article 65(1) of the Statute of the International Court of Justice 1945

¹⁰⁰ United Nations Organs are, the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly, See <<http://www.un.org/en/aboutun/structure/>> accessed on 17 July 2014

¹⁰¹ Specialized Agencies of the United Nations include the International Labour Organization (ILO), Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), International Development Association (IDA), International Monetary Fund (IMF), International Civil Aviation Organization (ICAO), International Telecommunication Union (ITU), International Fund for Agricultural Development (IFAD), World Meteorological Organization (WMO), International Maritime Organization (IMO), World Intellectual Property Organization (WIPO), United Nations Industrial Development Organization (UNIDO) and the World Bank Group, See <<http://www.un.org/en/aboutun/structure/>> accessed on 17 July 2014

¹⁰² United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 42, <<http://www.icj.cij.org>> accessed on 7 July 2014

Before acceding to a request, the ICJ has to decide that it has jurisdiction and, if it has, it would then decide whether it should exercise its discretion to give an Advisory Opinion.¹⁰³

From the above, it is clear that the jurisdiction of the Court covers a wide range of international legal issues between States including but not limited national boundaries, maritime, rights to natural resources and international human rights while the Court also has the jurisdiction to give advisory opinions on questions of international law submitted to it by public international organizations.

Criticisms of the International Court Of Justice

As seen from the above, the Court from its inception was expected to become the principal judicial organ for the settlement of disputes among sovereign nations. However, the Court has been criticized for its limited effectiveness and the many failures it has experienced over the years¹⁰⁴. Many of the provisions of its Statute have also been criticized for favoring major power blocs of the world which has not allowed the Court to live up to the hopes of many of its early supporters¹⁰⁵. The Court has also been abandoned by the major powers in the world. Some Countries that are currently part of the ten largest economies in the world like China, Japan, and Russia have never brought a proceeding, and never been a respondent beyond the filing stage.

¹⁰³ Aust Anthony 'Advisory Opinions' 2010) 1(1) Journal of International Dispute Settlement 130

¹⁰⁴ Bingbin, L. U., 'Reform of the International Court of Justice – A Jurisdictional Perspective', Vol. 5 No. 2 (2004) Perspectives, p. 6

¹⁰⁵ Arora M., 'Criticism of International Court of Justice' <<http://www.omabc.com/united-nations/icj/criticism-international-court-justice>> accessed on 20 July 2014

Another criticism that has been levied against the Court is the implication of the provision of Article 36 (1) of Statute which states that the Court has jurisdiction in matters specially provided in convention or treaties. The implication of this is that the voluntary clause paves the way for parties to not participate in proceedings or abide by decision of court in a particular matter¹⁰⁶. Further to the above, the Optional Clause system in Article 36 (2) of the ICJ Statute which states that States parties can declare at any time to accept compulsory jurisdiction of ICJ in matters related to conventions or international law has not been effective. As at 7 July 2014, only 70 States out of 193 States that are members of the United Nations have deposited declaration recognizing the compulsory jurisdiction of the ICJ with the Secretary-General of the United Nations¹⁰⁷. The meaning of this is that a larger percentage of the members of the United Nations do not accept the compulsory jurisdiction of the ICJ and therefore, unless they give their consent to be a party in a case before the ICJ, the ICJ will have no jurisdiction. This limits the jurisdiction of ICJ significantly. It should be noted that out of 5 permanent members of the Security Council, it is only the United Kingdom that have recognized the compulsory jurisdiction ICJ¹⁰⁸.

A major criticism against the ICJ is that unlike the International Criminal Court (ICC),

¹⁰⁶ For example Iran refused to participate in case of Iran hostage crisis brought by United States which was based on voluntary clause of Vienna Convention on Diplomatic Relations and did not complied with the order of the ICJ.

¹⁰⁷ See, The International Court of Justice, Declarations recognizing the Jurisdiction of the Court as Compulsory <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>> accessed on 7 July 2014

¹⁰⁸ Posner Eric, 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics

the ICJ does not enjoy a full separation of powers with permanent members of the Security Council being able to veto enforcement of cases even to which they consented to be bound¹⁰⁹. As such, the Security Council can modify or reverse the judgment of the ICJ as it is the Organ of the United Nations that enforces any judgment of the Court¹¹⁰. The Security Council therefore has more power than the Court which is to the detriment of the Court.

Many studies have also revealed that judges favour their home State and that bias voting is common in among non-party judges because they mostly vote in favour of States similar to their States in dimensions of wealth, culture or political regime¹¹¹.

The jurisdiction of the Court in providing Advisory Opinion has also been criticized for been limited organizations authorized by United Nations while private enterprises and other non-authorized organizations cannot approach the Court for settlement of any kind of dispute. Even organization like International Criminal Court (ICC)¹¹² is out of jurisdiction of court. This means that potential victims of crimes against humanity, such as minor ethnic groups or indigenous peoples cannot approach the Court to seek redress.

¹⁰⁹ By virtue of Article 92, the ICJ is an organ of the United Nations and its Statute annexed to the Charter of the United Nations. On the other hand, the Rome Statute which created the ICC is independent of the United Nations' Charter

¹¹⁰ For example in the case brought by Nicaragua before the ICJ against the United States, the ICJ's judgment delivered in 1984 was in favour of Nicaragua and the judgment called upon the United States to cease and refrain from using unlawful force against government of Nicaragua. However, the United States refused to comply with this judgment and withdrew its acceptance from compulsory jurisdiction. Nicaragua brought case of non-compliance of the United States with ICJ judgment before the Security Council. The United States used its veto power and the resolution that may have been reached by the Security Council was vetoed. See <<http://www.icj-cij.org/docket/index.php?sum=367&p1=3&p2=3&case=70&p3=5>> accessed on 17 July 2014

¹¹¹ Arora M., 'Criticism of International Court of Justice' <<http://www.omabc.com/united-nations/icj/criticism-international-court-justice>> accessed on 20 July 2014

¹¹² The International Criminal Court (ICC) is a permanent international tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression and it was created by the Rome Statute which came into force on 1 July 2012, see <<http://www.icc-cpi.int>> accessed on 18 July 2014

Conclusion

The need to settle disputes among sovereign nations amicably without unnecessary resort to war is fundamental to international peace and harmony. Therefore, the establishment of the ICJ was a remarkable step for the enforcement of international laws and is in no doubt a significant development in the settlement of international disputes among sovereign nations and a great departure from the ineffective Permanent Court of Arbitration (PCA) and Permanent Court of International Justice (PCIJ). Its establishment strengthens the role of international law in international relations and contributed to the development of international law. The ICJ have jurisdiction to entertain contentious cases instituted before it by States while it also has jurisdiction to give advisory opinion in cases instituted by specialized agencies recognized by the United Nations. However, the jurisdiction of the ICJ is not automatic as a State either has to give its consent, recognize the jurisdiction of the ICJ under a particular treaty or recognize the compulsory jurisdiction of the ICJ before the ICJ can be conferred with jurisdiction.

Although the ICJ and its Statute are not perfect and have some weaknesses, as will any international organization. However, in spite of its unique features as well as its flaws, the establishment of the ICJ as well as its Statute marked an indisputable advance in international law and relations. It is only hoped that more countries will recognize the compulsory jurisdiction of the ICJ including the remaining permanent members of the Security Council who have not yet recognize its compulsory jurisdiction in the nearest future so as to strengthen the prosecutorial profile and authority of the ICJ.

Recommendations

In order to enhance the operations of the ICJ, it is recommended as follows:

- The enforcement of judgment of the Court should be within the exclusive powers of the Court and the Court should enjoy a full separation powers so as not to be seen as an appendage of the permanent members of the Security Council;
- The decision to reverse or modify judgment of the ICJ should be taken by the General Assembly which consists of all members States of the United Nations rather than the Security Council which consist of few States;
- The number of judges should be increased from the current 15 as the number of members of the of the United Nations had increased presently to 193 members from 50 members in 1945;
- Access to contentious proceedings and jurisdiction of the ICJ should be extended to parties other than States, that is, non-governmental organizations, individuals and corporations;