CHAPTER 4

THE WORLD COURT: A BULWARK OF INTERNATIONAL JUSTICE

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INTRODUCTION

In 1922, the Permanent Court of International Justice PCIJ was established as a principal organ of the League of Nations. The PCIJ was replaced by its successor the International Court of Justice (ICJ) in 1946. The International Court of Justice, commonly known as the "World Court," is the only international tribunal that can decide upon issues extending to any area of international law. The Court is seated at the Peace Palace in The Hague. It is described in the Charter as 'the principal judicial organ' of the United Nations. It has a special position as an independent court and is not integrated into the hierarchical structure of the other five organs of the United Nations.[1] Its Statute forms an integral part of the Charter so that all members of the United Nations are automatically parties to the Statute. Its governing rules are the UN Charter (Articles 92-96), its own Statute, and the Rules of Court amended from time to time.[2]

The Court's function is twofold: first, to settle legal disputes submitted to it by States in accordance with international law, and secondly, to give advisory opinions on legal questions referred to it by international organizations. The Court has no express task of providing for 'judicial review' of the acts of international organizations, although this function is implicit in its advisory capacity and may also be utilized in its contentious function.

ORGANIZATION OF THE COURT

The Court consists of 15 judges; five are elected every three years to hold office for nine years. Two criteria govern election of judges of the Court. The first, in Article 2 of the Statute, is personal to the judges: they are to be "persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or jurisconsults of recognized competence in international law". The second, in Article 9 of the Statute, is that the body of judges as a whole should represent "the main forms of civilization and of the principal legal systems of the world". The Court may not include more than one judge of any nationality.[3]

Election of judges

In practice election of judges is based upon a degree of 'equitable geographical distribution". The recent practice has been to select four judges from West European States, one from the United States, two from South America, two from East European States and six from Asia and Africa. Article 2 provides for election 'regardless of their nationality'; in practice the permanent members of the Security Council have always had a judge of their nationality. This has been established by a series of understandings which have either been negotiated diplomatically or have emerged *de facto* in the United Nations.

In theory, nominations of candidates are the prerogative of independent national groups,[4] but in practice governments

exercise a major influence. The judges are elected by an '*absolute majority*' of votes in both the Security Council and the General Assembly sitting independently of each other. In the General Assembly, the absolute majority of 50% plus one is calculated on the basis of the total membership of the United Nations, regardless of whether any particular delegation is present or not, or is entitled to participate in the work of the General Assembly or to vote.[5] In the Security Council, no distinction is made between the permanent and the non-permanent members, that is, the so-called 'veto' does not apply. But although the permanent members do not have a privileged position as regards voting (which is secret), they can ensure the election of candidates of their own nationality, as has been stated earlier.

Ad hoc judges

If a State appearing before the Court does not have a judge of its own nationality at the Court, it may appoint an *ad hoc* judge for the particular case. Such an *ad hoc* judge takes part in the decision of the Court on terms of complete equality with other judges.[6] The institution of the *ad hoc* judge was introduced as an inducement to States to use the Court. It may be necessary to reassure the litigants that the Court will not ignore their views; but it is hard to reconcile with the principle that judges are impartial and independent, and are not representatives of their national governments. The fact is that even though *ad hoc* judges have been appointed in many of the Court's contentious cases, only very rarely has an *ad hoc* judge voted against his or her own State.

Chambers of the Court

Cases in the Court are normally heard by the full Court. However, Articles 26 to 29 of the Statute provide for the creation of chambers composed of fewer judges for particular categories of cases, for the speedy dispatch of business, or to deal with an

individual case.[7] In other words, the Statute allows the Court to sit in smaller chambers. The two well-known types of chambers are: the *special chamber* and the *ad hoc chamber*.

Under Article 26 (1) of the Statute, a special chamber consisting of three or more judges may be established for dealing with particular categories of cases. The Court made first use of this power in 1933 by establishing a permanent chamber of seven judges to deal with disputes concerning international environmental law. This environmental law chamber has not yet been used.

By virtue of Article 26(2) of the Statute, the Court may at any time form an *ad hoc* chamber for dealing with a particular case, the number of judges being determined by the Court with the approval of the judges.[8] Four cases have so far been decided by *ad hoc* chambers. The *Gulf of Maine* case is the very first case for which the procedure for *ad hoc* chambers was used.[9] The other cases are the *Frontier Dispute (Burkina Faso/Mali)* case,[10] *Elettronica Sicula SpA (ELSI)* case,[11] and *Land, Island and Maritime Frontier Dispute* case *(Nicaragua Intervening)*[12] The attraction of the chambers procedure is that it provides States with a method of resolving disputes which combines a major advantage of arbitration, namely control over the size and composition of the court with an advantage of the ICJ, which is that it comes equipped with a panel of available judges, a court building and the facilities needed for international litigation, all of which are paid for by the United Nations.[13]

JURISDICTION

Jurisdiction primarily refers to the power of a court to render a binding decision on the substance or merits of a case placed before it. However, any discussion on 'jurisdiction' should first of all start with the question of who can be parties before the court and be followed by further discussions of primary and incidental forms of jurisdiction.

Access to the Court (jurisdiction *ratione personae*)

The International Court of Justice has two types of responsibility. It decides contentious cases (i.e. disputes between States) and it gives advisory opinions on legal questions asked by international organizations.

Contentious cases

In accordance with Article 34 (1) of the Statute, "only States may be parties in cases before the Court". The reference is of course to sovereign States in the sense of the principal category of subjects of international law, and excludes the component States of federations. A case cannot be brought by or against a non-State entity, such as an individual, a non-governmental organization, or a multilateral corporation, even if the other party is a State and consent to the case being brought. International organizations also have no *locus standi* as parties in contentious proceedings. They have only the right to request advisory opinions and present information to the Court.

Advisory opinions

Article 65 of the Statute provides that the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter to make such a request. The General Assembly or the Security Council may request the Court to give an advisory opinion on any legal question. Other organs of the United Nations and specialized agencies, which may be so authorized by the General assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.[14]

Contentious Jurisdiction

The Court has jurisdiction under Article 36(1) of its Statute in "all cases which the parties refer to it." The phrase clearly indicates that the Court can exercise jurisdiction only when the parties refer the case to it. The word "parties" is in the plural, and implies that all the parties to the dispute must agree that the dispute should be referred to the Court. Therefore, the Court's jurisdiction is not compulsory; it is voluntary only.

Consent is the basis of Court's jurisdiction

The Court on a number of occasions declared that its jurisdiction in contentious cases is dependent on the consent of the parties.[15] This principle, reflected in Article 36 of the Statute, rests on international practice in the settlement of disputes and is a corollary of the sovereign equality of States.

The jurisdiction of the Court is founded upon the consent of the parties which need not be in any particular form and in certain circumstances the Court will infer it from the conduct of the parties, In the *Corfu Channel (Preliminary Objections)* case,[16] the Court inferred consent from the unilateral application of the applicant State (UK) coupled with subsequent letters from the other party (Albania) intimating acceptance of the Court's jurisdiction.

In *Qartar v Bahrain*,[17] the issue centred upon minutes of a meeting signed by the Foreign Ministers of both States (the Doha Minutes), which provided for the jurisdiction of the Court in case of dispute. The Court held that these meeting minutes constituted an agreement under international law.

It is a well-established principle that the Court will only exercise jurisdiction over a State with its consent and it 'cannot therefore decide upon legal interests of third States not parties to the proceedings.'[18] This rule was underlined in the *Monetary*

Gold case,[19] where gold belonging to the National Bank of Albania had been seized by Germany from a bank in Rome during the World War II. It had since fallen into the hands of the allied forces, consisting of France, the UK and the US. Italy and Albania disputed over the gold before an arbitral tribunal and the tribunal decided that the gold belonged to Albania. Italy instituted proceedings before the ICJ, against the three allied powers claiming the gold, But Albania, in whose favour the arbitrator had decided, declined to be a party to the case. The Court held that it did not have jurisdiction because Albania, whose legal interests would form the very subject-matter of the decision, did not consent to its jurisdiction.

In the *East Timor* case, East Timor was a non-self-governing territory and Portugal was the Administering Power. Indonesia occupied by force and illegally claimed title to East Timor. In 1989, Indonesia concluded a treaty with Australia which delimited the continental shelf between East Timor and Australia. Portugal brought legal proceedings against Australia under Article 36(2) of the ICJ Statute claiming that Australia had failed to respect the rights of Portugal as the administering power and the right of the people of East Timor to self-determination by entering into continental shelf treaty with Indonesia. Indonesia was not a party to the case. It was held that:

The effects of the judgment requested by Portugal would amount to a determination that Indonesia's entry into and continued presence in East Timor are unlawful and that, as a consequence, it does not have the treaty-making power in matters relating to the continental shelf resources of East Timor. Indonesia's rights and obligations would thus constitute the very subject-matter of such a judgment made in the absence of that State's consent. Such a judgment would thus run directly counter to the 'well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent."

Various ways of expressing consent

The consent of a State to appear before the Court may be expressed in several ways.

Consent given by special agreement (*Compromis*)

The classic method by which the parties refer a case to the Court is by a *special agreement* (*compromis*). This is an agreement whereby two or more States agree to refer a particular and defined matter to the Court for a decision. The distinguishing feature of the special agreement as a title of jurisdiction is that jurisdiction is conferred and the Court is seized of the defined issues of the concrete case by the mere notification to the Court of the agreement. Recent examples are Special Agreement between Indonesia and Malaysia relating to the *Case converning Sovereignty over Pulau Ligitan and Pulau Sipadan*[20], and Special Agreement between Malaysia and Singapore in respect of the *Case Concerning Sovereignty over Pedra Branca/ Pulau Batu Puteh.*[21]

Forum prorogatum

In the *Corfu Channel* case,[22] the United Kingdom brought a claim against Albania before the Court by a unilateral application in accordance with Article 40(1) of the Statute. It argued that the Court had jurisdiction under Article 36(1) of its Statute as being a matter, which is one specifically provided for in the Charter of the United Nations, on the ground that the Security Council, after dealing with the dispute under Article 36 of the Charter, by a resolution, decided to recommend both the Government of the UK and the Albanian government to refer the present dispute to the Court. The Court held that although the UK initiated the proceedings by unilateral application, the letter sent by the Albanian

government to the Court's Registrar could be considered as consent given on the part of Albania.

The doctrine relied upon by the Court to found its jurisdiction in this case is that of *forum prorogatum*. According to the Court, There is no reason why each party should not make a separate reference to the Court by a unilateral application while the Court is considering the unilateral application of one State, the other may expressly or impliedly signify its consent to the jurisdiction. Such consent may be express or implied. It can be implied if the respondent State defends the case on the merits without challenging the jurisdiction of the Court. This is rather like an estoppel by conduct.

Applications relying on *forum prorogatum* have since been made in the *Treatment in Hungary of Aircraft of the USA* case[23], in three *Aerial Incident* cases[24] and the *Antartica* case[25] In all of these cases, no basis for jurisdiction other than *forum prorogatum* was available. In each case the respondent State took no positive action and eventually the case was struck off the Court's list.[26]

Consent given by a compromissory clause in a treaty

States can agree in advance by treaty to confer jurisdiction to the Court. That is what Art. 36 (1) means when it refers to "matters specially provided for... in treaties".[27] There are several hundred treaties in force which contain such a jurisdictional clause stipulating that if parties to the treaty disagree over its interpretation or application, one of them may refer the dispute to the Court. Such a compromissory clause in a multilateral or bilateral treaty is the more usual method of conferring jurisdiction to the Court. The treaty may be a general treaty of peaceful settlement of disputes or a treaty regulating some other topic and containing a compromissory clause. In the *Tehran Hostages* case, the Court accepted jurisdiction on the basis of the bilateral *Treaty of amity, Economic relations and consular Rights* between the two parties

and the Protocol to the multilateral *Vienna Convention on Diplomatic Relations, 1961*.

Accepting compulsory Jurisdiction under Article 36(2) of the Statute

One characteristic of the judicial process in every national legal system is the capacity of the courts to assert jurisdiction independently of the desires of the parties to disputes. In international sphere, the situation is different. We are dealing with sovereign States, not private individuals. States have been unwilling to establish a genuine supranational legal authority. How can the deadlock be broken? A partial solution has been found in Article 36(2) of the Statute of the Court:

The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other states accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature and extent of the reparation to be made for the breach of an international obligation.

Article 36(2) of the Statute provides what is known as 'compulsory jurisdiction' of the International Court of Justice. It is compulsory once it is voluntarily accepted. There is no obligation to make a declaration under Article 36(2). By the use of the term 'may', this Article 36(2) is not obligatory upon Member States. That is the reason why it is known as the 'optional clause'. The introduction of this type of jurisdiction was a compromise between those who wanted true compulsory jurisdiction over legal disputes and those who wanted to retain the exclusively

consensual basis of the jurisdiction. It was a major innovation in international practice.[28]

There are 66 declarations in force under the "Optional Clause" system in accordance with Article 36(2) of the Statute.[29] France terminated its declaration in 1974 as a result of the *Nuclear Tests* cases. The United States terminated its declaration in 1985 because of the *Nicaragua* case. The United Kingdom is now the only Security Council permanent member that is bound by the Optional Clause.

States which accept the jurisdiction of the Court under the optional clause system [Article 36(2)] do so only 'in relation to any other State accepting the same obligation'. This is known as the 'principle of reciprocity'. This principle has two aspects. First, both parties to a dispute must have made declarations under Article 36(2) in order that the Court may exercise jurisdiction. Secondly, the principle of reciprocity means that the Court exercises jurisdiction only to the extent to which the declarations of the two parties coincide. In other words, the Court has jurisdiction over the subject-matters common to both States' declarations. In practice, this means that one State may rely on the reservations contained in another State's declaration.

According to Article 36 (3) of the Statute, declarations accepting the compulsory jurisdiction may be made unconditionally or on condition of reciprocity on the part of several or certain states. By virtue of this, several types of 'reservations' are made. Some reservations are made *ratione materiae*. The effect of it is to limit the subject-matters over which the Court may exercise jurisdiction; for instance, Philippines makes a reservation of disputes concerning its Continental shelf. Some are made *ratione temporis*, i.e., regarding the time limit. Most States reserve matters of 'domestic jurisdiction'.

But some reservations go beyond that. For example, the Connally reservation of the United States to its declaration accepting compulsory jurisdiction of 1946 excluded from the jurisdiction of the Court "disputes with regard to matters which

are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America." As the State itself (not the Court) will determine whether a matter is a domestic matter or not, this kind of reservation is known as automatic or self-judging reservation. Whether such 'automatic reservations' are consistent with the Statute of the Court is a matter of debate.[30]

In the *Norwegian Loans* case,[31] France brought a claim against Norway. Both France and Norway had made declarations under Article 36(2) accepting the compulsory jurisdiction. There was an 'automatic reservation' similar to that of the US in the French declaration. Norway objected to France commencing the action as it claimed that the issue was essentially a matter within Norway's 'domestic jurisdiction'. Although Norway did not have such a reservation to its declaration, it submitted that it could rely on the fact that France did have such a reservation. The Court accepted Norway's submission and held that it had no jurisdiction.

However, Judge Lauterpacht stated that such a reservation was invalid, because it was contrary to Article 36(6) of the Statute, according to which the Court has jurisdiction to determine whether it has jurisdiction or not. Besides, since the reservation could not be severed from the rest of the declaration, the nullity of the reservation entailed the nullity of the whole declaration. Judge Guerrero in the *Norwegian Loans* case stated in his dissenting opinion: "I do not agree that the Court is without jurisdiction when its lack of jurisdiction is founded on the terms of a unilateral instrument which I consider to be contrary to the spirit and to the letter of the Statute and which, in my view, is, for that reason, null and void."[32]

Judicial criticisms of automatic reservations led to the abandonment of such reservations by several States which had previously inserted them in their declarations.[33] But automatic reservations are still retained by some States.[34]

Non-appearance of the respondent

It has been a difficult problem for the Court that in contentious cases instituted unilaterally by one State the respondent State has refused to acknowledge the competence of the Court or to take part in the proceedings in any way. Sometimes a State has not taken part in an initial phase of the proceedings, participating in a later phase.[35] In some instances the respondent, although participated in the beginning of the proceedings, has withdrawn from the case before the final decision has been given.[36] In other instances, the respondent has failed to appear at all throughout the proceedings.[37]

The answer to these situations can be found in Article 53(1) of the Statute which provides that: "Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim." It means that despite the non-appearance of a party (normally the respondent), the Court has to go on with the proceedings. Still it is clear that there is no automatic presumption in favour of the applicant; there will be no judgment by default. The Court must satisfy itself, not only that it hasul: jurisdiction, but also that the claim is well founded in fact and law.[38] Of course the Court's task would become more difficult due to the fact that there is lack of formal pleadings and evidence submitted by one of the parties. At the same time, a State's non-appearance in the proceedings in a case in which it is a proper party does not in itself affect the final and binding character of the Courts decision, or the obligation to comply with it.

Incidental Jurisdiction

In addition to its contentious jurisdiction, the Statute entitles the Court to exercise an incidental jurisdiction. By virtue of its incidental jurisdiction the Court has the power to resolve preliminary objections as to its jurisdiction or admissibility, to indicate interim measures of protection, to allow intervention, and to interpret or revise a judgment.

Preliminary Objections: Decisions on Jurisdiction and Admissibility

A well-established principle of the law relating to international arbitral and judicial proceedings is that a tribunal has power to decide, with binding effect for the parties, any question as to the existence or scope of its jurisdiction. This principle is known as that of the *comp'etence de la comp'etence*, the jurisdiction to decide jurisdiction.[39] The principle is reaffirmed in Article 36 (6) of the Statute of the Court: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." This means that the Court is the final arbiter of its jurisdiction.

The Court must exercise this power in any case in which the existence of its jurisdiction is disputed. Sometimes the attitude of the respondent State in disputing jurisdiction is fully justified: the applicant State may be trying to extend limited acceptance of jurisdiction by its opponent to cover a dispute of a kind that was never contemplated in the instrument relied on. Sometimes, on the other hand, the respondent is trying to evade its obligation to accept settlement of the dispute by the Court because the ruling, or even any discussion of the matter before the Court, is likely to cause political embarrassment.

A State named as respondent that considers that the case has been brought without a jurisdictional title will normally raise this at an early stage, and the usual procedure is to file a '*preliminary objection*'. It is defined by the Rules of Court as "any objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits...."[40] Such an objection is usually presented in response to the Memorial filed by the applicant (though it may be filed earlier).

'Objections to jurisdiction' are of course denials that the respondent State ever gave its consent to the particular dispute being brought before the Court, or that the particular dispute

falls within the category of disputes for which it did accept jurisdiction.

'Objections to admissibility' are less easy to define: they include the contention that the applicant lacks *locus standi* (i.e., has no legally protected interest); that the local remedies have not been exhausted; that the case is, or has become, 'without object' or moot; that the presence as a party of a third State is essential to the proceedings, etc.

The main feature of the preliminary objection procedure is that if a party wishes to dispute the Court's jurisdiction or the admissibility of a case, it must do so before it pleads to the merits (substance of the dispute). Normally, it will almost always be the respondent State which disputes the Court's jurisdiction. The effect of a preliminary objection is that the proceedings on the merits of the case (the actual dispute brought before the Court) are suspended,[41] and will never be resumed if an objection to jurisdiction is upheld. Some objections to admissibility may be 'curable' and make the continuation of the proceedings possible after certain steps have been taken.

A separate phase of proceedings is opened to deal with the preliminary objection: the applicant has the opportunity of responding in writing to the objection and in the subsequent oral proceedings the respondent speaks first to present its objection, and the applicant replies. This is the application of a principle of procedural law: (by submitting an objection the respondent becomes the applicant in that preliminary objection phase).

The Court may uphold an objection or reject it; but it may also declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. Its effect is that the objection is not determined at the preliminary stage, but may be re-presented and re-argued along with the merits.

In addition to the proceedings on jurisdiction and admissibility, the Statute entitles the Court to initiate other incidental

proceedings such as to indicate provisional measures (interim measures of protection), to allow intervention and to interpret or revise a judgment.

Interim measures of protection (Provisional measures)

Most, if not all, national courts have power to issue binding interim injunctions, i.e., directives requiring or prohibiting certain action pending settlement of the case before the court. It is also an essential part of the armoury of international tribunals and of the ICJ in particular. The Statute in Article 41 does include a power of the Court to "indicate, if it considers that circumstance so require, any provisional measures which ought to be taken to preserve the respective rights of either party."

In view of the fact that interim measures of protection (provisional measures) may be indicated before any question of jurisdiction is decided, this is a form of involvement in the affairs of States that does not depend on their consent. In addition, the wording of the Statute uses a mild term 'indicate' instead of stronger terms such as 'order' or direct'. This may be the reason why there was a debate as to whether the measures so indicated create a binding obligation on the States addressed.

The question remained unsettled until recently, when in the *LaGrand* case, the Court decided that provisional measures addressed to the United States, which had not been complied with, had created a legal obligation, the breach of which gave rise to a duty of reparation, independently of the rights and duties of the parties in respect of the original dispute.[42] Now, there is no doubt about the binding legal effect of interim measures of protection.

Another difficult question is the relationship between these measures and the jurisdiction of the Court to hear and determine the merits of the case in which measures are requested. Can

the Court indicate measures in cases where it is not dead sure that it has jurisdiction to decide the merits of the dispute. The jurisprudence of the Court has struck a balance between the two extremes[43] and opted for a middle path relying on the '*prima facie jurisdiction*' test.

Thus, in the *Nicaragua* case,[44] Nicaragua's main request was that the United States should cease and refrain from any action restricting, blocking, or endangering access to or from Nicaraguan ports and, in particular, to cease the laying of mines. The Court indicated the provisional measures as requested and laid down requirements for such measures in these words:

> ...[O]n a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, or, as the case may be, that an objection taken to jurisdiction is well-founded, yet it ought not to indicate such measures unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded....[45]

This *prima facie* jurisdiction test has been reaffirmed by the Court in the *Arbitral Award of July 1989* case,[46] *Passage through the Great Belt* case,[47] and the *Application of the Genocide Convention* case.[48] According to this test, there must at least be a *prima facie* case for jurisdiction of the Court. If, there is a '*manifest lack of jurisdiction*', the Court would decline to indicate measures.[49]

The indication of interim measures is an interlocutory measure justified by urgency: there must be a threat to the rights of a party that is immediate in the sense that the final decision in the case may come too late to preserve those rights. If the case will have been decided before irreparable injury is caused, no measures will be indicated.[50]

Intervention by third States

The powers of the Court to allow a State to intervene in a case are set out in Articles 62 and 63 of the Statute.[51] Article 62 authorizes a State to make a request to intervene if it considers that it has 'an interest of a legal nature' which may be affected by the decision in the case. The Court, for example, gave Nicaragua permission to intervene under Article 62 in the *Land, Island and maritime Frontier Dispute* case,[52] although in respect of the legal regime of the Gulf of Fonseca.

The *Land, Island and Maritime Frontier Dispute* case is the only one to date in which an application to intervene under Article 62 was successful. Intervention under Article 62 is a matter for the Court to decide; there is no right to intervene and it is for the State seeking to intervene to show to the satisfaction of the Court that it has an interest of a legal nature which may be affected by the decision of the Court. A State may be permitted to intervene even though there is no 'jurisdictional link' between the intervening State and the parties to the case. Since it is not a party to the case, an intervening State is not bound by the Court's judgment.[53]

Article 63 of the Statute entitles a State to intervene as of right when a case involves the interpretation of a treaty to which it is a party. Such an intervention has been permitted by the Court in two cases: the *Wimbledon* case,[54] and the *Haya de la Torrer* case.[55]

Revision of a Judgment

Article 60 of the Statute says that "The Judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party." What is clear from it is that there is no appeal from a judgment of the Court but a party may request for the interpretation of the judgment. Although there is no appeal, there is a procedure for 'revision' of a judgment of the Court.

Article 61 of the Statute of the Court reads as follows:

> 1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.[56]

In the *Application for the Revision of the Genocide Convention* case, the International Court of Justice formulated the conditions contemplated by Article 61 of its Statute as follows:

(1) The application should be based upon the "discovery of a "fact";
(2) The fact, the discovery of which is relied on, must be "of such a nature as to be a decisive factor".
(3) The fact should have been "unknown to the Court and also to the party claiming revision" when the judgment was made;
(4) Ignorance of this fact must not be "due to negligence"; and
(5) The application for revision must be "made at least within six months of the discovery of the new fact" and before ten years have elapsed from the date of the judgment.[57]

In the same case, the Court observed that "the application for revision is admissible only if each of the conditions is satisfied. If any one of them is not met, the application must be dismissed."[58] There have been only three applications[59] for revision of the judgment of the Court throughout its history and due to the strict conditions, none of them was successful.

Advisory Jurisdiction

In addition to its power to decide disputes between states (contentious jurisdiction), the Court also has a power to give

advisory opinions (advisory jurisdiction). Article 96 of the Charter reads:

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

The advisory function of the Court is not open to States, but only to international organizations. The right to request an advisory opinion is an original right for the general Assembly and the Security Council. It is a derivative right for other organs of the United Nations and specialized agencies (they have the right to request only when authorized by the General Assembly).

In contrast to a judgment in a contentious case, an advisory opinion has of itself no binding force. The organs are not obliged to request them; once the request has been made, they are similarly not obliged to comply with them. Nevertheless, in practice, advisory opinions are complied with in most cases. Indeed, they may contribute, and sometimes they have contributed in large measure, to the formation or to the confirmation of international customary rules.

HOW A CASE IS TRIED

The procedure of the Court is governed primarily by its Statute, supplemented by the Rules of Court. The proceedings in '*contentious cases*' are set in motion in one of two ways. If the parties have concluded an agreement (*compromis* or Special agreement) to bring the dispute before the Court, the case begins with the notification of this to the Court. If not, one State may file an application instituting proceedings against another State, and the Registrar communicates this to that other State.

The procedure thereafter represents something of a blend of the continental system of extensive 'written pleadings', and the common law system in which the 'hearing' is the essential element. This means that there is a sharp division of the proceedings into two distinct phases, the written proceedings and the oral proceedings. In the first stage, the parties exchange written pleadings (*Memorial* by the applicant, *Counter-Memorial* by the respondent). After that there will be an oral hearing, usually taking up several days or even weeks, at which the parties address their arguments to the Court in the same order; a presentation by the applicant, followed by a presentation by the respondent, and a much briefer 'second round' devoted to refutation of the opponent's contentions (rebuttals).

When the case is brought by special agreement, rather than a unilateral application filed by one State against another, neither party is, strictly speaking, in the position of applicant or respondent; the order of speaking is determined by the Court, taking into account the views of the parties.[60] Evidence is normally submitted in the form of documents[61] though it may of course take other forms (eg, physical objects); witnesses may give written evidence, or appear at the hearing to give their evidence orally, in which case they may be cross-examined by the other party. The procedure in this respect is modeled broadly on common law practice. Hearsay evidence does not carry weight.[62] In the *Nicaragua* case, the Court expressed some reservations as to the value of evidence of government ministers and representatives of a State, who could be taken to have some personal interest to the success of their government's case.[63]

The burden of prove of facts lies on the party alleging the fact. The parties not necessary to prove the existence of the rules of international law that they invoke; the Court is deemed to know such rules. An exceptional case is where a party relies on a local or special customary rule, which is not general customary law, the party must prove that this custom is established in such a manner that it has been binding on the other party.[64] In practice, particularly where the existence of a particular rule of general international law is controversial, States will devote much argument

to demonstrating that it does, or does not, exist, citing the facts of State practice in support.

The sources of international law to be applied by the Court, enumerated in Article 38 of the Statute, have been discussed in Chapter 2 above. The decision of the Court is adopted by majority vote, the President of the Court having a casting vote in the event of a tie. Every judge has the right to append to the decision an individual statement of his view, called '*separate opinion*' if he agrees with the decision, or '*dissenting opinion*' if he does not.

ENFORCEMENT AND COMPLIANCE

A judgment of the Court is final and without appeal. The history of the Court furnishes a good record of unenforced compliance with the judgments. There is nothing surprising about this. A State which is willing to litigate will be most unlikely to repudiate the decision. There have, however, been some exceptional cases. Albania, for example, did not adhere to the Court's order to pay compensation to the United Kingdom in the Corfu Channel case. Iran in the *Tehran Hostage* case, US in the *Nicaragua* case, Israel in the *Palestinian Wall* case, also failed to comply with the respective decision of the Court.

The means of enforcement under general international law are: (1) self-help; (2) cooperation of third States; (3) recourse to national courts; and (4) enforcement through international organizations. The traditional method of self-help can now be used only within the limits laid down in Article 2(3) and (4) of the UN Charter regarding the use of force. But the assets of the respondent in the applicant's territory may be seized in satisfaction.

As far as enforcement of the judgments of the ICJ is concerned, Article 94 of the Charter provides:

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

This article reflects collective action to secure enforcement of judgments. Nevertheless, a request by Nicaragua to the Security Council to enforce the Court's decision in the *Nicaragua* case was vetoed by the United States.

Commentators on the International Court of Justice note that cases of noncompliance with final judgments are very rare.[65] Jonathan Charney conducted an empirical study of state compliance with final decisions of the Court.[66] He found that cases submitted with express consent of both parties or by special agreements received a high degree of compliance.[67] However, unwilling participants were less likely than others to accept the Court's judgment.[68] Almost the same conclusion was made by Leo Gross.[69]

Compliance should not be confused with the overall effectiveness of the Court. Effectiveness might be measured by the resolution of the dispute at hand, the quality of the opinion, the development of international law, the effect on the docket, the effects on third parties, or the effects on similar disputes and on international relations in general. Many cases are settled before a final judgment is reached and the Court has had an important "pacifying effect" on disputes at all stages of litigation.[70]

Interestingly, cases of noncompliance have not seemed to undermine States' attraction to the Court. The Court's docket has steadily grown over the years. The Court's compliance record is good, though not perfect. The Court is fulfilling its role as part of the United Nations system designed to "maintain international peace and security" and "achieve international co-operation in

solving international problems."[71] Compliance problems in some cases are due to the limited ability of legal decisions to solve complicated political questions.

ROLE OF COURT AS THE PROTECTOR OF INTERNATIONAL JUSTICE

The ICJ, as the principal judicial organ of the United Nations, is an independent judicial body with highly qualified and professional international law experts as judges. The principle of "independence of judiciary" is an essential requirement for both national and international courts. The ICJ has commented on the issue of "independence of judiciary" in relation to the work of the UN Administrative Tribunal and its independence from control of the UN General Assembly.[72] During the 1950s the US government exerted pressure on the UN Secretary-General to dismiss US nationals suspected of communist sympathies. After the UN Administrative Tribunal overturned the dismissals, the US government argued that the General Assembly, having created the Tribunal, had the authority to review and rescind its judgments. The General Assembly requested an ICJ advisory opinion on the issue and the Court replied that "the General Assembly has not the right on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal of the United Nations in favor of a staff member."[73] The Court determined that the Tribunal was established, "not as an advisory organ or a mere subordinate committee of the General Assembly, but as an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions."[74]

There are arguments for and against the effectiveness of the Court. The first criticism of those who are against the Court is that it has heard only a small number of cases since its inception and that the vast majority of cases have been settled by other means. By just referring to the lesser number of cases decided by the Court in its early history, it would be easy to

conclude that the Court makes little contribution to dispute resolution. That would nevertheless be to underestimate its significance. The number of cases referred to the Court has risen considerably in recent years, and it is not unusual for there to be ten or more cases on its list, denoting an unprecedented growth in popularity.[75] A large number of treaties provide for the reference of disputes to the Court and the number of States with declarations of some kind under the optional clause is slowly rising. At the time of writing, altogether 107 contentious cases had successfully been decided by the World Court and 14 contentious cases are pending before it. Furthermore, the Court has contributed to the development of international law by rending advisory opinions on 25 legal questions on various international law issues submitted to it. One request for advisory opinion is pending before it.[76] There are, at present, sixty six (66) countries that have made declarations to accept compulsory jurisdiction of the Court under Article 36(2) of the Statute.[77]

Another, more severe, criticism is that it is not appropriate for the Court to deal with cases which involve serious political underpinning and where interests of the powerful States are at stake. It is to be admitted that there are some setbacks if we go through the litigation history of the World Court. The *Lockerbie* case is one such example. A few years ago, in the aftermath of the provisional measures stage of the *Lockerbie* case, some commentators had already expressed the view that the Court had "carefully, and quietly, marked its role as the ultimate arbiter of institutional legitimacy." Nevertheless, the Court issued two separate orders on September 10, 2003, recording the discontinuance of the *Lockerbie* cases brought by Libya against the United Kingdom and the United States, respectively.[78] The termination of those cases removed the possibility that the Court (or one or more of its judges) would pronounce on the question of the Court's role as a kind of "constitutional court" empowered to review the legality of actions of the political branches of the organization of which the Court is the principal judicial organ.[79]

Despite a few setbacks, the history of the World Court is complete with the Court's bold standing as a bulwark of

international justice even in the face of the sole super power of the world or the current most powerful organ of the United Nations - the Security Council - believed by many as possessing unfettered powers. This can well be illustrated by a series of leading decisions of the World Court on issues of the use of force and self-defence, starting from the *Nicaragua* case. The *Nicaragua* case is so remarkably because it was a real battle between David and Goliath: Nicaragua, a small and poor South American State versus the United States, the super power of the world. The World Court ruled that the United States violated the principles of non-use of force and non-intervention and that it was responsible under international law for such breaches. The Court, in this case, has contributed a lot to the development of international law by clearly formulating the principles relating to the prohibition of the use of force, non-intervention and the right of self-defence. Most importantly, the Court has defined the term 'armed attack' and extended its meaning to include attack by non-State actors. However, even such a landmark decision was attacked by many, in particular those who wanted to defend whatever actions taken by the United States and its allies as lawful. Some writers even declared that "Nicaragua is dead. Long live Nicaragua!"

Unnerved by the attacks and criticism by naysayers, the World Court reaffirmed its stand in later and more recent cases, namely: *Oil Platforms* case,[80] *Palestinian Wall Advisory Opinion*,[81] and *Armed Activities in Congo* case,[82] that armed attack is a requirement of a lawful self-defence and that it must come from a State or be attributable to a State.

The significant role of the Court in interpreting the important provisions of the Charter of the United Nations was highlighted both in the *Oil Platforms* case,[83] and *Palestinian Wall* advisory opinion.[84] Those rulings have profoundly affected the understanding of fundamental rules of international law - in particular, the right to self-defense - as interpreted by the Court.[85]

CONCLUSION

It has been argued that due to the emergence in recent time of other international courts and tribunals, including the International Tribunal for the Law of the Sea (ITLOS), and the Appellate Body of the World Trade Organization, the significance of the International Court of Justice has been reduced. Nevertheless, since the newer courts and tribunals are all rather specialized, the International Court of Justice is still the only court with general competence in the sense that disputes relating to any aspect of international law may be brought before it. Thus the fact of the Court's existence, together with a simple procedure for establishing its jurisdiction, continues to give a prominence to adjudication in the international field.

Before the Sixth Committee of the General Assembly, the then President of the ICJ, Judge Shi, made some significant suggestions.[86] One is to broaden the field of application of the Court's advisory jurisdiction to intergovernmental organizations, perhaps through appropriate resolutions of the General Assembly or the Security Council and another is to empower the Secretary-General on his own initiative to request advisory opinions. Such proposals deserve serious consideration. Fuller utilization of the International Court of Justice in general and of its advisory jurisdiction in particular may greatly contribute to the development of international law as well as clarification of rules of international law that are controversial.

Endnotes

1 Art. 92, the Charter of the United Nations.
2 Rules of Court, July 1, 1978.
3 Art. 3, the Statute of the ICJ.
4 Art. 4 and 6, *ibid*.
5 The 'absolute majority' is different from the 'simple majority' in that the latter only requires one half plus one of the votes cast. See Terry D. Gill (ed.) *Rosenne's The World Court, What It is and How It Works*, (Leiden: Martinus Nijhoff Publishers, 2003) 51.

6 Art. 31, *ibid*.

7 J.G. Merrills, *International Dispute Settlement*, 4th. ed. (Cambridge University press, 2005) 150.

8 See S.M. Schwebel, "Ad Hoc Chambers of the International Court of Justice," (1987) 81 *AJIL* 831.

9 *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v USA)*, 1984 ICJ Rep. 246.

10 *Frontier Dispute* (Burkina Faso v Mali) , 1986 ICJ Rep 554.

11 *Case Concerning Elettronica Sicula SpA (ELSI)*, 1989, ICJ Rep 15.

12 *Land, Island and Maritime Frontier Dispute case, (El Salvador/ Honduras: Nicaragua Intervening)*, 1992 ICJ Rep 351.

13 J.G. Merrills, *supra*, n. 7, 152.

14 Art. 95, the Charter of the United Nations

15 See, for example, the *Monetary Gold* case, (1952) ICJ Reports, 19, at 32; *Nicaragua* case, (1986) ICJ Rep 3, 32; *Application for the Interpretation and Revision of the Judgment in Tunisia/Libya* case, (1985) ICJ Rep 192, at 216.

16 *Corfu channel (Preliminary Objections)* case, (1950) ICJ Rep 15.

17 *Qartar v Bahrain*, (1994) ICJ Rep 112.

18 *Cameroon v Nigeria*, (2002) ICJ Rep 303, at 421.

19 *Monetary Gold* case, ICJ Reports 1952, 19, at 32.

20 *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Judgment of 17 Dec 2002), (2002) ICJ Rep 625.

21 *Case Concerning Sovereignty over Pedra Branca/ Pulau Batu Puteh, Middle Rocks and South Ledge*, Special Agreement jointly submitted to the ICJ on 24 July 2003 (the Court gave its judgment on 25 May 2008).

22 *Corfu Channel Case*, (Preliminary Objection) (1948) ICJ Rep. 15.

23 (1954) ICJ Rep. 99, 103.

24 (1956) ICJ Rep. 6, 9; (1959) ICJ Rep. 276.

25 (1956) ICJ Rep. 12, 15.

26 To avoid this kind of "fishing" for jurisdiction, Article 38 (5) of the Rules of Court was amended to the effect that a unilateral application by one State will not be entered in the Court's List and no action will be taken in the proceedings unless and until the respondent State consents to the Court's jurisdiction.

27 See S, Rosenne, "The Qarter/Bahrain Case - What is a Treaty" A Framework Agreement and the Seizing of the Court", 1995 8 *LJIL* 161-82.

28 Terry D. Gill, Rosenne's The World Court: What It Is and How It Works (Leiden, Martinus Nijjhoff Publishers, 2003) 74-75.

29 See www.icj-cij.org/jurisdiction/index.php.

30 J. Crawford, "The Legal Effect of Automatic Reservations to the Jurisdiction of the International Court of Justice", (1979) 50 *BYIL* 63.

31 France v Norway (1957) ICJ Rep. 9

32 *Norwegian Loans* Case, 1957 ICJ Rep. 9, at 68, 70. See also *Interhandel* Case 1959 ICJ Rep. 6, especially the opinions of Judge Lauterpacht, Judge Spender and Judge Klaestad

33 For example, India, Pakistan, and the United Kingdom.

34 Liberia, Malawi, Mexico, the Philippines, and Sudan.

35 A good example is the *Anglo-Iranian Oil Co* case where Iran did not participate in the Provisional measures phase of the case. Iran later appointed an agent and filed preliminary objections while denying that the Court had jurisdiction. After hearing the pleadings on this issue, the Court upheld the objections; *Anglo-Iranian Oil Co case (Jurisdiction)* 1952 ICJ Rep 93.

36 In both *Corfu Channel* (1949 ICJ Rep 4) and *Nicaragua* (1986 ICJ Rep 14), the respondent appeared in the initial phases but subsequently withdrew.

37 Examples of these instances are: *Fisheries jurisdiction* case (1974 ICJ Rep 3), *Nuclear Tests* cases (1974 ICJ Rep 253, 457), *Aegean Sea Continental Shelf* case (1978 ICJ Rep 3), and *United States Diplomatic and Consular staff in Tehran* case (1980 ICJ Rep 3).

38 Terry D. Gill, Rosenne's The World Court: What It Is and How It Works (Leiden, Martinus Nijjhoff Publishers, 2003), 78-79.

39 See *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (jurisdiction and Admissibility), 1994 ICJ Rep. 112 and 1995 ICJ Rep. 6; *Oil Platforms (Iran v United States)*, (Preliminary Objection), 1996 ICJ Rep. 803.

40 Art. 79(1), the Rules of Court, 1978.

41 Art. 79(3), *ibid*.

42 *LaGrand* (Germany v United States of America), Merits, Judgment, 2001 ICJ Rep 466, at paras. 98ff.

43 At one extreme, it might be argued that if the Court had no jurisdiction to hear the case at all, then it had no power to indicate measures; at the other extreme, it might be said that since Art. 41 confers an independent power, the Court could indicate measures, if it saw fit, even where it was almost certain that it had no jurisdiction.

44 *Nicaragua* case, (Request for the Indication of Provisional Measures), 1985 ICJ Rep. 169.

45 *Ibid*., at para. 24.

46 *Arbitral Award of July 1989* case, 1990 ICJ Rep. 64.

47 *Passage Through the Great Belt* case, 1991 ICJ Rep. 12.

48 *Application of the Genocide Convention* case, 1993 ICJ Rep. 3.

49 See, for example, Legality of Use of Force (Yugoslavia v USA), Provisional Measures Order of 2 June 1999, 1999 ICJ Rep 916, para 29.

50 See *Passage through the Great Belt*, Provisional Measures, Order of 29 July 1991, 1991 ICJ Rep. 12.

51 See C.M. Chinkin, "Third Party Intervention before the International Court of Justice", (1986) 80 *AJIL* 495.

52 *Land, Island and maritime Frontier Dispute* case (El Salvador v Honduras), 1990 ICJ Rep. 92, at 121. See also M. Evans, "El Salvador v Honduras: The Nicaragua Intervention", (1992) 41 *ICLQ* 896.

53 Article 59 of the Statute of the Court

54 *Wimbledon* case, (1923) PCIJ Rep. Ser. A, No. 1, (Poland intervened).

55 *Haya de la Torrer* case, (1951) ICJ Rep. 71.

56 Article 61, the Statute of the International Court of Justice.

57 Application for Revision of the Judgment of 11 July 1966 in the Case Concerning Application of the Genocide Convention (Bosnia v. Yugo.) 2003 I.C.J. 7, para 16 (February 3).

58 *Ibid*., para 17.

59 Application for Revision of the Judgment of 24 Feb. 1982 in the Case Concerning Continental Shelf (Tunisia/ Libya) (Tun. V. Lib.) 1985 I.C.J. 192 (December 10); Application for Revision of the Judgment of 11 July 1966 in the Case Concerning Application of the Genocide Convention (Bosnia v. Yugo.) 2003 I.C.J. 7(February 3); Application for Revision of the Judgment of 11 Sept. 1992 in the Case Concerning Land, Island and Maritime Frontier Dispute(El Salvador v Honduras) 2003 I.C.J. 392 (December 18).

60 The order of speaking is different in proceedings on preliminary objections or requests for the indication of provisional measures.

61 Documentary evidence may include treaty texts, official records of international organizations and national Parliaments, diplomatic correspondence, archive material, maps photographs, and affidavits.

62 Cf *Corfu Channel* case, (Merits) ICJ Reports 1949, 4, at 16-17; *Nicaragua* case (Merits) ICJ Reports 1986, 42, para. 68.

63 *Ibid*. para. 70.

64 *Asylum* case, ICJ Reports 1950, 266, at 276.

65 Robert Jennings, "Presentation," in Connie Peck & Roy S. Lee (eds.) *Increasing the effectiveness of the international Court of Justice: Proceedings of the ICJ/ UNITAR Colloquium to Celebrate the 50th Anniversary of the Court* (1997) 78; Philippe Couvreur,

"The Effectiveness of the International Court of Justice in the Peaceful Settlement of International Disputes," in A. S. Muller et al. (eds.) *The International Court of Justice: Its Future Role after Fifty years* (1997) 83, 112; M. Butlerman & M. Kuijer (eds.) *Compliance with Judgments of International Courts* (1996).

66 Jonathan I. Charney, "Disputes Implicating the Institutional Credibility of the Court: Problems of Non-Appearance, Non-Participation, and Non-Performance," in Lori Fisler Damrosch (ed.) *The International Court of Justice at a Crossroads* (1987) 288.

67 *Ibid*., at 297.

68 *Ibid*., at 31-19.

69 Leo Gross, "Compulsory Jurisdiction Under the Optional Clause: History and Practice," in Lori Fisler Damrosch (ed.) *The International Court of Justice at a Crossroads* (1987), at 19, 45-46.

70 Mohammed Bedjaoui, "Presentation," in Connie Peck & Roy S. Lee (eds.) *Increasing the effectiveness of the international Court of Justice: Proceedings of the ICJ/ UNITAR Colloquium to Celebrate the 50th Anniversary of the Court* (1997) at 22 (observing that on a number of occasions, incidental proceedings have "made a decisive contribution not only to the settlement of disputes of very different kinds, but also, directly, to the maintenance or restoration of peace between the parties"); see also B. A. Ajibola, "Compliance with Judgments of the International Court of Justice," in M. Butlerman & M. Kuijer (eds.) *Compliance with Judgments of International Courts* (1996) at 34-37.

71 United Nations Charter Art. 1 (1); see also Nagendra Singh, *The Role and Record of the International Court of Justice* (1989) 11, 319-20.

72 Dinah Shelton, "Form, Function, and the Powers of International Courts", (2009) 9 *Chi. J. Int'l L.* 537, at 542.

73 *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, 1954 ICJ 47, 62 (July 13, 1954) (Hacksworth dissenting).

74 *Ibid*., at 51 (majority ruling).

75 See J.R Crook, "The 2003 Judicial Activity of the International Court of Justice," (2004) 98 *AJIL* 309.

76 See the official Website of the World Court: http://www.icj-cij.org. [Last visited 3 August 2011].

77 See http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3. [Last visited 3 August 2011].

78 *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. UK) (Libya v. U.S.)*, Order (ICJ, Sept. 10, 2003).

79 Thomas M. Franck, "The 'Powers of Appreciation': Who Is the Ultimate Guardian of UN Legality?" (1992) 86 *AJIL* 519, 523.

80 *Oil Platforms* case (Iran v. U.S.) (Merits) (2003) ICJ Rep 161, para. 72.

81 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep 136 (*Palestinian Wall Advisory Opinion*), para. 139.

82 *Armed Activities on the Territory of the Congo* (Congo v Uganda) 2005 ICJ Rep., para. 146.

83 *Oil Platforms* case, above note 80.

84 *Palestinian Wall advisory Opinion*, above note 81.

85 *Oil Platforms* case, above note 80, paras. 50-78; *Palestinian Wall* Advisory Opinion, above note 81, paras. 138-39.

86 H.E. Judge Shi Jiuyong (President to the International Court of Justice), Speech to the Sixth Committee of the General Assembly of the United Nations (Nov. 5, 2006)

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