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VI

Peaceful Settlement of International Disputes

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## **Law of Jungle in International Relations:**

We are living in a dangerous world indeed. In a world mired in innumerable disputes among nations and dominated by violence all around, it is indeed sad to notice that the law of jungle still prevails as the ultimate mechanism to settle disputes between nations. If we want to avoid the bloodbath of continuous warfare in our international society, we should be prepared to resolve our disputes through impartial third-party settlement, if direct negotiations between parties fail. That is one of the most important and civilized way to settle disputes. But as regards institutions and procedures for adjustment of disputes, international law has been woefully deficient – a jungle law imperfectly ameliorated by a fragmentary and hesitant progress in the direction of a legal order. The precariousness of the present situation can be visualized from the fact that whereas it is difficult to

establish arbitration courts – which in any case remain ad hoc and impermanent – and the Permanent Court of Arbitration has been little used, we have an International Court of Justice, which is said to be sitting “precariously at the peak of a pyramid which has no enduring base.”<sup>i</sup> Although, as we shall see, the jurisdiction of the World Court has been progressively extended and it has gained tremendous and well-deserved prestige and confidence by its excellent and conscientious work, it is unable to realize fully “the potentialities of its greatness”, it is pointed out, because of the insecure foundations upon which its enterprise must rest.<sup>ii</sup> It needs, it has been suggested, a more enduring base if it is to fulfil the hopes which it has engendered.<sup>iii</sup>

### **Proliferation of New International Tribunals:**

Although there has never been an “overall plan”, there has been a proliferation of several new international tribunals during the last 50 years. Besides, several ad hoc arbitration tribunals which have been set up, and the so-called “commercial arbitrations” held under established rules such as UNCITRAL or the ICC or ICSID, or under municipal arbitration law, quite a number of other international judicial or quasi-judicial institutions have

been established, such as Iran-United States claims Tribunal, and new mechanism under the auspices of the WTO.

There are too many such institutions to be enumerated. At the regional level, Europe has its European Court of Justice in Luxembourg; its Commission and the Court of Human Rights at Strasbourg; and a European mechanism for conciliation and arbitration set up within the framework of the CSCE.

Several administrative tribunals have been established to deal with disputes arising between international organizations and their staff: the ILO Administrative Tribunal; the UN Administrative Tribunal; the World Bank Administrative Tribunal; and so on.

The horror of war in Yugoslavia and Rwanda have led the UN Security Council to create two International Tribunals for crimes committed in the former Yugoslavia and in Rwanda. A permanent International Criminal Court is now established.<sup>iv</sup>

Even more interesting today is the International Tribunal for the Law of Sea which has been established in Hamburg, Germany, under the Montego Bay Convention concluded in 1982 as part of a comprehensive system for the settlement of disputes laid down in the Convention. The Convention came into force in November 1994. Although there is a

considerable overlapping in the jurisdictions of the Hamburg Tribunal and the International Court of Justice, the Law of the Sea Tribunal can deal with some important classes of disputes<sup>v</sup> that probably could not go before the Hague Court.

### **No Structured Relationship, or System Between Different Kinds of Courts**

But despite all this proliferation of Courts, there is no “structured relationship” or “hierarchy or system” between them. As Judge R.Y. Jennings, President of International Court of Justice, pointed out, “they have just appeared as need or desire or ambitions promoted yet another one”.<sup>vi</sup>

As a result :

“In this particular respect, contemporary international law is just a disordered medley. Suffice it to say that it is very difficult to try to make any sort of pattern, much less a structured relationship, of this mass of tribunals, whether important or petty. It is sometimes difficult to find out what is going on, much less to study it.”<sup>7</sup>

This lack of “structured relationship” among different kinds of courts in international system, where diverse organs exercising parts of judicial system are not related to each other is, it is sometimes pointed out, a rather disturbing trend which may lead to conflicts of “jurisdiction or contradiction in decisions increasing the indetermination rather than the determination of

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law”.<sup>8</sup> Some well-meaning scholars and judges are concerned about “the dangers that international law as a whole will become fragmented and unmanageable.”<sup>9</sup>

### **Jurisdiction of International Courts:**

Besides the problems relating to creation or establishment of different structures of peace and their relationship with each other, the most important issues relate to the jurisdiction of these courts. It is all too well-known that no state is under an obligation to submit its disputes to any third party settlement without its own consent. As the International Court of Justice has made it clear beyond any doubt that the jurisdiction of an international court “depends on the will of the parties” and that the jurisdiction exists in so far as the states have accepted it.”<sup>10</sup>

Leaving aside ad hoc arbitration and other specialized international criminal tribunals on which jurisdiction is conferred by special agreements relating to their establishment, it may be mentioned that when the Permanent Court of International Justice was established in 1920 and again when its Statute was revised and the new International Court of Justice was formed in 1945, general compulsory jurisdiction could not be conferred on the Court. The obligatory jurisdiction of the Court could be accepted either under

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treaties, bilateral or multilateral, or by unilateral declarations under the optional clause (Art. 36(2)) of its Statute. The optional clause constituted an invitation to States to take courage and undertake this commitment even if only for a trial period and even if only for a limited range of disputes. But the unilateral form of these declarations and complete freedom assumed by States left them free to exclude wide matters from coming before the Court. This also made State practice under the optional clause dependent on international confidence in the Court. After 1920, as confidence in the Court grew, many States accepted its jurisdiction. At certain time as many as 41 States out of 48 States parties to the Statute had accepted its jurisdiction under the optional clause. In 1939, 36 States had made much declarations.<sup>11</sup>

**Permanent Court of Justice largely a “European Court”:**

Although the Permanent Court of International Justice had proved its worth and was the subject of general and well-merited praise at the San Francisco Conference for its decisions and advisory opinions – between 1922 and 1940 the Court pronounced 29 judgements and gave 27 advisory opinions – general compulsory jurisdiction could not be conferred on the new Court which replaced it.<sup>12</sup> The Permanent Court truly represented the international community of its time. It was largely a “European Court” with

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a majority of European judges (with the notable exception of post-revolutionary Russia) in addition to judges from the USA, some Latin American Republics, as well as from China and Japan. The Court also reflected in its pronouncements, it is said, “the legal outlook of the Eurocentric community, which was strongly imbued with nineteenth century positivism.”<sup>13</sup>

### **International Court established with Great Hopes**

In spite of its glorious record and the respect which was attached to the name of the Permanent Court of International Justice (PCIJ) in 1945,<sup>1</sup> when a new international organization was formulated at the San Francisco conference, the Court was re-established under a new name, the International Court of Justice (ICJ), for political rather than juristic considerations.<sup>2</sup> But in its “reincarnation”, the loose connection of the old World Court with the League of Nations was replaced by the integration of the new Court into the United Nations as its “principal judicial organ” and the Statute of the Court was made part of the United Nations Charter (Art. 92). Thus all members of the United Nations became *ipso facto* Parties to the Statute of the Court (Art. 93). But though it was a new Court with a new name which came into existence in 1945, the chain of continuity was not

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broken, and the new Court stepped into the shoes of the old Court, with the same organization and virtually the same Statute.<sup>3</sup> With a satisfactory record, of PCIJ and its international composition having a body of highly competent and great jurists of the world as its judges, there is little wonder that the ICJ was inaugurated with high hopes and great expectations. As P.H. Spaak, first President of the General Assembly, said at the inaugural sitting of the International Court of Justice on April 18, 1946:

I would not venture to assert that the International Court of Justice is the most important organ of the United Nations...but I am convinced that it is of quite exceptional importance...I am deeply convinced that peace will not be established until countries have recognized the truth that there can be no civilized world nor any lasting peace, if there be not complete and absolute respect for international jurisdiction and its judgments.<sup>4</sup>

Although compulsory jurisdiction could not be conferred on the new Court as well because of the hesitation and strong opposition of several sovereignty-enamoured big powers, especially the Soviet Union and the United States, it was hoped that as the Court started functioning and helped in solving some controversial and difficult issues, it would engender in course of time more and more confidence in its working and greater faith in its impartiality. It was expected that the jurisdiction of the Court, which could be conferred only by the consent of States, either by *ad hoc*

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agreements or under treaties, [Art. 36(1)], or by declarations made under the Optional Clause [Art. 36(2)] of the Court's Statute accepting compulsory jurisdiction before hand in future disputes, would come to be widely accepted as had happened in the case of the Permanent Court of International Justice. Thus, as we have seen, as many as 42 out of 52 members of the Statue of the Permanent Court (or nearly 73% of the "international judicial community") had accepted its jurisdiction under Article 36(2) of its Statute.<sup>5</sup> Moreover, almost all the then existing States of the world (all save Nepal, Saudi Arabia, Vatican and Yemen) took part in concluding hundreds of treaties which conferred jurisdiction on the Court.

Paying "tribute to this remarkable achievement" of the Permanent Court, the *Rapporteur* of the First Committee of Commission IV at the San Francisco Conference foresaw:

a significant role for the new Court in the international relations of the future. The judicial process will have a central place in the United Nations for the settlement of international disputes by peaceful means... It is confidently anticipated that the jurisdiction of the tribunal will be extended as time goes on, and past experience warrants the expectation that its exercise of the jurisdiction will command a general support.<sup>6</sup>

### **Hopes Belied**

These hopes were however woefully belied after 1945 in the tension-

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ridden bipolar world and amidst power and ideological struggle that ensued between the Communist and the non-Communist States. Although 23 countries which had accepted the jurisdiction of the Permanent Court were deemed to have accepted the jurisdiction of the ICJ under Article 36(5) of its Statute in 1945, not many more countries came forward to accept the jurisdiction of the new Court. In fact 17 countries which had accepted the jurisdiction of the PCIJ under its Optional Clause, let their declarations lapse or terminated them. In 2006, out of the 191 members of the “international judicial community” (members of the UN), only 65 States (about 34%) have accepted the jurisdiction of the International Court under Article 36(2) of its Statute.<sup>7</sup> These include 16 States from Africa, 9 from Latin America, 3 from Asia and 23 from West European and other States. The then Soviet Union and the former Communist States of East Europe never accepted the jurisdiction of the Court. China withdrew its declaration in 1972 shortly after the People’s Republic of China replaced Taiwan as the legal representative of the Chinese people at the United Nations. France terminated its declaration in 1974 after it refused to appear before the Court in *Nuclear Test cases*. Not only have very few countries accepted the jurisdiction of the Court but even these declarations under the Optional Clause have been made

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with far-reaching reservations which are found in more than 50 out of 65 declarations. These reservations include questionable self-judging Connally-type reservations concerning matters within the domestic jurisdiction of a country as determined by that country, first made by the United States and originally followed by 10 other countries,<sup>8</sup> and other exclusions, no less damaging.<sup>9</sup> Further, many of these declarations (25 of them) may be terminated by a simple notice which may take effect after a specified time or immediately.<sup>10</sup> Although the United Kingdom is the only permanent member of the Security Council, which at present has accepted the compulsory jurisdiction of the International Court under the Optional Clause, the United Kingdom itself terminated its declaration four times and each time added new reservations in order to avoid being arraigned before the Court.<sup>11</sup>

It is interesting to note that President Michail Gorbachev of the former Soviet Union called the permanent members of the Security Council to set an example by submitting to the ICJ. This aroused great interest and the Five held a number of meetings at legal advisers level with a view to

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drawing up a list of subjects which could be submitted to the Court in the event of a dispute. But no agreement could be reached.<sup>12</sup>

Compulsory jurisdiction of the Court may also be accepted through compromissory clauses in international treaties. But we find the same hesitation in accepting the Court's jurisdiction among most of the countries. There are at present about 100 multilateral and 160 bilateral conventions accepting jurisdiction of the Court.

### **Jurisdiction of the Law of the Sea Tribunal:**

There is a similar lack of enthusiasm in accepting the jurisdiction of the only other permanent court which has been recently created, viz., International Tribunal for the Law of the Sea which should have a great potential in the settlement of disputes relating to the law of the sea. Since not all countries were equally enthusiastic about this new Tribunal, the 1982 Law of the Sea Convention identifies in Part XV other means of settling disputes and leaves it to States to choose between the Tribunal, the ICJ, and various forms of arbitration. At present out of 112 States which have ratified or acceded to the LOS Convention, 17 have made a choice of procedure under Section 2 of Part XV. The rest are deemed to have accepted arbitration as the method of settlement of disputes. Of the 17

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States, 9 have chosen the Tribunal. They are Argentina, Austria, Cape Verde, Finland, Germany, Greece, Oman, Tanzania and Uruguay.<sup>13</sup>

Further, States are not obliged to submit to the Tribunal their disputes which they consider of vital national concern. Thus, practically all disputes arising out of the exercise of sovereign rights or jurisdiction by a State in the exclusive economic zone concerning marine scientific research and fisheries are excluded from the compulsory procedures. Moreover, a State may declare in writing that it does not accept any compulsory procedure with regard to, *inter-alia*, disputes concerning boundary delimitation, military activities and law enforcement activities in regard to marine scientific research and fisheries in the EEZ, as well as disputes in respect of which the Security Council is exercising its functions under the Charter.<sup>14</sup>

### **International Court of Justice in Crisis from the very Beginning:**

From the very beginning the International Court of Justice was portrayed as in crisis as a result of the lack or loss of confidence by one or the other part of the international community. None of the big powers put much faith in the Court and avoided it as far as possible. If United States included self-judging Connally reservation relating to domestic jurisdiction

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in its declaration under the optional clause which reduced the acceptance to a mere nullity, the United Kingdom revised its declaration four times within a few years, each time changing its reservations to suit its conveniences.<sup>15</sup> France withdrew its declaration after the *Nuclear Test* cases in 1974.

After 1960, with the acceleration of decolonization process, as numerous Asian and African countries became independent, “the ‘crisis of the Court’ was perceived and analysed in terms of the distrust manifested by newly independent States towards the Court.”<sup>16</sup> Several explanations were sought to be given for this supposed distrust on the part of the Asian-African States in the judicial process and their preference for the diplomatic procedures. Besides their cultural differences and national traditions, lengthy and onerous character of the judicial procedure, under representation of the Asian-African States on the bench, and the dissatisfaction of the new States with large parts of classical international law which legitimized their subjugation and generally favoured the interests of the erstwhile colonial powers, were given as the reasons for the hostile attitude of the new States towards international adjudication.<sup>17</sup>

The strongest blow to the confidence in the Court, especially amongst the Asian-African States, came in 1966 when the Court, by the casting vote

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of the President<sup>18</sup> (Sir Percy Spender), after nearly six years of proceedings costing millions of dollars, more than a dozen volumes of written proceedings, almost 300 hours of oral testimony, and more than 100 Court sessions, decided – or refused to decide – the *South-West Africa* cases by declining to go into their merits on the basis of a matter of “antecedent character” which was not even argued by either of the parties. This most controversial decision – or lack of decision – frustrated and enraged politically conscious Africans, undermined the confidence of newly independent countries in the Court and its capacity to do justice and thrust the Court into an acute crisis.<sup>19</sup> The African States, in particular, adopted “the cynical view that the ICJ was a white man’s Court, dispensing white man’s justice.”<sup>20</sup> It also evoked an extended and critical debate on the role of the Court in the General Assembly, leading to readjustment in the composition of the Court to make it more representative of the various parts of the international community.

There was a steep decline in the work of the Court. So steep was the decline that for some time – from June 21, 1971 to August 30, 1971 – there was not a single case pending before the Court.<sup>21</sup> For the next nearly three

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years after 1971 it had little to do and “it was the subject of some humour about there being few cases and many judges.”<sup>22</sup>

### **Self-Assessment and Change on the Part of Court:**

One of the most important consequences of this crisis was a new self-assessment, a new self-awareness and change of attitude on the part of the Court itself. While earlier the Court was reserved in its relations with the UN, after this crisis the Court missed no opportunity to emphasize that it was part of the United Nations and its principal judicial organ, and put forward the law and principles of the Charter.<sup>23</sup> The Court also revised its rules of procedure in 1972 and 1978 to make itself more efficient.<sup>24</sup>

In 1971 the Court gave its advisory opinion in the *Namibia* case<sup>25</sup> declaring illegal the continued occupation of Namibia by the Republic of South Africa following the termination of its mandate. The Court’s stock further rose in the eyes of African countries when in 1975 it gave its advisory opinion in the *Western Sahara* case.<sup>26</sup> In this case the Court had occasion to discuss further the principles of decolonization and self-determination and made an important pronouncement on the concept of occupation as a means of acquiring title to territory in Africa.

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### **International Court Regains Confidence:**

The Court was beginning to regain its confidence, especially the trust of the African countries. The confidence in the ICJ reached its high water mark after its final judgement on the merits on 27 June 1986 in the *Nicaragua* case. Nicaragua appeared before the Court on the basis of its own and US declarations under the optional clause and charged that the United States was “using military force against Nicaragua and intervening in Nicaragua’s internal affairs in violation of Nicaragua’s sovereignty, territorial integrity and political independence and of the most fundamental and universally accepted principles of international law.” The Court unanimously rejected US objections and boldly held that it had jurisdiction to entertain the case on merits.<sup>27</sup> Over the strongest objections of the United States, which withdrew from the case and cancelled its optional clause jurisdiction, the Court gave a decision on merits holding the United States responsible for its actions, as charged by Nicaragua.<sup>28</sup>

This was indeed a bold decision and the Court was well aware of the political risk it was taking in deciding the dispute against the only Super Power and leader of Western group of States even if it was “upholding the basic principles of contemporary international law and the Charter in the

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way it did in its judgement, and which it could not help doing as a court of law.”<sup>29</sup>

This led to what was supposed to be a new crisis. Earlier it was said that the Third World had no confidence in the Court. But with this judgement, some people “started to contend that it is now the Western world that no longer has confidence in the Court, where it risks systematically being put into the minority.”<sup>30</sup> France had already withdrawn its jurisdiction under the optional clause in 1974 after the *Nuclear Test* cases. United Kingdom was the only permanent member of the Security Council which had accepted optional clause jurisdiction which itself was full of gaps and reservations. The Court had, therefore, decided the *Nicaragua case* at a very high cost, it was feared.<sup>31</sup>

### **Increase in Court’s work:**

But these fears proved to be short-lived and unnecessary panic. The Court had indeed given proof of its impartiality, objectivity and independence. Even if, therefore, it would suffer in the volume of its work in the short run, it was bound to increase its credibility.

Furthermore, with the collapse of Soviet Union, international tension between Eastern and Western bloc decreased and cold war between them

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subsided. This new period was ushered in by a momentous event, the collapse of Berlin Wall on one memorable day in 1989. “Other walls”, as Judge Bedjaoui told the General Assembly in his address on 11 October 1995, “erected in the minds of world’s leaders and which previously constituted so many impediments to the Court’s work” then began to fall.<sup>32</sup>

Charles de Visscher said, “general and prolonged political tensions are one of the gravest obstacles to regular recourse to international justice”.<sup>33</sup> Although tension is not altogether gone, it is much less prominent and much less debilitating.<sup>34</sup>

All these factors have led to tremendous increase in the Court’s work. In fact the Court was never so busy and has never had so many cases simultaneously in its docket. There are at present 13 cases pending before the Court, many of them brought by the much-maligned Third World, who, it used to be said, did not trust the Court. Even those who were sceptical yesterday are beginning to see the Court’s potentiality. As President Mitterrand of France, some ten years after France had withdrawn its declaration under the optional clause, said in 1984 in an address in the Great Hall of the Court:

“[T]here can be no civil peace without judges, no peace in our

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international society without judges who are chosen at that level and represent the powerful moral and legal force of the Hall where all the peoples of the world forgather.”<sup>35</sup>

The Court is now overloaded with judicial work. Judge R.Y. Jennings, President of the Court, said to the General Assembly in his 1991 address:

“Glancing at this list of cases, we can say one thing with assurance: this is indeed now a World Court, exhibiting in its daily work that quality of universality which is also a feature of the General Assembly. I think there is every reason to believe that this new buoyancy of the Hague Court, which has been developing now for some time, is set to continue. A reason for that belief is that there is perhaps now a greater understanding among Governments of the role that an international Court can and should play in their relations with one another.”<sup>36</sup>

It may also be mentioned that a Legal Aid Fund was established by the Secretary General of the United Nations in 1989 to help the poor countries pursue their cases before the Court. This is an excellent move and can help some countries seek justice at the international level which many a time is beyond their reach.<sup>37</sup>

#### Encouraging Trend:

As we have seen, there has been a lot of judicial activity during the last few years. Several new international tribunals have been created. Although extensive compulsory jurisdiction has not been conferred on the

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Tribunal for the Law of the Sea, nor for that matter even on the International Court of Justice, the case load in the latter Court shows increasing interest of States in the judicial settlement of international disputes.<sup>38</sup> There have of course been swings before in the work-load of the International Court and certainly variations will occur in the future. But an awareness seems to be increasing of the need to recourse to judicial settlement as a useful procedure for resolving disputes in a civilized way, in much the same way as individuals do within a domestic system.<sup>52</sup>

### **Limitations of the Judicial Process:**

It must be realized, however, that the judicial process has its own limitations. Law is not a panacea to solve all the problems of the international society. As the Court itself said in the *Northern Cameroon's* case that even if it finds that it has jurisdiction,

“the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court’s judicial integrity.”<sup>53</sup>

It must be confessed that judicial procedure cannot, on the plane of mere fact, be a substitute for war. The judicial approach is limited by the

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<sup>38</sup> See above.

fact that, given the fundamental nature of major disputes that arise in international relations and the clashes of political and economic interests, a judgement does not constitute a settlement. There is no doubt that the much-disputed line between legal and political questions is purely a subjective phenomenon of the minds and wills of the disputants. But the fact still remains that many issues will be as far from settlement after a judge has said all that a judge can properly say as they were before any such pronouncement. It must be admitted that by the very nature of international life, not all disputes can or will be submitted to the international courts. The problem is not that the courts cannot decide the disputes because of their inherent "political" nature. But the problem is that the States won't be prepared to submit disputes or to accept judicial decision in cases which involve their vital interests.<sup>54</sup> Professor David Forsythe correctly stated:

“The ICJ remains marginal in international relations because of the up-stream concern by States that their ‘vital’ interests not be entrusted to independent judges who will decide disputes with reference to legal rules. Even when the Court finds that the States have given their consent to ICJ jurisdiction, if the resulting judgement is bothersome enough, States from Albania to Iran, from Libya to the US will display defiance rather than compliance. That most States have complied with ICJ and PCIJ judgements means primarily that States gave their consent for World Court adjudication previously because the dispute was not seen as ‘vital’.<sup>55</sup>”

The assertion that if general compulsory jurisdiction could be established, the problem of war and illegal force would be solved, said Judge R.Y. Jennings, rests—

“upon an egregiously mistaken assumption that wars and other resorts to force are about what international lawyers would recognize as legal ‘disputes’ which would answer to the adversarial procedure of a court of justice. Some uses of force, or resort to war have indeed had legal disputes at the core of the matter – notably disputes about boundaries or entitlement to territory, both land and sea – but many again have not. Neither of the World Wars have even remotely lent themselves to so simplistic an analysis.”<sup>56</sup>

So long as the world remains as unorganized as at present, and the security and welfare of each State are left in fact to depend upon itself alone, the world history can not be turned into a Court procedure. Similarly, when States demand a change in the law, which they challenge as obsolete, a decision according to law can hardly help in solving the dispute. Indeed, the authoritative declaration of legal rights and wrongs may even impede settlement by encouraging the rigidity of one side in the controversy which might have been settled by a political compromise.<sup>57</sup> To again quote Judge R.Y. Jennings, who said about grave disputes which are neither simply legal nor simply political:

“[A] Court, in deciding the legal question in legal terms, might be prejudicing or indeed frustrating decisions of which it may not itself be in a position even to understand, other than perhaps marginally. The Court has no expertise or even experience in the political, military and strategic criteria that a political body would expect to apply to

this kind of political decision.”<sup>58</sup>

He added that sometimes it is better not to settle at all but to *manage* the dispute and referred to “the successful treaty regime for Antarctica which wholly depends upon an agreement *not* to settle the underlying disputes.”<sup>59</sup>

It has been correctly pointed out that generally “States have mutual, vested interests in settling (or managing, or just continuing) disputes out of Court. It is because of States’ perception of what is in their national interest, i.e. freedom of maneuver as compared to submission to a workable and effective rule of law – that the ICJ has averaged only about three cases per year over the last 50 years.”<sup>60</sup>

### **Wider Compulsory Jurisdiction Helpful:**

But though compulsory adjudication in comparatively ordinary, non-political, so-called “run of the mill” cases is not an effective substitute for war, that does not mean that it is not in itself a powerful constituent element of peace. While admitting that adjudication must be supplemented by approaches of a different order and that other more informal political methods of pacific settlement of international disputes must be provided, it is essential to increase the jurisdiction of the courts. Even by solving minor day to day disputes, they can help create a law habit among States and create an atmosphere of peace. By deciding these ordinary economic, business or

even boundary disputes without much fanfare, they can render a most useful service, as courts do in the traditional field, because by far the greatest number of disputes relate to these matters which, if peacefully settled, can encourage smooth intercourse between States in the present inter-dependent world. It has been well said by an experienced judge:

“After all, it is the habit of living under the law, and with habitual and normal recourse to the agencies of the law, that will make violence and aggression in defiance of the law more difficult. What we need is not just a crisis law but a law for normal existence.”<sup>61</sup>

Basically the principal function of law “is to provide clear principles and rules for the routine ordering of a society by the rule of law”.<sup>62</sup>

#### Conclusion:

Institutions and procedures for the settlement of disputes under law are at once the hope and despair of all those who reflect seriously upon relations among nations. One of the basic functions of a civilized legal order is a system of courts with jurisdiction to decide every dispute that might arise. In the international society, besides *ad hoc* arbitration courts, we have a number of courts established during the last 50 years but without any regular plan or structured relationship. We have the International Court of Justice which is truly a World Court without any regional restriction as to subject matter in its contentious jurisdiction. But it is restricted as to parties of cases which come before it. Under Article 34(1) of its Statute, “only

States may be parties in cases before the Court.” Although, individuals can and do enjoy “rights” directly under modern international law, the Hague Court is increasingly cut off from a growing and very important part of international law system. Neither multilateral corporations, nor NGOs, nor even the United Nations itself can appear before the Court as applicants or respondents. This is an anachronism created in 1922 which has not been rectified. There is a dilemma. According to a former President of the World Court, if Article 34(1) of that Statute is modified, it “would probably produce a flow of cases with which the Court, with its present staff, organization, resources, could not possibly cope.”<sup>63</sup>

Another possible remedy is of course the creation of other kinds of international tribunals and courts which has been done with a lot of enthusiasm. Although the proliferation of new, specialized and permanent courts, like the Law of the Sea Tribunal, are welcome, they all have limited jurisdiction, limited sometimes by region, sometimes by subject matter, sometimes by both. But because of their rather haphazard and unplanned growth, there is a serious danger that international law may “become fragmented as each tribunal ... will tend to produce a specific variety of international law.”<sup>64</sup>

In a developed system of courts, as we find in most States, there are legally defined relationships between courts, whether legally defined subordination or legally recognized independence. There is usually one court at the top of the hierarchy. It is suggested that “the ICJ, being the principal judicial organ of the United Nations, and moreover having a general jurisdiction over all questions of international law, would seem apt to fill this role.”<sup>65</sup> But we will have to solve the problems of Article 34(1) of the Statute, and its relationship with the specialized tribunals.

Although far-reaching jurisdiction has not been conferred on the International Court, nor is it likely to solve important economic or political problems involving vital interests of States, it is still by far the most successful organ of the United Nations. It is too much to expect States to accept unqualified compulsory jurisdiction immediately. The maxim “calculate the limits of the possible” should be kept in mind. The busier the Court gets, the better it is for the world society because it can help promote a more peaceful and less lawless world. It can certainly help reduce tension between States by sorting out intricate facts and clarifying complicated law in numerous disputes that arise between them. Let us remember that each day of peace is a time for the extension of law and every extension of law a reinforcement of peace.

## Footnotes

### Peaceful Settlement of International Dispute

1. See, Edwin Dewitt Dickinson, *Law and Peace* (Philadelphia, 1951), p. 113.
2. Dickinson, *ibid.*, p. 121.
3. Dickinson, *ibid.*, pp. 121-22.
4. See, Gilbert Guillaume, “The Future of International Judicial Institutions”, *International and Comparative Law Quarterly* (I.C.L.Q), vol. 4 (October 1955), pp. 848-49.
5. Disputes like the prompt release of vessels and crews under Art. 292 of the L.O.S. Convention and in the matter of provisional measures under Art. 290, paragraph 5, and disputes concerning the international seabed area as provided in Part XI of the Convention. See Judge P. Chandrasekhara Rao, “The ITLOS And its Guidelines”, *Indian Journal of International Law* (IJIL), vol. 38, nos. 3 and 4, pp. 371-72.
6. R.Y. Jennings, “The Judiciary, International and National, and the Development of International Law”, *ICLQ*, vol. 45 (January 1996), p. 5.
7. Jennings, *ibid.*, p. 5.
8. Georges M. Abi-Saab, quoted in R.Y. Jennings, “The Role of the International Court of Justice”, *British Yearbook of International Law*, vol. (1998), p. 61. But cf. Shabtai Rosenne who points out that “there is no evidence to support the view that multiplicity of international judicial institutions for the settlement of disputes seriously impairs the unity of jurisprudence (a difficult proposition at the best of times). The Convention requires ITLOS to perform tasks that are beyond the capacity of the International Court under its present Statute. If only for that reason the cautious observer will hesitate before crying redundant.” Shabtai Rosenne, “Establishing the ITLOS”, *American Journal of International Law* (AJIL), vol. 89 (1995), p. 814; see also Alexander Yankov, “ITLOS: Its place within the dispute settlement

- system of UN Law of the Sea Convention, *IJIL*, vol. 37 (1997), p. 304.
9. Jennings, *ibid.*, p. 60.
  10. See, R.P. Anand, quoting numerous cases in the World Court, *International Courts and Contemporary Conflicts* (Bombay, 1974), pp. 194 ff.
  11. See R.P. Anand, *Compulsory Jurisdiction of the International Court of Justice* (Bombay, 1961), pp. 36-37.
  12. See for an interesting comparison between jurisdiction conferred on the PCIJ and the ICJ, Philippe Couvreur, in A.S. Muller, D. Raic and J.M. Thuranszky (ed.), *International Court of Justice: Its Future Role After Fifty Years* (The Hague, 1997), pp. 96-97.
  13. Georges M. Abi-Saab, "The International Court of Justice as a World Court", in Vaughan Lowe and Malgosia Fitzmaurice (ed.), *Fifty Years of the International Court of Justice: Essays in honour of Sir Robert Jennings* (Cambridge, 1996), p. 4.
  14. See Report of the UN Committee of Jurists which said that the Court "had functioned to the satisfaction of the litigants". *UNCIO DOC.* vol. 14, p. 822.
  15. See R. P. Anand, *International Courts and Contemporary Conflicts*, (Bombay, 1972), p. 64.
  16. Report of Subcommittee IV/1/A, *UNCIO DOC.* vol. 13, p. 384.
  17. *Year Book of the International Court of Justice* (1946-47), p. 31.
  18. See Leo Gross, "Compulsory Jurisdiction under the Optional Clause: History and Practice:", in Lori Fisler Damrosch, *The International Court of Justice at a Cross-roads*, (Dobbs Ferry, N.Y, 1986), p. 21; Shabatai Rosenne, *The Law and Practice of the International Court*, (New York, 1965) vol. I, p. 419.
  19. Report of the Rapporteur of Committee IV/1, *UNCIO DOC.* 913, IV/1/74(1), vol. XIII, p. 393.
  20. Since 1951, 11 declarations under the Optional Clause had either lapsed or been terminated. These declarations were made by Bolivia, Brazil, China, France, Guatemala, Iran, Israel, South Africa, Thailand, Turkey and the United States. See *Year Book of the International Court of Justice*, (1989-90), p. 63.
  21. Five countries have withdrawn Connally-type reservations but it is still found in five declarations (Liberia, Malta, Mexico,

Philippines and Sudan) under the Optional Clause. For details and an analysis of these damaging reservation, See Gross, note 18, pp. 22 ff.

22. Thus the United States declaration included “Vandenberg” reservation which excluded all “disputes arising under a multilateral treaty unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court or (2) the USA specially agrees to jurisdiction”. This reservation has been included by El Salvador, India, Malta, Pakistan and Philippines in their declarations. See *Year Book of the International Court of Justice*, (1989-90), pp. 62 ff.
23. See J. Patrick Kelly, “The International Court of Justice: Crisis and Reformation”, *Yale Journal of International Law*, (1987), vol. 12, p. 350.
24. See C.H.M. Waldock, “Decline of the Optional Clause”, 32 *British Year Book of International Law* (1956), p. 269; See also Kelly, ibid.

25. See President of the ICJ Judge Bedjaoui, in his address to the General Assembly on 11 October, 1995.
26. See Gudmundur Eiriksson, “The Role of ITLOS in the Peaceful Settlement of International Disputes”, *Indian Journal of International Law* (IJIL), vol. 37, no. 3 (Special Issue on ITLOS)(1997), p. 350.
- 27.. See Law of the Sea Convention, Part XV, Sections 2 and 3; see also Guillaume, n. 4, p. 855; Shigeru Oda, “Dispute Settlement Prospects in the Law of the Sea”, *International and Comparative Law Quarterly*( ICLQ), vol. 41 (October 1995), p. 863. Shigeru Oda, “Dispute Settlement Prospects in the Law of the Sea”, *I.C.L.Q.*, vol. 4 (October 1995), p. 863.
- 28.. Anand, n. 11, p. 39.
29. Abi-Saab, n. 13, p. 5.
- 30.. See R.P. Anand, “Attitude of the ‘new’ Asian-African countries towards the International Court of Justice”, in his *Studies in International Adjudication* (New Delhi, 1969), pp. 53 ff; Abi-Saab, n. 13, p. 5.
- 31.. The Court being equally divided 7 votes to 7. See *South-West Africa Cases* (Second Phase), *ICJ Reports*, 1966, p. 6.
- 32.. See R.P. Anand, “International Status of South-West Africa”, in his *Studies in International Adjudication* (New Delhi, 1969),, p.119.
33. Andronico O. Adede, “Judicial Settlement in Perspective”, in A.S. Muller, D. Raic and J.M. Thuranszky (ed.), *The International Court of Justice: Its Future Role after Fifty Years* (The Hague, 1997), p. 51.
34. See R.P. Anand, “Role of International Adjudication”, in Leo Gross, *The Future of the International Court of Justice* (Dobbs Ferry, N.Y. 1976), p. 2.
- 35.. See Judge Mohamed Shahabuddeen, “The World Court at the Turn of the Century”, in Muller, Raic and Thuranszky, n. 25, p. 20.

36. See *Abi-Saab*, n. 13, p. 6.
37. See *Guillaume*, n. 4, p. 851.
38. *ICJ Reports*, 1971, p. 16.
39. *ICJ Reports*, 1975, p. 12.
40. *ICJ Reports*, 1984, pp. 415-19.
41. *ICJ Reports*, 1986, p. 14.
42. *Abi-Saab*, n. 13, p. 6.
- 43.. *Abi-Saab*, n. 13, p. 6.
- 44.. See R .P. Anand, “The World Court on Trial”, in R.S. Pathak and R.P. Dhokalia, *International Law in Transition: Essays in Memory of Judge Nagendra Singh* (New Delhi, 1992), pp. 253ff.
- 45.. See Address by President Bedjaoui to the General Assembly on 11 October, 1995.
46. Charles de Visscher, *Theory and Reality in Public International Law* (1968), p. 369.
47. See Judge Gilbert Guillaume, President of ICJ, Address to the General Assembly, February 2000.
48. Quoted in *Shahabuddeen*, n. 27, p. 24.
49. See quoted in *Adede*, n. 25, p. 62. *ICJ Yearbook*, 1991-92, p. 207. See also Judge *Shahabuddeen*, n. 27, p. 22ff; K. Highet, “The Peace Palace Heats up: The World Court in Business Again”, *AJIL*, vol. 85 (1991), p. 646.
50. See Judge *Shahabuddeen*, n. 27, p. 23.

51. Jennings, 50. Jennings, n. 8, pp. 38-39.
52. *Free Zones* case, Order PCIJ, Series A, No. 22 (1929), p. 13. See also Shahabuddeen, n. 27, p. 23.
53. *I.C.J. Reports*, 1963, p. 29.
54. See J.L. Brierly, "Vital Interests and the Law", *BYIL*, vol. 21(1944), p. 51. See also Louis B. Sohn, "The Jurisdiction of the ICJ", *AJIL*, vol. 38 (1944), p. 694ff.
55. David P. Forsythe, "The International Court of Justice at Fifty", in Muller, Raic, Thuranszky, n. 12, p. 397.
56. Jennings, n. 8, p. 53.
57. See Anand, n. 10, pp. 231 ff.
58. R.Y. Jennings, n. 8, p. 31.
59. Jennings, *ibid.*, footnote. Emphasis in original. See for a detailed discussion of this dichotomy of legal and political disputes, Anand, n. 10, pp. 230-241.
60. See Forsythe, n. 55, p. 401.
61. Jennings, n. 8, p. 54.
62. Jennings, *ibid.*
63. Jennings, *ibid.*, pp. 38-39.
64. See *Abi-Saab*, quoted by Jennings, *ibid.*, p. 61.
65. Jennings, *ibid.*, p. 63.

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<sup>i</sup> See, Edwin Dewitt Dickinson, *Law and Peace* (Philadelphia, 1951), p. 11

<sup>ii</sup> Dickinson, *ibid.*, p. 121.

<sup>iii</sup> Dickinson, *ibid.*, pp. 121-22

<sup>iv</sup> See, Gilbert Guillaume, “The Future of International Judicial Institutions”,

*International and Comparative Law Quarterly* (I.C.L.Q), vol. 4 (October 1955), pp. 848-49.

<sup>v</sup> Disputes like the prompt release of vessels and crews under Art. 292 of the

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