CHAPTER – VII

ICJ: ROLE AND CONTRIBUTION OF THE COURT IN
THE DEVELOPMENT OF INTERNATIONAL LAW

1. GENERAL INTRODUCTION

The Court decision reveals that it has played a significant role in the development of international Law. It has dealt with major questions in conformity with International Law, and made pronouncements thereupon. For instance, it has delivered judgements on disputes concerning land frontiers and maritime boundaries, territorial sovereignty, the use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights. In addition to the above the Court has given advisory opinions, concerning inter alia admission to United Nation membership, reparation for injuries suffered in the service of the United Nations membership, reparation for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and Western Sahara, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights reporters and the legality of the threat or use of nuclear weapons.

While dealing with the above and other subjects, the Court contributed towards the development of International Law in two directions. Firstly, it interpreted and applied the existing rules in such a way so as to resolve issues affecting the life of nations. For instance, it has put to an end to a long standing controversy which had aroused considerable interest in the maritime States of the World. It has condemned decolonization and reaffirmed the principle of self-determination as provided under United Nations Charter. The Court has stated that the doctrine of non-intervention is to be treated as a sanctified absolute rule of law. Secondly, in those cases where no rule existed in International Law or where the Court was faced with new situations, it evolved certain new
principles. For instance, in the Reparation case it stated that the United Nations Organization is an international person. The Organization has been exercising and enjoying functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. Thus, the Organization can bring claim in respect of injury to the United Nations caused by the injury to the agents. The Court has also dealt to membership and competence of the General Assembly regarding admission of a State to the United Nations.

Besides finding the law in the settlement of disputes brought before it, the perusal of several cases before the ICJ gives clear impression that it can help in its clarification, systematisation and development as well.

As Brierly puts it,

“Legislative and judicial processes are inseparable... The act of the Court is creative act in spite of our conspiracy to represent it as something else”.

That law grows in the hands of Judges is a well known fact, although they may not assert it openly. Internationally, in contrast to the national scene, the fiction that courts do not ‘make’ the law but only ‘discover’ or reveal what was implicitly a rule of law-can not hold good. Cardozo says, “The Judges do not pick their rules of law full blossomed from the trees”.

The problem in the international sphere is more stringent as it necessitates caution and restraint, occasioned by the admitted sovereignty of the States and their consent to international adjudication.

The caution and restraint by which the International Courts are burdened do not yet prevent them from shaping, making or even altering the law. Lauterpacht tells:

“They do it but without admitting it, they do it while guided at the same time by existing law, they do it while

remembering that stability and uncertainty are not less of essence of the law than justice; they do it, in a word, with caution”.3

However, the attachment of importance, by a court to the law it administers does not place omnipotent powers in its hands that it may make new law or amend the existing provisions of the law. This aspect is for the law-maker to take care of. The responsibility of the Court, rests in interpreting the provisions of the law and applying them to the facts of a case before it, and pointing out any sharp edges of the law that need the attention of the law-maker, and the community that it serves. This field of development of law, which is limited and comes to rest with the court must take account of the Statute of the Court by virtue of which it exists and functions. The Court law relationship here is of key importance and worthy of mention in the present context.

2. THE MEANING OF THE DEVELOPMENT OF INTERNATIONAL LAW BY THE COURT

The decision of the Court, states Article 59 of the Statute of the Court, has no binding force except between the parties and in respect of that particular case.4 That, however, does not imply that the findings of the court as to the relevant provision of international law, used by it as a major premise in the judicial syllogism which constitutes a judgment, will not be seized upon by other States as authoritative and applicable to their own affairs, nor is it desirable that this be not so. Article 59 prevents from coming into operation, any strict rule of stare decisis, yet court’s reports in volumes, contain a bulk of jurisprudence, corroborative in effect, which, the court itself would find unlikely to disown, a previous decision unless it is satisfied that the legal rule or principle in question had undergone a subsequent modification. Besides declaring the law, the Court’s functions include deciding in accordance with international law, such disputes as are submitted to it.

---

It has to confine itself to the limits of competence conferred upon it by the parties to any particular dispute.

Court’s contributions to the development of international law, with the help of basic sources of international law referred to in Article 38 of the statute may be investigated as follows.

2.1 International Conventions

Insofar as the law applicable in a given case is to be found in international conventions whether general or particular, establishing rules expressly recognised by the contesting states, it is clear that the court must take the convention as it finds it, and is not entitled to add to the obligations, which the parties have reciprocally undertaken in concluding or becoming parties to the convention.

The court’s role and contribution here is, essentially of interpretation. Normally, a dispute before the court should have arisen because parties to the convention do not agree whether a particular conduct is required or forbidden by the convention. Role of Courts in all legal systems has been discussed at length on the subject of interpretation of written instruments and the extent to which a court may rewrite, or supplement such an instrument if applicability to the case in hand is obscure or if the situation which has arisen appears to have been wholly unforeseen by the authors of the text. The matter of interpretation of purely bilateral instruments and the conclusion arrived at by the court, will be of little interest to any third state, as to the impact of the convention upon the position of the parties. But this is not necessarily so. The question of development of international law may arise in the context of interpretation of a bilateral treaty.

The Agean Sea Continental Shelf Case\(^5\) affords an illustration to this. The instrument which came for interpretation was not a treaty but in fact, a unilateral declaration of acceptance of Jurisdiction, made by Greece under the provisions of a multilateral treaty – The 1928 General Act for Pacific Settlement of International Disputes. The Court decided to understands the expression ‘relating to the territorial Status of Greece’ appearing in that declaration as meaning ‘relating to

\(^5\) *Greece v. Turkey*, I.C.J. Reports 1978, p.3.
the territorial Status under general international law’. Recalling that the Act of 1928 was a convention for the pacific settlement of disputes, designed to be of most general kind, this presumption in the Court’s view became yet more compulsive. In a convention such as the 1928 General act, terms like domestic ‘jurisdiction’, and ‘territorial status’ to have fixed content of meaning regardless of the subsequent evolution of international law fall outside the field of intellectuality.

The court arrived at the following conclusion:

“Having regard to the foregoing considerations, the court is of the opinion that the expression, in reservation, ‘disputes relating to the territorial status of Greece’ must be interpreted in accordance with the rules of international law as they exist today and not as they existed in 1931”.

7 I.C.J. Reports 1978, p. 16.

The Court was constrained to examine the development of International law, concerning territorial Status in order to find out what its comparative contents were in 1931 and in 1978. This way, it could hardly avoid making a contribution to a better understanding of the development of law, if not to the development in general.

In its Advisory opinion on Legal Consequences for States of the Continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) the Court had taken a somewhat similar approach in the specialised field of the League of Nations Mandates. It had observed:

“The Concepts embodied in Article 22 of the Covenant were not static but were by definition evolutionary…. That is why, viewing the institution of 1919, the Court must take into consideration, the changes which have occurred in the subsequent half Century”.

2.2. International Custom

Viewing international custom as evidence of a general practice accepted as law, it becomes evident that the role which an international judge plays in the development of such law is different from and perhaps more substantial and significant than that which he plays when working with treaties. That the Court makes major contribution to the development of the law, when it analyses the practice of States, deduces a principle of international law or a customary law rule and applies it to the situation before it so as to resolve the dispute can hardly be denied.

Hersch Lauterpacht regarded decisions of the Court in this field as a true source of law. Whether the Court declares the existence of a rule or rejects a suggested rule as unsupported by the practice of States, it is both ways a contribution to the development of law.

When the Statute expects the Court to decide in accordance with international law, it implies international law in its existing form and not as any one would wish it to be.

That the Court is under a duty to State international customary law as it is and not as the parties think it is or wish it to be, constituted an application of the principle that it is for the Court to establish what the law is, so that the parties are not obliged to produce evidence of the state of the law or convince the court of it in the same way as they must prove matters of fact. The principle also implies that the Court can not be satisfied with the statement of law made by one or both parties, and must look beyond this to establish for itself the state of law. The court stated as follows when the point arose in the case of Military and Paramilitary Activities in and Against Nicaragua.10

“The mere declaration by state of their recognition of certain rules does not qualify them for the Court to consider them as part of customary international law so as to be applied as such to those states. The bondage of Article 38 of the Statute,

does not allow the Court to disregard the role played by general practice”.

A good example of the Court’s role in refinement and development of customary law through its judicial application is come across in the above mentioned case.

In the field of the law relating to the non-use of force and the principle of non-intervention in the affairs of other states, there has been a considerable amount of State practice along with official statements by the States concerned and other about legality of different actions which were or might have been regarded in some quarters as contrary to customary international law. A judicious and neutral determination by a judicial tribunal could, besides resolving the dispute before it, make invaluable contribution towards reaffirming the principles of the relevant customary law and uncovering their precise extent and application.

2.3 General Principles of Law Recognised by Civilised Nations

Certain principles which by virtue of their universal appeal, enjoy widespread assent, whether or not they have attained the form of effectively applicable rules of internal or international law are grouped under this heading. The court is understood to have made contribution under this heading, by means of its decision in Barcelona Traction Case in 1970. It drew attention to the category of obligation of a State towards the international community as a whole, which descend into international law through the outlawing of the acts of aggression and of genocide and from the principle and rules concerning the basic rights of human person, including protection against enslavement and racial discrimination.

The court had also to deal with problems of corporate personality and relationship between companies and shareholders and with the possibility of lifting the veil of corporate personality to impose the rights and obligations on the shareholders, in some circumstances. It tackled all these problems, not in reference to a particular system of municipal law, but by deriving the related general principles from consistent municipal practice.

2.4 Judicial Decisions and Teachings of Publicists Classified as Subsidiary Means for Determination of the Rules of Law

The Court certainly reaches to such material for reference when preparing to shape its decisions, but in doing so, it is confirming such development of law as the judicial decisions or teaching in question may already have effected, rather than developing the law itself. If an arbitral decision has already defined a previously vague rule of law, the development so effected or achieved can receive the endorsement of the Court’s prestige if it makes use of such arbitral decisions in framing its view.

Although, “teachings of publicists” has been included in the list of sources of international law in Article 38 of the Statute, the Court on no occasion has referred to the writings of a single such publicist.

In the *Barcelona Traction Case*\(^\text{13}\) the Court stated that ‘in seeking to determine the law applicable to this case, the Court has to bear in mind the continuous evolution of international law,\(^\text{14}\) and it surveyed very carefully the development in the field of diplomatic protection of nationals, particularly from the standpoint of the impact upon it resulting from the growth of international economic relations and at the same time from the profound transformations which have taken place in the economic life of nations.\(^\text{15}\)

### 3. THE PROGRESSIVE ROLE AND CONTRIBUTION OF THE COURT

The Court has been in the past and shall always be in the future ever mindful of the importance of the progressive development of the law which it is required to interpret and apply to resolve issues affecting the life of nations. The confidence that can be reposed in the Court is undauntedly bound up with the nature of the international law which it is its task to apply. This law has nowadays taken on a new dimension and is constantly expanding its field of

---

application consequent on the numerous international conventions which are being forged both within the framework of the United Nations and elsewhere. The International Court of Justice has directly contributed towards ensuring respect for international law; it has also gone a long way to remove lacunae and to clear up obscurities and doubts, and to say the least, the merit of many of its decisions has been to fully emphasise the role of law in present day international relations.

The number and nature of cases submitted to the Court determine the opportunities the Court has had of contributing to the development of international law.

The Court’s role and contribution in the development of different fields of law may be studied under following heads:

### 3.1 Development of Constitutional Law of the United Nations

In its advisory opinion on *Certain Expenses of the United Nations*\(^{16}\) a major contribution to the development of the Constitutional law of the United Nations was made by the Court. Here, the Court opined that the expenditure authorised for the operation in the Congo by the resolution of the General Assembly from December 20, 1960 to October 30, 1961 and the expenditure authorised for the operation of the United Nations Emergency Force in the Middle East from November 26, 1956 to December 20, 1960, constitute ‘expenses of the organisation’ within the meaning of Article 17, para 2 of the Charter of the United Nations\(^{17}\). Although, the Court did not say so explicitly, the effect was discernible from the opinion that members of the United Nations were legally bound to pay the assessment made by the Assembly to defray the costs of the two operations. The Court held that regardless of the fact that such recommendations were not binding, the General Assembly had the power to commit the members, directly or through the Secretary General to expenditure to carry out those recommendations. When the organization takes action which warrants the assertion that the action

---

**Footnotes:**

was appropriate for fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* of the Organization.

If the action was taken by a wrong organ, it would be deemed as irregular in terms of the internal structure but this would not essentially mean that the expenditure incurred was not an expenditure on account of the organization. On the national as well as international side of law, there is the evidence in which the body-corporate or politic may be bound towards third parties by an *ultra vires* resulting from an agent’s action.18

This novel assertion has augmented the institutional efficiency of the Organization, although it has bestowed the General Assembly with unlimited budgetary and financial powers, its consequences may reach up to regions, otherwise remote.

The court approved indirectly, the ‘Uniting for Peace Resolution’ thereby confirming legally, the developments inside the United Nations which have increased the powers of the General Assembly as compared to the Security Council. The Court said, while it is the Security Council which exclusively may order coercive action, the function and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the institution of Studies and the making of recommendations, they are not merely oratory.

Rosenne Observes:

“The Court has introduced an element of healthy dynamism well matching the new trends of international organisation... The Court has shown its awareness of the unsatisfactory features of classic international law and has been conscientious in reaclopting that law to the requirement of modern international life.”19

### 3.2 Development in the Law of the Sea

Several judgments of the Court have influenced the development of the law of the sea and have been reflected in the work of conferences called by the United Nations to deal with this vital subject.

---

The Court's decision in the Fisheries case (1951) between the United Kingdom and Norway put an end to a long-standing controversy which had aroused considerable interest in the maritime States of the world. The Court held that the method adopted in a Norwegian decree of 1935 for the delimitation of the territorial sea was not contrary to international law and it laid down three criteria in this connection:

1. that the baselines should not appreciably depart from the general direction of the coast;
2. that the sea areas lying within these lines should be sufficiently closely linked to the land domain to be subject to the regime of internal waters; and
3. that consideration should be given to the economic interests peculiar to the region in question, the reality and importance of which are clearly evidenced by a long usage. The International Court of Justice further rejected the view that, in international law, bays with an entrance more than ten miles wide could not, unless of the nature of so-called "historic" bays, be regarded as internal waters. These pronouncements were made when the International Law commission was just starting its work on the law of the sea. The Commission's efforts led eventually to the convening of the Law of the Sea Conference and the adoption of the Geneva Contentions of 1958.

The single most frequent subject of disputes, brought before the Court in the last decades, is the delimitation of maritime boundaries.

In the North Sea Continental Shelf Cases\(^{20}\) the Court first adopted an approach, negative to the development of international law, when it found that the equidistance rule was not a binding rule of customary international law governing the delimitation of continental shelf between adjacent or opposite States. It however, extended its ruling beyond this finding and indicated the principles and rules of law applicable to the particular delimitation case immediately before it, as

well as to all comparable delimitations. The Court held that the concept of the continental shelf is the natural prolongation of the land territory of the Coastal State. It recommended the idea of the obligation to delimit the shelf by agreement resulting from bonafide negotiations whereby the applicable legal principles themselves refer to equitable considerations and the balancing up operation of the various relevant considerations including unity of deposits across the delimitation line in order to achieve an equitable solution. The Court also recommended the element of a reasonable degree of proportionality to be achieved between the extent of the continental shelf of each state and the length of its coast line.

In the Delimitation of the Maritime Boundary in the Gulf of Maine area between the United States and Canada, the opportunity was afforded by the parties who requested the Chamber dealing with the case to fix a single maritime continental shelf boundary for all purposes. This posed a fundamental question since considerations governing the delimitation of the continental shelf and those governing the delimitation of the exclusive economic zone, for instance, could not be identical.

The Chamber Observed, “this is an unprecedental aspect of the case which lends it its special character and accordingly, differentiates it from those that were the subject of previous decisions”.22

It found that a delimitation by a single line is feasible by applying a criteria or combination of criteria which does not give preferential treatment to one of the two objects (the continental shelf and the superjacent water column) and ignore the other, and is such as to be equally suitable to the division of either.

This approach is undoubtedly a contribution to the development of the law of maritime delimitation. The number of claims to maritime areas other than continental shelf being on the increase, the Chamber was conscious about the need for development in this area.

The Court has shown, its awareness of the contemporary trends in the field of Law, governing a dispute submitted to it in the Fisheries Jurisdiction Cases brought against Iceland by Great Britain and the Federal Republic of Germany.

The Court found that the regulations constituting a unilateral extension of Iceland’s exclusive fishing rights to fifty nautical miles are not objectionable to the Government of the United Kingdom and held that the two Governments were mutually under obligation to undertake negotiations in good faith for the equitable solution of their differences concerning their respective fishery rights.

Some members of the Court, in their joint separate opinion have criticized the Court for not being able to decide the fundamental question of the validity of Iceland’s extended fishing zone, in general international law. Those who stood to criticize the judgment perhaps failed to understand and accept that at that time a general rule of customary law having the force of international custom, prescribing an obligatory maximum fishery limit on coastal States was developing to be established.

The Court, by its restraint, was contributing to the development of international law. It was taking great care not to check such development or to put obstacle in the way of development. The judgment defined the concept of preferential fishing rights of the coastal State as well as the principle of ‘due regard to the interests of others’ when it dealt with the problem created by assertion of national interests in the exploitation of natural resources which are regarded as falling in the category of the ‘common heritage of mankind’. Development of law received further thrust where the judgment lay emphasis on the need to Judge economic dependence of a coastal State on fisheries and the due weight to be given to that factor in the settlement of maritime disputes. Another factor which lends importance to this case from the point of view of development of law is that the judgment defined the concept of ‘preferential fishing rights of the coastal State’ as well as principle of ‘due regard to the interests of others’.

In Maritime Delimitation in the Area Between Greenland and Jan Mayen,\textsuperscript{24} the attempt to negotiate the maritime boundary between Greenland (Denmark) and the island of Jan Mayen (Norway) having failed, Denmark filed an application with the ICJ instituting proceedings to delimit the boundaries in the area.

\textsuperscript{24} Denmark v. Norway, I.C.J. Reports 1993, p. 38.
Denmark claimed a single maritime boundary in the area, coincident with 200 nautical mile limit drawn between the two territories. Norway argued that the maritime boundaries between the fishery zones and continental shelves of the two territories are the equidistance line.

The Court rejected the equidistance line approach on the basis of substantial difference in length of the relevant coastlines of Greenland and Jan Mayen. This difference was found by the Court as a special circumstance and considered likely to lead to inequitable result, if equidistance was adopted.

The judgment in this case considered new and previously unsettled questions. First time in a maritime boundary case jurisdiction vested in the Court’s compulsory jurisdiction. Norway’s argument in favour of equidistance line was rejected by the Court after analysing those circumstances. It found that Denmark had used the equidistance line to avoid the aggravation of the conflict with Norway. What it did, did not represent any actual or tacit agreement or create an estoppel fixing the boundary at equidistance line. The Court accepted Norway’s position in asking for separate analysis of each zone, disregarding Denmark’s request for a single maritime boundary, basing its decision on the principle that a single maritime boundary could be delimited only if the parties so agreed. Arguments based on other maritime boundary settlements in circumstances similar to the instant case, were dismissed. The fact that a State had agreed to a method of delimiting some maritime boundaries, did not compel its use elsewhere.

### 3.3 Development in the Law of Decolonisation

The Court has not merely been fully alive to but also sympathetic with the development of the law concerning decolonization and this indeed is a vast field in which the law has been constantly evolving. In the Advisory Opinion, the Western Sahara case the Court has gone to the very fundamentals of the problem when it has emphasized the principle of self-determination. The ascertainment of the will of the people "genuinely expressed" emerges as a key factor in the regulation of decolonization. The Court would not allow itself to be

---

hampered by historical references and has rightly observed in the Western Sahara case.26

"The reference in those questions to a historical period cannot be understood to fetter or hamper the Court in the discharge of its judicial function. That would not be consistent with the Court's judicial character; for in the exercise of its functions it is necessarily called upon to take into account existing rules of international law..."

The Court then proceeded to conclude that:

"... it has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."27

Furthermore, the court took a firm and progressive stand in the Namibia case28 when it observed.

"In order to determine whether the laws and decrees applied by South Africa in Namibia, which are a matter of public record, constitute a violation of the purposes and principles of the Character of the United Nations, the question of intent or government discretion is not relevant nor is it necessary to investigate or determine the effects of those measures upon the welfare of the inhabitants.

It is undisputed, and is amply supported by documents annexed to South Africa's written statement in these proceedings, that the official governmental policy pursued by South Africa in Namibia is to achieve a complete physical separation of races and ethnic groups in separate areas within the Territory.29

Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to

27 I.C.J. Reports 1975, p.68.
race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."

The aforesaid will have to be accepted as a progressive interpretation and application of the law on the subject.

Again, in the same Namibia case the Court has accepted the evolutionary aspect and rejected the static concept:

"Mindful as it is of the primary necessity of interpreting and instrument in accordance with the intentions of the parties at the time of its conclusion, the Court is bound to take into account the fact that the concepts embodied in Article 22 of the Covenant- "the strenuous conditions of the modern world and the well being and development of the peoples concerned were not static, but were by definition evolutionary, as also, therefore, was the concept of the 'sacred trust'. The parties to the Covenant must consequently be deemed to have accepted them as such. That is why, viewing the institutions of 1919, the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law."

The Court has then proceeded further in the same case to emphasize the development aspect in clear and unequivocal terms when it has observed:

"In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments. These developments leave little

doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain, as elsewhere, the corpus iuris gentium has been considerably enriched, and this the Court, if it is faithfully to discharge its functions may not ignore.\textsuperscript{31}

The Court held in this case that the presence of South Africa in Namibia was illegal, that States were under an obligation to recognize that illegality and that South Africa was under an obligation to withdraw its administration immediately.

In fact the Court, when speaking of human rights, had observed earlier in the Barcelona Traction case\textsuperscript{32} that there existed an essential distinction between the "obligations of a State towards the international community as a whole, and those arising vis-a-vis one State to another State. "By their very nature the former are the concern of all States." The Court had no hesitation in concluding that human rights came in that category when it observed:

"In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations \textit{erga omnes}. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."\textsuperscript{33}

Moreover, the Court went a step further when it observed later in the same case that "with regard more particularly to human rights,... it should be noted that these also include protection against denial of justice".

\textsuperscript{31} I.C.J. Reports 1971, p. 32.
\textsuperscript{32} I.C.J. Reports 1970, p. 32
\textsuperscript{33} I.C.J. Reports 1970, p. 47
There has been consistency in the Court's observations on problems and issues relating to colonization. In an earlier decision, the Right of Passage over Indian Territory (1960) concerning two Portuguese enclaves in the Indian peninsula, Portugal claimed that it had a right of passage to and from these enclaves and that India had prevented it from exercising that right. The Court found that Portugal had no right of passage for armed forces, armed police or arms and ammunition and that India had in consequence not acted contrary to its obligations. The observations of the Indian ad hoc judge, Judge Chagla, bear out the fact that from the Court's Judgment India had vindicated her stand in relation to the colonizing power.

"...I think that the Judgment of the Court in the main vindicates the attitude taken up by India in the controversy between herself and Portugal over the question of the right of passage."34

3.4. Development in the Law of Treaties

The Court has made contribution to the development of the law in the field of the law of treaties which has been subjected to extensive codification among conventions of multilateral character. The Vienna Convention on the Law of Treaties of 1969 has codified the provisions governing almost all aspects of the law of treaties between States. The application of the convention by its Article 4 is limited to treaties concluded after the Convention came into force. The process of ratification taking its usual slow course thereby delaying the enforcement of the Convention, it is natural that the number of Treaties covered by the Convention as a matter of Treaty Law are unavoidably limited. Ever since the adoption of the Vienna Convention the number of problems dealt with by the Court relating to Treaty Law has been considerable but the treaties in any of such cases have not been of dates subsequent to the adoption of the Convention and therefore the Court was obliged to determine the question according to the customary law in force between the parties.

34 I.C.J. Reports 1960, p. 118.
To find relationship between codifying conventions and customary international law is a complex exercise but the Court may make broad reference to such a convention, and treat a particular codified rule as of general application, if it is satisfied that the rule, in question represents customary or 'emergent' international law.

The provision relating to termination of a treaty relationship on account of breach (adopted without a dissenting note) may in many respects be considered as a duplication of the existing customary law on the subject.

It is well-known that even though the Vienna Convention on the Law of Treaties (1969) had not been ratified to come into force, the Court had no hesitation in referring to it as representing "in many respects" codification of customary law. In *Fisheries Jurisdiction, Jurisdiction of the Court* it was observed:

"This principle, and the conditions and exceptions to which it is subject, have been embodied in Article 62 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances."

Again, in the *Reservations to Genocide Convention case* after referring to the "traditional concept" as to the validity of reservations to multilateral conventions, the Court examined a number of trends which remained "manifestations of a new need for flexibility in the operations of multilateral conventions". The Court held inter alia that even though the Convention was silent with respect to reservations, it did not follow there from that they were prohibited, but that a State could not be bound by a reservation to which it had not consented.

Moreover, in its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), Notwith-

---

36 I.C.J. Reports 1951, pp. 21-22
standing Security Council Resolution 276 (1970), (1971), (p. 31), the Court emphasized that "an international instrument has to be interpreted and applied within the framework of the entire' legal system prevailing at the time of the interpretation". This is a vital principle in the interpretation of treaties and, as stated earlier, indicates a broad, basic but progressive approach as against a narrow parochial one which the Court rejects as unwarranted in this field.

3.5 Development in the Law of International Organisation

The contribution made by the Court to the development of law in the field of international organisations is very considerable.

In the Advisory Opinion on Reparation for Injuries suffered in the service of the United Nations, the Court was faced with the question that in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State whether the United Nations as an Organisation has the capacity to bring an International claim against the responsible government, which the Court understood to mean the responsible State. The Court came to the conclusion that the Organisation is an international person, and that it is a subject of international law and capable of possessing international rights and duties and that it has capacity to maintain its rights by bringing international claims.

In the Advisory Opinion on the Legal Consequences of South Africa’s continued Presence in Namibia, the resolution requesting the opinion was adopted over the abstention of two permanent members of the Security Council. South Africa argued before the Court that the resolution was not adopted by an affirmative vote of nine members including the concurring votes of the permanent members, as required by Article 27, para 3 of the Charter. The Court dealt with this objection by relying on the consistent and uniform interpretation of the voluntary abstention of a permanent member as not constituting a bar to the adoption of the resolution.

In the case concerning the *Interpretation of the Agreement of March 25, 1951, between the WHO and Egypt*,\(^{39}\) the Court made several statements of principles concerning international organisation. It emphasised that there can be no doubt that an international organisation has the right to select the location of the seat of its head quarters or of a regional office. The Court clarified that States for their part possess a sovereign power of decision with respect to their acceptance of the headquarters or a regional office of an organisation within their territories and, an organisation’s power of decision is no more absolute in this respect than is that of a State. After considering a considerable number of host agreements of different kinds concluded by States with various international organisations and containing varying provisions regarding the revision, termination or denunciation of the agreements, it concluded that those texts must be presumed to reflect the views of organisations and host States as to the implication of the obligations incumbent upon them. The Court was thereby enabled to contribute to a better understanding of the customary law created by the practice of State surrounding the host agreements concluded with international organisations.

In the case concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of June 26, 1947*,\(^{40}\) the Court was to give its opinion about the applicability of the provision in a host agreement for arbitration. The Court pointed out that the purpose of the arbitration procedure envisaged by the Agreement is precisely the settlement of such disputes as may arise between the organisations and the host Country, without any prior recourse to municipal Courts. It said that a provision of the nature of Section 21 of the headquarters agreement can not require the exhaustion of local remedies as a condition of its implementation.\(^{41}\)

In the field of the law governing relations between such organisations and the members of their staff, the Court has given three opinions on the basis of requests addressed to it.

\(^{39}\) I.C.J. Reports 1980, pp. 67, 73.

\(^{40}\) I.C.J. Reports 1988, p. 12.

\(^{41}\) I.C.J. Reports 1988, p.29.
In the Advisory Opinion on *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, on a complaint by a former United Nations Staff Member concerning the non-renewal of his fixed term contract, the Committee on Applications for Review of Administrative Tribunal Judgments considered a substantial basis for the application and requested the Court to give an advisory opinion on two questions arising from the applicants contentions. The Advisory Opinion of the Court decided to comply with the Committee’s request considering that the Review procedure was not incompatible with the general principles of litigation. It expressed the opinion that the tribunal, contrary to the applicant’s contentions, had not failed to exercise the jurisdiction vested in it and had not committed a fundamental error in procedure having occasioned a failure of justice.

In the advisory opinion on *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, the Court discussed power conferred by the General Assembly on the Secretary General through the United Nations Staff Regulations to provide and enforce such staff Rules consistent with ‘Staff Regulations’, as he considers necessary. Such Rules will be binding upon the United Nations. The right acquired by a staff member under such Rule could not be infringed even by a subsequent decision of the General Assembly itself. The concept of acquired rights not mentioned in the Charter was provided for in the staff regulations established by the General Assembly.

In the case concerning *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, the Court considered the suggestion that the Tribunal had erred on the questions of law concerning the Charter, to consider closely provisions of the Charter covering the employment of staff by the Secretary General and the latter’s powers and duties.

---

44. I.C.J. Reports 1987, p.18.
3.6 Development in the law of Human Rights

The ICJ is not a Court for human rights in the contemporary sense of the term. Article 34 of the Statute of the Court provides that only States may be parties in cases before the Court.45

The principle that only States have standing before international tribunals has long since been modified. But it continues to govern the World Court and will do so unless and until its Statute is amended.

Sir Hersch Lauterpacht has proposed an amendment of Article 34 to provide “The Court shall have jurisdiction:

(1) In disputes between States:

(2) In disputes between States and private and public bodies or private individuals in cases in which States have consented in advance or by special agreement to appear as defendants before the Court”.46

But there appears no disposition among the States to consider or to amend the Statute of the Court to make such provision.

It is a true statement that the question of Human Rights has appeared in many cases before the Court and in some of them the Court has rendered judgments or given advisory opinions which have significantly influenced international law bearing on human rights.

An earlier advisory opinion of the ICJ on Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide,47 related to the making of reservations to treaties. The Court declared when giving its opinion on this question that the United Nations had intended to condemn and punish Genocide as a crime under international law, involving a denial of the right of existence to entire human groups which being contrary to moral law and the spirit and aims of the United Nations, shocks the conscience of mankind and results in great losses to humanity.

45. Statute of ICJ, Art. 34.
47. I.C.J. Reports 1951, p.15.
In such a convention the contracting States have none of their own interests. They all have merely a common interest viz., the accomplishment of the high purposes which form the raison d'être of the convention.

In doing so the Court recognized Genocide as supremely unlawful under international law, customary as well as conventional which continued to cast its shadow on its subsequent holdings on international obligations erga omnes.

In the advisory opinion on the International Status of South West Africa the Court held that as a result of resolution adopted by the Council of the League of Nations in 1923, the inhabitants of the mandated territories acquired the international right of petition, a right maintained by Article 80, para 1 of the United Nations Charter which safeguards the rights not only of the States but also of the peoples of mandated territories. By this opinion the ICJ invested individuals with an international right.

The advisory opinion on Reparation for Injuries suffered in the Service of the United Nations gave the United Nations the Status of a large international personality having the right to bring an international claim. This reinforced the principle that international rights do not belong to States alone.

In the Corfu Channel Casa the Court referred to the obligation of a coastal State towards certain general and well recognised principles namely elementary considerations of humanity, even more exacting in peace than in war, the principle of the freedom of maritime communications and obligations of a State not to allow knowingly its territory to be used for acts contrary to the rights of other States.

In the Asylum Case, the Court observed, “Asylum protects the political offender against any measures of a manifestly extra-legal character which a Government might take against its political opponents”. The basic consideration of the Court’s opinion is the protection of the individual against the violation of his rights as a human being.

The Court, in its advisory opinion on the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania answered the questions put by General Assembly concerning the obligations of those States to implement dispute settlement procedures of the Peace Treaties. It was alleged that in dealing with the question of the observance of human rights and fundamental freedom in these three States the Assembly was interfering or intervening in matters essentially within the domestic jurisdiction of the States. The basis for the allegation was derived from Article 2, para 7 of the United Nations Charter. The Court held after taking Article 1, para 3, Article 55 and Article 56 of the United Nations Charter into consideration, that any question of breach of these treaty obligations-if they obligation-equally would not be matters essentially within the domestic jurisdiction of a State. The conclusion has been important to the contemporary international law of human rights in view of the fact that later the Court held that these Charter provisions do give rise to international obligations.

In South West Africa Cases brought by Ethiopia and Liberia against South Africa, it was alleged that the practice of apartheid in South West Africa constituted a violation of South Africa’s mandatory obligation to promote to the utmost, the well being of the inhabitants of the territory. Rejecting South Africa’s preliminary objections as to the jurisdiction of the Court in 1962 the Court in its final judgment in 1966 held that applicants had not established any legal right or interest appertaining to them in the subject matter of the dispute. It also held that the arguments of Ethiopia and Liberia amounted to a plea that the Court should allow the equivalent of an ‘acrio popularis’ or right resident in any member of a community to take legal action in vindication of a public interest. The Court held that such a right did not find place in international law though it may be known to exist in certain municipal systems of law.

As such the stage of merits, which had generated exceptionally extended and detailed arguments over human rights issues could never be reached. Schwellb’s comment upon the holding of the Court is that what is a flagrant violation of the purpose and principles of the charter when committed in Namibia

is also such a violation when committed in South Africa proper or, for that matter, in any Sovereign Member State.\footnote{Schwelb, Egon, “The International Court of Justice and Human Rights Clauses of the Charter,” AJIL, Vol. 66, 1972, p.349.}

In \textit{Barcelona Traction, Light and Power Company Limited},\footnote{Belgium \textit{v.} Spain, I.C.J. Reports 1970.} case when holding the applicants claim inadmissible the Court distinguished between the obligation of a State towards the international community as a whole and those arising \textit{vis-a-vis} another State in the field of diplomatic protection.

By it the Court has found that the rules concerning basic rights of the human person are the concern of all states, that obligations flowing from these rights run \textit{erga omnes}, that is towards all States. Thus, it follows that, when one State protests that another is violating the basic human rights of the latter’s own citizens, the former State is not intervening in the latter’s internal affairs, it rather is seeking to vindicate international obligations, which run towards it as well as all other States.

In the \textit{Nottebohm Case},\footnote{Liechtenstein \textit{v.} Guatemala, I.C.J. Reports 1955, p.4.} the issue was whether Liechtenstein could exercise diplomatic protection \textit{vis-a-vis} Guatemala on behalf of Nottebohm. The Court held that in view of the absence of any bond of attachment between Nottebohm and Liechtenstein, the latter was not entitled to extend its protection to Nottebohm \textit{vis-a-vis} Guatemala and that, accordingly, its claim was inadmissible.

Still the law of international claims has been replete with limitations on the exercise of diplomatic protection which may have precisely such a result but the question still remains if the fundamental human rights indeed are of fundamental importance should their pursuance on the international plane be so limited by traditional rules of diplomatic protection.

In its advisory opinion in the \textit{Western Sahara Case},\footnote{I.C.J. Reports 1975, p. 12.} the Court expressed its support to the applications of the principle of self- determination through the free and genuine expression of the will of the people of the territory.
In the case concerning *United States Diplomatic and Consular Staff in Tehran*, the Court held unlawful the detention of the hostages, occupation of the embassy of the United States and rifling of the embassy archives. It also held that:

“Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”.

In 1970, the Security Council requested an advisory opinion of the Court on the *Legal consequences for States of the continued presence of South Africa in Namibia despite a Security Council Resolution holding, as a consequence of General Assembly Resolution 2145 (XXI) that presence to be illegal*, the Court found that the continued presence of South Africa being illegal. South Africa is under obligation to withdraw its administration from Namibia immediately and thus to put an end to the occupation of the territory.

According to the Court, under the Charter of the United Nations, the former mandatory had pledged itself to observe and respect in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish and to enforce distinction, exclusion, restriction and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights, is a flagrant violation of the purposes and principles of the Charter.

These holdings are of fundamental importance to the contemporary character of international law governing human rights.

Egon Schwelb says that “the Court leaves no doubt that in its view the Charter does impose on the members of the United Nations, legal obligations in the human rights field”.

In *Military and Paramilitary Activities in and Against Nicaragua*, the Court held that:

“While the United States might form appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be appropriate method to monitor or ensure such respect”.

The Court concluded that the protection of human rights can not be compatible with the mining of ports, the destruction of oil installations and support for the Contras and held that any argument derived from the protection of human rights in Nicaragua could not afford a legal justification for the conduct of the United States.

The *Electronica Sicula S.P.A. (ELSI)*, is a State taking up the claim of its nationals in the Court and espousing it in an area of human rights i.e., property rights. The Court found no violation of such rights as established by treaty and it also found a claimed arbitrary act to be absent, which it defined as an act contrary not to “a rule of law” but “to the rule of law”.

In its advisory opinion in *Mazilu Case (Application of Aigicie VI, Section 22 of the Convention of the Privileges and Immunities of the United Nations)*, the Court held that a special rapporteur of a Sub-Commission of the United Nations Human Rights Commission was entitled to privileges and immunities of a United Nations expert on mission— even in circumstances in which he had not been permitted to leave Romania to perform its function.

In the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, having regard to the application filed by the Republic of Bosnia and Herzegovina, instituting proceedings against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violation by Yugoslavia of the Convention on the Prevention and Punishment of the Crime of Genocide the Court made an order unanimously providing that the

---

Government of the Federal Republic of Yugoslavia should immediately, in pursuance of its undertaking in the convention on the prevention and punishment of the crime of Genocide, take all measures within its power to prevent commission of the crime of Genocide.

By 13 votes to 1 it further provided that the Government of Federal Republic of Yugoslavia should, in particular, ensure that any military, paramilitary or irregular armed Units which may be directed or supported by it as well as any organisation and persons which may be subject to its control, direction or influence do not commit any acts of Genocide, of conspiracy to commit Genocide, of direct and public incitement to commit Genocide, or of complicity in Genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group.

The Court also directed that the Government of Federal Republic of Yugoslavia and that of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute or render it more difficult of solution.

That the influence of the Court on the evolution of international law of human rights has been considerably and predominantly constructive is apparent from the Survey of the cases that the ICJ has treated—the question of human rights and allied matters. Although there appears no prospect that the Court will become in the near future a Court of Human Rights, it can still be expected that the Court’s contribution to the progressive development of the international law of Human Rights will continue unchecked.

3.7 Development in the Environmental Law

The importance of environmental protection was foreseen by Judge Jennings as early as 1967 in his splendid and comprehensive Hague Academy Lectures in the chapter on ‘State Responsibility’.66 He then saw environmental protection as an urgent problem, warning, for instance, against the dangers of dumping nuclear waste in the sea, and of the wholesale use of detergents,

pesticides and fungicides. Judge Jennings commented as well on certain so-called ‘experiments’ in space and their sometimes disastrous effects. He stated rightly that ‘a governing principle ought to be that nothing of man’s environment should be subject to the risk of large-scale change until the natural phenomena which might be changed or obscured, have been studied, and their nature and functions established with reasonable certainty’. His interest in the environment has persisted.

This is the field in which international law needs urgent development in respect of the protection of the environment and the problems of maintaining sustainable developments. The World Commission on Environment and Development has pointed out that “human laws must be reformulated to keep human activities in harmony with the unchanging and universal laws of nature”.67

There has been little opportunity for the Court to contribute to the development of this field of law. It would be desirable that environmental disputes falling within the ambit of international law should be brought before the Court for authoritative and prudent settlement on the basis of law.

In the North Sea Continental Shelf Cases,68 the Court made an important development in this branch of the law in establishing the primacy of equitable principles, in delimiting the continental shelves between States having opposite or adjacent coasts. When applying these principles account should be taken of all relevant circumstances and of the principle of natural prolongation. The unity of deposit could be included as relevant circumstances for environmental considerations.

In Nuclear Tests Cases,69 Australia and Newzealand requested the Court to indicate provisional measures to forbid France from further nuclear testing in the atmosphere. The provisional measures indicated by the Court which were regarded by the respondent State as a grave interference with its Sovereignty on the mere possibility of damage by nuclear fall out, show the extremely creditable

sensitiveness of the Court to the vital importance of prevention of this form of environmental damage.

In the *Fisheries Jurisdiction Cases*,\(^\text{70}\) the Court made pertinent observations which gave the very first start to the development of the principles of modern environmental law. The Court said that the rights of the coastal State must have preference over the rights of other States in the coastal fisheries of the adjacent waters and have nevertheless to be exercised with due regard to the rights of other States and the claims and counterclaims in this regard have to be resolved on the basis of considerations of equity. No State could exclusively appropriate natural resources of the environment and ignore the essential aspect of common heritage of the global community. This was a distinct contribution of the Court to the development of environmental law to serve the best interests of the community.

In the *Gulf of Maine Case*\(^\text{71}\) relating to the delimitation of maritime boundary between Canada and United States environmental considerations were regarded by both the parties as of considerable importance. The Chamber in deciding the dispute did not give expression to the importance of environmental considerations which it could do without making any alteration in its decision.

In *Certain Phosphate Lands in Nauru*,\(^\text{72}\) Nauru commenced proceedings against Commonwealth of Australia in the ICJ in 1989. Both the parties had accepted the compulsory jurisdiction of the Court pursuant to Article 36, para 2 of the Statute of the Court. Nauru was seeking a declaration from the Court that Australia was bound to make restitution or reparation to Nauru for the damage and prejudice it had suffered, primarily as a result of Australia’s failure to remedy the environmental damage it had caused Nauru in the Course of administration of Nauru first under the mandate system of the League of Nations and subsequently, under the United Nations Trusteeship system. The preliminary objection as to jurisdiction and admissibility by Australia have been rejected by the Court. For the

---


\(^{71}\) Canada, United States, I.C.J. Reports 1984, p.165.

first time in History, there is available to the Court the opportunity to consider a breach of trusteeship obligations. The Court is in a position to deal with issues like environmental damage along with others i.e., self-determination, permanent sovereignty over natural resources and colonial exploitation, the issues which have acquired immense significance to the jurists in the international field in the present times but which have been evading sustained consideration by the Court itself.

The sphere of activity of the International Court of Justice is limited. It is curbed by the conditions of consent of the parties and the absence of any execution machinery. Yet the work the Court has done is praise-worthy. In providing a body of case law it has presented an example of international law of a very high value in existence.

Courts are not supposed as the most suitable agencies for the development of the law. The absence of some other suitable means for making laws has always been felt in the international sphere. Even if any alternative means become available the importance of the International Court will not be lost. It will continue to introduce refinement and reformation into the law which will be given to it for administration of justice.

Until any such arrangement acceptable to one and all is possible, the Court must be fed with maximum work for the full utilisation of its capacity. To reduce the legal costs, the suggestion of regional Courts may also be implemented and tried. The experience with the World Court until flow has not been of dissatisfaction and wherever judgments have been rendered their execution has been forthcoming. The unsuccessful litigants have bowed to the spirit of justice even when not pleased with it or avoided to conflict with it. The court has been duly respected as such and it is expected that in times to come it will continue to meet the needs of international justice.

3.8 Protection of Foreign Investments

This subject is of vital interest to the developing countries in their relations with developed States. The Court has shown the path to pursue and its observations, in this regard, which though obiter are certainly revealing and also helpful.
In describing the position of the law relating to multinational corporations the Court has pointed out that evolution of the law had not gone far enough to give birth to accepted rules to govern this subject. The Court observed:

"Considering the important developments of the last half-century, the growth of foreign investments and the expansion of the international activities of corporations, in particular of holding companies, which are often multinational, and considering the way in which the economic interests of States have proliferated, it may at first sight appear surprising that the evolution of law has not gone further and that no generally accepted rules in the matter have crystallized on the international plane. Nevertheless, a more thorough examination of the facts shows that the law on the subject has been formed in a period characterized by an intense conflict of systems and interests. It is essentially bilateral relations which have been concerned, relations in which the rights of both the State exercising diplomatic protection and the State in respect of which protection is sought have had to be safeguarded. Here, as elsewhere, a body of rules could only have developed with the consent of those concerned. The difficulties encountered have been reflected in the evolution of the law on the subject."73

This does reveal an unexplored field for purposes of codification. Furthermore, the Court did not hesitate to elaborate the aspect relating to what it considered to be necessary for securing adequate protection in the field of foreign investments and indicated what was conspicuously absent in that case. The Court observed:

"Thus, in the present state of the law, the protection of shareholders requires that recourse be had to treaty stipulations or special agreements directly concluded between the private investor and the State in which the investment is placed. States ever more frequently provide for such protection, in both bilateral and multilateral relations, either by means of special instruments or within the framework of wider economic arrangements. Indeed, whether in the form of multilateral or bilateral treaties between States, or in that of agreements between States and companies, there has since the Second World War been considerable development in the protection of foreign investments. The instruments in question contain provisions as to jurisdiction and procedure in case of disputes concerning the treatment of investing companies by the States in which they invest capital. Sometimes companies are themselves vested with a direct right to defend their interests against States through prescribed procedures. No such instrument is in force between the parties to the present case."74

Thus, by pointing to a lacuna and drawing attention to what could have been done, the Court may be said to have helped to evolve the law on the subject by indicating the direction of such development. There would appear to be a need for a multilateral treaty to regulate the inter-State activity of multinational corporations with a view to protect the interests of all parties concerned. This is so essential from the viewpoint of developing countries that the codifier could profitably take it up as one of his very fruitful exercises.

* * *

CHAPTER – VIII
ICJ : CONCLUSION AND SUGGESTIONS

"There can be no peace without justice, no justice without law and no meaningful law without a court to decide what is just and lawful under any given circumstance"

- Benjamin B. Ferencz, a Former Nuremberg Prosecutor

1. CONCLUSION

This would particularly appear to be an irresistible conclusion if one were to also recall the existence of a well-known limitation inherent in the judicial process, which is also immediately relevant in the context of its popularity in the community which it serves. It is inevitable that at the conclusion of litigation one of the two opposing parties – or even both – could be disappointed; and at least one of them may have only participated in the proceedings because, in the relevant legal order, the summons issued by the Court, at the instance of the other party, had to be obeyed. Hence neither the contentious character of litigation nor the inescapable nature of a judicial process is conducive to earning immediate and unqualified popularity for the tribunal, although it may constantly and sincerely endeavour to serve the best interests of the community.

In international law, adjudication and post-adjudication are two distinct, and separate phases in the process of settlement of disputes. The adjudication phase, mainly legal in character, relates to the settlement of disputes and its binding nature; whereas enforcement of decisions and judgments is the prime concern of the post-adjudication phase, which is more of political in character. This study is mainly focused on the post-adjudicative phase, i.e., enforcement of international decisions in inter-state disputes rendered by judicial organ and arbitral tribunals and methods of securing compliance with such decisions.

Settlement of inter-state disputes by peaceful means is a well-recognised principle of international law and has been enshrined in various bilateral and
multilateral treaties. The Covenant of the League of Nations in Article 13, para 1, provided for submission of disputes to arbitration or judicial settlement. Article-2, para 3, of the United Nations Charter similarly enjoins the Members of the United Nations to settle their disputes by peaceful means. The peaceful means, in accordance with Article 33 of the Charter are negotiations, inquiry, mediation, conciliation, arbitration Judicial settlement, resort to regional agencies or other arrangements. The modes such as negotiation, good offices and mediation, conciliation and inquiry are called as diplomatic means, which, are more of political in nature. The diplomatic mode of settlement, no doubt, is a flexible method of compromise and usually do not suffer from any constitutional validity. These diplomatic mean's are out of the scope of this study.

Arbitration and judicial settlement are the adjudicative means, which generally follow a specified procedure. Arbitration has been defined, by the International Law Commission, as "a procedure for the settlement of disputes between States by a binding award on the basis of law and as a result of an undertaking voluntarily accepted". The arbitral tribunal is composed of judges who are chosen by the parties. This tribunal may be established ad-hoc by the parties or it may be a continuing body to handle certain categories of disputes. The modern trend has been towards the institutionalised arbitration where the rules in regard to the choice of arbitrators, the conduct of arbitration proceedings, and the rules regarding awards and their enforcement are well known to the parties in advance when reference to arbitration is made to such a body. Where the arbitration is undertaken by an arbitral institution, its rules of procedure will usually be explicitly or implicitly agreed by the parties. But its rules are likely to provide that the parties may agree on their own procedure. When parties to a dispute refer their dispute to an arbitrator or to an arbitral tribunal, in fact, they have accepted that the award of the tribunal shall be final and binding upon them unless stipulated otherwise. It is concluded from the finality character of the international arbitral awards that the awards are not appealable. Even an arbitrator cannot interpret or modify his own award by revising it after the tribunal has completed its functions, unless through an agreement the parties expressly permit
the tribunal to do so. There is a well-established rule under customary international law that award is binding on the parties and it shall be carried out immediately unless a time-limit has been fixed by the tribunal within which it must be carried out in its entirety or parity.

In accordance with the vast record of arbitral procedure, it has been proved time and again that the awards are generally carried out and have practically met with acquiescence and fulfillment. Nevertheless, the problem of securing enforcement of awards has not been resolved completely as is evident in cases such as Beagle Channel (1977) between Argentina and Chile, in which the award was not accepted by Argentina; Maritime Delimitation Arbitration (1989) between Guinea-Bissau and Senegal, in which the award was rejected by Guinea-Bissau, In the past decades also, some of the awards, have not been carried out. For instance, awards in the Orinoco Steamship Company case (1904), between United States and Venezuela; the King of Spain's Arbitration (1906), between Honduras and Nicaragua; the Chamizal Arbitration case (1911), between United States and Mexico; the Societe Commercials de Belgique case (1935 & 1936) between Belgium and Greece have not been complied with by losing parties But, unfortunately, no mechanism existed under international law for the enforcement of arbitral awards in inter-state disputes.

The PCIJ, which was established in 1920, started functioning in the year 1922. Its first judicial pronouncement was made in the form of an advisory opinion in the Designation of the Workers delegate for the Netherlands it the Third Session of the International Labour Conference case. The Court gave thirty-two judgments and twenty-seven advisory opinions during its existence. Many of these judgments and advisory opinions were of great importance, and international lawyer will admit that they have permanently enriched and enlarged the international law. A brief summary of the records of the Permanent Court of International Justice shows that in the entire history of judicial process of the Court, in no case did a State refuse to carry out judgment rendered by the Court and fortunately, no case of non-compliance arose during the regime of the PCIJ. Thus, the enforcement machinery that was provided under Article 13 (4) of the
Covenant had served the purpose of execution of judgments.

In fact, compliance with the decisions of international tribunals by the States concerned before the United Nations had been so much impressive that many authors thought that the execution of international judicial awards is a problem of minor importance. For example, Jessup wrote in 1947 that, "although there has been no international marshal to enforce the decisions of international courts, but their decisions have been respected...enforcement of judgments of international courts has never been an international problem."

Nevertheless, certain attempts were underway to provide measures to secure enforcement of international judicial decisions. According to Article 10 of the Geneva Protocol for the Pacific Settlement of International Disputes of 2 October 1924, in the case of hostilities, a State which had refused, to carry out the judgment of the Court would, under certain conditions, be considered as an aggressor. At the San Francisco Conference in 1945, it was again proposed that refusal to comply with a decision pronounced by a World Court should be considered as an act of aggression. The International Law Commission (ILC), constituted under the United Nations, took up similar proposal in 1970 during the course of its examination of the definition of aggression. However, such proposals have not hitherto commanded any general assent.

On the other hand, the Charter of the United Nations imposes the obligation of compliance with the decisions of the present World Court, ICJ, upon each Member State by stating in Article 94 (1) that, "Each Member of the United Nations undertakes to comply with the decisions of the International Court of Justice in any case to which it is a party."

But, in spite of this, the present Court is saddled with the problem of non-compliance, which has been further aggravated by non-appearance (which is a recent problem since 1970s) of the parties before the Court. In several cases in 1970s and 1980s, the Court experienced the phenomenon of the "non-appearance" of defendant, which is more a problem of jurisdiction. The defendant contests the

---

jurisdiction of the Court on technical grounds. For example, Iceland boycotted the proceedings in the *Fisheries Jurisdiction case*, in the *Nuclear, test cases*, France, in the *Aegean Sea Continental Shelf case*, Turkey, in the *United States Diplomatic and Consular Staff in Tehran case*, Iran, in the *Military and Paramilitary Activities in and against Nicaragua case* the United States did not appear before the Court. Non-appearance has become a frequent occurrence on the proceedings of ICJ, and in fact poses a challenge to the jurisdiction of the Court, particularly when the jurisdiction of Court had been invoked under Article 36 (2) of the Statute (optional clause) order to safeguard the interests of the parties and to settle the disputes without any impediments such as non-appearance, it was provided under Article 53 of the Statute that "the Court must satisfy itself that it has jurisdiction under either Article 36 or Article 37 of the Statute." In the *Corfu Channel case*, though Albania refused to appear before the Court, the Court had established its jurisdiction on the basis of *forum prorogatum*, to determine compensation in the proceedings on the merits. Similarly, in the *Military and Paramilitary Activities in and against Nicaragua case* when the United States refused to appear before the Court, the Court decided to continue the proceedings on merits even in the absence of the US on the basis of Article 36 (2).

The problem of 'non-compliance', though different from 'non-appearance', is inter-related. Whenever the States have contested the Jurisdiction of the Court and have not appeared, the chances of non-compliance with the judgements are high. In fact, all cases of non-compliance with the judgments of the ICJ are also the cases of non-appearance. Even in such cases interim measures granted by the Court have not been complied with. For example, In the *Corfu Channel case* (1948), the *Fisheries Jurisdiction cases* (1972), the United Nations diplomatic and Consular Staff in Tehran case (1980), the *Military and Paramilitary Activities in and against Nicaragua case* (1984). In the case of non-compliance States are reluctant to be bound by the decisions rendered by the Court, unlike challenging the authority of the Court to render the decision. Non-compliance is usually accompanied by an aversion having some legal justification under international law.
The pertinent question is whether States should comply with the decisions of the Court in which they have chosen not to appear before the Court? In other words, whether the parties should comply with such decisions, which are decided in their absence?

In Article 94 (1) of the Charter, there exist a general principle of international law according to which, when States agree to submit their dispute to an international tribunal, they assume the obligation to comply with the decision of the tribunal. Non-compliance with the decision of the International Court or tribunal is an international wrong, a breach of various obligations arising out of a duty imposed by international law. This article does not speak about the decisions rendered in consequence of non-appearance. Thus, it could be a plausible explanation that States are under an obligation to comply with the decision only when they agree to it. If States, in general, have failed to appear before the Court or have decided not to appear before the Court, are under no obligation to comply with the decisions. This interpretation would seriously hamper the enforcement of judicial decisions. On the other hand, when the Jurisdiction of the Court has been involved under Article 36 (2), their-express agreement to the jurisdiction is there on the form of Declaration filed with the Court. Failure to comply with the judgment and non-appearance is the breach of the international rule of *pacta sunt servanda*.

The ICJ is the principal judicial organ of the United Nations whose decisions should be enforced by the United Nations, in the case of non-appearance, hence, there is the role of the Security Council. The reason behind entrusting the task of enforcement of judgment to the Security Council is obvious. The Council is not only an executive organ of the United Nations but also has its own techniques of enforcement in circumstances where the dispute or situations degenerates into an actual 'threat to the peace', "breach of the peace" or "an act of aggression" within the meaning of chapter VII of the Charter.

Certainly every act of non-compliance—may not constitute an imminent threat to peace. Therefore, the acceptance of this view would mean that the Council is devoid of power to act in such cases where there is no threat to the
peace. There is nothing as such in the wording of Article 94 (2) and there seems to be no reason to believe that there is a restriction on the authority of the Council under this provision. Furthermore, this article has made a considerable change in the functioning of the Security Council. Formally, the Security Council has jurisdiction only in matters concerning the maintenance of peace and security. In other words, the enforcement power given to the Security Council under chapter VII is in addition to its powers to enforce compliance with judgment of the ICJ under Article 94 of the Charter.

Enforcement of a judgment of the Court is plainly, nonprocedural, and decisions subsequent to the inscription of a question relating to enforcement of a judgment of the Court would require the affirmative votes of the permanent members of the Council. The following matters, however, are considered as procedural: inclusion of items in the agenda; the order of items in the agenda; deferments of consideration of items on the agenda; removal of items from list of matters of which the Security Council is seized; ruling of the President; suspension or adjournment of a meeting; invitation to participate in the proceedings under Article 31 and 32 and Rule 39; conduct of business; and convocation of an emergency special session under the Uniting for Peace Resolution of 3 November 1950. However, the distinction between "procedural" and other matters has not always been obvious and has occasionally been the subject of extended controversy.

The customary international law allows a successful party to take certain measures to carry out the judicial decisions and also arbitral awards. The successful party can resort to self-help. The term self-help is well-known in international law. The self-help can involve use of force or it can be without force. The self-help, involving use of force is in the nature of reprisals. Self-help may be done either through the use of force or it may be exercised as non-coercive (peaceful) measures generally designed to exert economic or diplomatic pressure on the recalcitrant State for complying with a request for satisfaction. In the case of enforcement of arbitral awards in 1898, in the Cerruti Arbitrations case, between Italy and Columbia, Italy resorted to self-help when Columbia rejected
part of the arbitral award, rendered by the arbitrator, President of the United States, in 1894. Italy, thereupon, sent its fleet to Colombian waters and the Commander of the fleet sent an ultimatum regarding enforcement of the award. This action by the Italian Government secured compliance with the award, by Colombia. In the Corfu Channel case: (1949), when Albania refused to pay compensation under the Judgment of the Court, the United Kingdom resorted to coercive measures as self-help against Albania.

No need to say that the use of force by one State against another State to obtain execution of international decisions is now generally regarded as illegal. Resorting to the use of non-forcible measures or threaten to use force short of war by successful party to compel the losing party for enforcement of decisions is one of the measures of self-help in the form of reprisals. However, the conditions for legitimate resort to reprisals are well supported by State practice when there is a previous violation of international law by the other party; second when they have been preceded by an unsuccessful demand for redress; and when taken, must be reasonably proportionate to the injury suffered. But most of the writers have deplored the use of forcible measures for enforcement of decisions. For example, Waldock states that the principle of resorting to forcible self-help was gravely weakened by the fact that conversion of forcible measures into war puts the case outside any legal principles. None of the recent authors deny this view.² Rosenne says preventive or enforcement measures can only be taken in conformity with the decisions of the competent organs;³ Verma supports this view and says that use of force as a part of retaliatory action is illegal under the modern international law.⁴

Under the Charter of the United Nations, enforcement of judicial decisions or arbitral awards by successful party by use of armed force is not legal. The Charter obligates States to settle their disputes by peaceful means so as to preserve international peace and security and justice (Article 2, para. 3). Similarly, the

² Waldock, "The Regulation of the use of Force by Individual States in International Law" (The Hague: 1952). p. 468

272
General Assembly Declaration on principles of International Law concerning Friendly Relations and Co-operation among States of 24 October 1970 declares that, "States have a duty to refrain from acts of reprisals involving the use of force". This view was expressed by the Court in its judgment in the United States Diplomatic and Consular Staff in Tehran case (1980). While the case was being deliberated before the Court, the United States conducted, on 24 April 1980, an armed incursion into Iranian territory as a form of self-help, in an attempt to secure the release of the hostages being held in Tehran.

There are a great variety of regional organisations that are instrumental in the peaceful settlement of disputes and enforcement of decisions. This ranges from political bodies such as the Organisation of American States (OAS) and the Organisation of African Unity (OAU), to more judicial bodies such as the Europaan Court of justice, the European Court of Human Rights, the Central American Court of Justice and Inter-American Court of Human Rights. Obviously, these regional forums are eminently suitable for enforcement of decisions for various reasons. For example, a sense of regional responsibility and solidarity may prompt the parties to comply with the decisions and make it politically less difficult to secure the participation of other States in the measures to secure compliance at regional level.

International law lacks many of the formal institutions present in national legal system. There is no formal legislative body, no compulsory Court machinery with general jurisdiction and no police force. It does mean that international law does not operate in the systematic manner. While, this; may-not be a serious defect, because of the different purpose of international law, there will always be some difficulties inherent in international legal order due to much prevailed concept of State sovereignty, to enforce international decisions.

It would be a mistake to conclude that international law is a perfect system. There is much required to reform international law to make it more effective. Strictly speaking, the development of international law can be achieved only by States and States themselves. The United Nations, other international organizations and the International Law Commission may propose substantive
changes in the law or bring changes in existing procedures, but the development of the system ultimately depends on the political will of sovereign.

When the role of the Court is evaluated in the light of its popularity it can be asserted with emphasis that the ICJ has not been a failure if viewed as an experiment amid the fast evolving international community in search of the establishment of a World Public Order. Besides, a process of justice based on the consent of the litigating parties could only be a mile-stone on the long journey ending ultimately in proper and compulsory adjudication. Thus the ICJ is an experimental institution which ought to be assessed in the light of its future necessity and immediate possibilities. The historical purpose of the international courts remains even as the twenty-first century looms closer and that is the reality of the Court’s jurisdiction.

This study reveals that the ICJ remains a forum for Sovereigns, a fact of life that restricts the judges and continues to outrage jurisconsults, lawyers, academics and the global community, who seek a forum to resolve disputes and assure world peace.

One of the basic reasons for the establishment of the World Court was to safeguard World Peace. The severely circumvented jurisdiction placed at the World Court’s disposal meant only that the Court resolve only narrowly defined legal issues but not political controversies. This had been the basic contention of the United States in its objection to the Court’s jurisdiction in *Military and Paramilitary Activities in and Against Nicaragua*, that the case did not involve a narrow legal dispute. Lissitzyn observes those arguments as “political disputes” or that “the court lacks the competence (even if it has jurisdiction) to resolve a dispute involving military conflicts, continue to be advanced simply because states refuse to give their express consent”. As such a State can not be compelled against its political will to appear and defend charges before the Court. This defence of prior consent continues to be advanced as can be seen from the case between *Iran and United States, relating to the destruction of a civilian air craft within international airspace*. Justice S. Oda in his dissenting opinion in the Nicaragua Case expressed that:

274
“Looking back at the history of the settlement of international disputes by arbitration or adjudication one may clearly see that the legal disputes subject to such settlement were limited in scope and more basically that there referral to such a settlement was always to depend ultimately on the assent of the States in dispute”.

The hesitancy of the states to submit their disputes to the ICJ represents an accelerating trend that is hampering the future use of the court’s facility. That the states fear an adverse judgement and believe often erroneously that their vital interests may be compromised; such a psychological blockage is all too obvious. The political climate with in the UN being reflected in this kind of attitude has the effect of retarding the entire global conflict resolution process. The problem continuous. Something ought to be done to encourage states to avail themselves of the ICJ. By incorporating dispute settlement provisions with in the scope of bilateral treaties and multilateral conventions. They have the opportunity and the ability to utilize the ICJ.

The most serious problem which international adjudication faces is the refusal of the respondent states to appear at the ICJ and defend their positions. Furthermore, states even refuse to abide by the orders, interim measures of protection and judgements of the court. The list of respondent governments that refuse to appear or even withdraw from proceedings in progress is growing continuously. It appears that such refusal to defend state actions is the most severe problem which the court will confront for many years to come. The acceptance of compulsory jurisdiction by all states including those who are not UN members is the final goal and from the very beginning it was the objective of the World Court, but it appears this objective may not be realized in years to come.

Though the current political climate does not leave it feasible, statesmen and jurists persist in applying the Court’s machinery by means of compulsory settlement of disputes for the sake of world peace.

Today, the court is busier than it has ever been before. Disputes have been
submitted to it not only by its most established ‘clients’, but by states of: Latin America\(^5\); Eastern Europe\(^6\), Asia\(^7\) and Africa\(^8\). It has also seen increasing use of the possibility of requesting an advisory opinion, including the request by both WHO and the General Assembly for an opinion on the legality of nuclear weapons,\(^9\) and by the General Assembly on an aspect of the Israeli/Palestine problem.\(^10\)

On the practical level, there are signs that the court is becoming victim of its own success. The principle that all cases are heard by the full Court unless the Parties agree to a chamber means that there is a limit to the number of cases that can be heard and determined each year: and although the registry has been enlarged and some of the Court’s working methods improved, there are signs of an overload, judicial settlement has never been a speedy means of resolving disputes, but it is to be feared that States considering bringing a case to the court may be put off by the likely delay before a decision is given, due to the presence of so many other cases in the queue.

A consistently high standard has however been maintained in the quality of the court’s decision, even though they have, as always, been exposed to healthy criticism. The bringing of more cases has meant more opportunities for contribution to the development of the Law; On a number of occasions, for

\(^5\) Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA), Border and Transborder Armed Actions (Nicaragua v Honduras, Nicaragua v Costa Rica), Land, Island and Maritime Frontier Dispute (Honduras/El Salvador, Nicaragua intervening), Territorial and Maritime Dispute (Nicaragua v Colombia); Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea; Avena and other Mexican Nationals (Mexico v USA); Territorial and Maritime Dispute (Nicaragua v Colombia).

\(^6\) Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Application of the Genocide Convention (Bosnia and Herzegovina v Yugoslavia), Legality of Use of Force (Yugoslavia against 10 NATO countries); Application of the Genocide Convention (Croatia v Yugoslavia; Maritime Delimitation in the Black Sea (Romania v Ukraine).

\(^7\) Aerial Incident of 10 August 1999 (Pakistan v India); Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia); Sovereignty over Pedra Blanca/Pulau Batu Pateh, Middle Rocks and South Ledge (Malaysia/Singapore).

\(^8\) Frontier Dispute (Benin/Niger); Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo); Armed Activities on the territory of the Congo (Democratic Republic of the Congo v Rwanda); Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium); Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Burundi; v Rwanda; v Uganda); Certain Criminal Proceedings in France (Republic of the Congo v France).

\(^9\) Opinions differ, however, as to the wisdom of using the advisory opinion procedure in an area of this kind (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, Dissenting Opinion of Judge Oda, p. 330).

example, the court has been able to supplement the work of International Law Commission by setting authoritatively the customary Law status of a rule embodied in a treaty or other text emanating from the ILC.

Considerable use has been made of the possibility of requesting the indication of provisional measures, *inter alia* in situations of armed hostilities. It remains to be seen, however, whether the ruling in the *Law Grand* case, that provisional measures give rise to a binding obligation of compliance, may not have a negative influence on advance acceptance of jurisdiction. The provisional measure procedure has always offered a temptation to states to commence proceedings on a shaky jurisdictional foundation in the hope of getting at least the short term benefit of an order for provisional measures, and this all the more attractive if the order is immediately binding. The only defence against such tactics is to limit generalized acceptances of jurisdiction that may be misused.

The prospects as regards acceptance of jurisdiction are otherwise mixed: existing treaties for dispute settlement, compromissory clauses, The optional dispute settlement protocols continue to provide a solid background of jurisdiction, but the modern trend is not to include such clauses automatically in new multilateral Treaties. Nor does the optional clause system seem to be thriving. The number of states having field declarations of acceptance is not increasing, and the declarations that have been filed are much qualified by reservation. Some disquiet has also been caused by what is perceived as a trend whereby the court, in order to comment on legal questions of substantial current importance, has been over-generous. In its interpretation of Tax conferring jurisdiction. The decision in the *Oil Platforms* case in particular has been criticized on this ground. The development of a coherent system of intervention has been valuable, since many modern international disputes are plurilateral rather than bilateral. The Court is clearly alive to the need to review its own procedure, as is shown by the recent revision of the Article 79 and 80 of the rules, and the use of practice direction.

---

11 *Oil Platforms (Islamic Republic of Iran v United States of America)*, judgment, I.C.J. Reports 2003, p. 161
2. SOME FEASIBLE SUGGESTION

In order to accelerate the Utilization process and to improve the efficiently of the Court, there is a vast opportunity. By implementing the suggestions enumerated below it is expected that Court will be in a better position to cope-up with international adjudication than at present.

2.1 Improvements Relating to the Establishment of the Court

From the very inception of the PCIJ, the number of judges of the Court has remained static at fifteen. Contemporary changes and increasing awareness of today require that, with everything changing its shape and structure every now and then the composition of the International Court of Justice must also adapt itself to present day needs.

There is a widespread feeling that on account of increase in the membership of the United Nations, the number of Judges on the International Court of Justice must also admit of some additions. What should be the most appropriate size of this addition can be precisely asked for or recommended by only those who are manning the court at present. Erstwhile there does not appear to have been made any such demand or recommendations. Viewing the results of the Court's functioning from outside quarters, five to ten more judges should be added. It will not only broad-base the participation of World Community but increase the efficiency of the Court.

As has been discussed in a foregoing chapter the procedure of election of the Judges will contribute to the raising of the standard of Court's efficiency if the measures suggested to keep the Court clean of political influences are adopted and made part of the Court's Statute.

2.2 Improvements Relating to the Competence of the Court

The participation of international organizations in contentious proceedings of the Court is receiving extensive support now a day. The field of action of such organizations is expanding day by day and they are capable of bearing the traditional rights and obligations of States. As such the suggestions to extend the
Court's jurisdiction to include such organizations is well-founded. Any objections, on account of the fact that it might be difficult for the judgments to be executed because of non-stable existence of these organizations, are merely theoretical.

The organizations functioning unchecked are no doubt having their liabilities and the enforcement of those liabilities would face practical difficulties when judgment of the Court is given against them as well as when it is not given. Therefore, it is advisable to bring such organizations into the fold of legal responsibilities to avoid risks emanating from as well as against them. As the late professor Leo Grog's quite properly maintained:

"to revise Article34, para 1 and to give to international organizations, access to the contentious jurisdiction of the Court is merely to make good a long over-due omission, for as international legal persons they have the right to defend themselves in the judicial forum of the World."\textsuperscript{12}

2.3 Improvement in the Procedure of the Court

A Common complaint about the Court's procedure is that it is cumbersome and dilatory. But it is difficult to trace it to the Court itself. The period between the filling of the application and the giving of the judgment is sometimes unduly long, but this is for the most part on account of the governments taking lengthy periods in preparing and submitting their pleadings. Judging from the erstwhile experience it can be said that the Court proceeds with commendable speed as soon as the proceedings are over.

It is the internal innovations brought about by the judges which will provide the ground for the main improvements that may be introduced in the immediate future. The primary example is the periodic review of the Court's Rules and the continual re-examination of procedures. That the over-all efficiency of every judicial institution depends upon its judges and their supporting staff is beyond any doubt.

\textsuperscript{12} Groos Leo, "The International Court of Justice, Consideration of Requirements for Enhancing its Role in the International Legal Order," AJIL, Vol. 65, 1971, p. 302
Sometimes when the respondent state refuses to appear before the Court and defend its actions, it becomes difficult for the court on the basis of the claims put forth by the Applicant State, to satisfy itself that the claim is well founded in fact and law. Going according to the statements in the application is fraught with the danger of wrongful decision and liable to bring the Court under unwarranted criticism.

The responsibility to furnish the Court with all requisite evidence lies upon the state parties and where such evidence is not forthcoming the Court is left with only two choices; to drop the case; or to go out of bounds to collect the evidence by itself. Under any circumstances its competence does not empower it to do injustice. To cope with the difficulty either the competence of the Court has to be adequately expanded or a separate investigating wing has to be attached to it.

Cases are arising in which the Court is in need of additional factual evidence or in which the states request greater participation by the judges of the Court including by visiting the areas in dispute.

The South West Africa Case,\(^{13}\) provides one example in which the Court was requested to carry out an on the spot inspection.

All such situations display the intention that evidence be obtained from states and international organizations even when in those cases the states refuse to appear and contest the issues. The ICJ therefore needs greater authority to procure evidence when faced with such circumstances. The Court on the other hand has been criticised for its failure to utilize its full potential. Highest contends:

"Although the Court has brought flexibility and wide powers in matters, relating to evidence, it has not yet used them to their full potential any more than the Court itself has been used to its full potential. It did not fully use those powers in the Nicaragua Case.\(^{14}\)

\(^{14}\) Highe, Keith, "Evidence, the court and the Nicaragua Case," AJIL, Vol. 81, 1987, pp. 51-56.
Moor has expressed the opinion that "From this perspective, it continues to be suggested that the ICJ should have made greater use of its investigatory powers in the Nicaragua Case."¹⁵

Gormley on the other side is of the view that it was the obligation of the respondent to provide the Judges with factual information and refute evidence that had been submitted by Nicaraguan Counsel.¹⁶

The fundamental problem remains inspite of the viewpoint taken towards the South West African and the Nicaraguan judgments. The Court should assume a more direct role. It therefore appears in this context that improvements can be made provided that the Court brings its full authority into play. This is equivalent to saying that Judges have the jurisdiction and competence to improve the procedure of the Court. The Instance of the use of assessors by the Court—particularly in Chamber proceedings can be cited as constituting an additional confidence building measure. The conception of utilizing the services of the experts is not new in itself and is very much likely to enhance the range of the Court's competence. By obtaining assistance on scientific and technical issues during the proceedings the Court may be able to adopt its own outlook in the light of the information made available by the experts and be in a position to decide the case before it in a better manner.

2.4 Improvements Regarding Jurisdictional Basis of the Court

The Court's jurisdiction in contentious proceedings rests upon the consent of all the parties to the proceedings. Such consent is given through provision in treaties, providing for submission of disputes to the Court at the request of one party to a dispute; or through a declaration of acceptance of the so-called compulsory jurisdiction of the Court under Article 36, para 2 of the Statute, or by conclusion of an agreement to submit a dispute to the Court; or by actual participation in proceedings instituted unilaterally.

Due to the position of jurisdiction of the Court having been as it is, the ICJ

has been markedly under-utilised. From 1946 to 2008 the total tally of cases submitted to the Court is 110 contentious cases and 27 advisory opinions.

Given here are some suggestions which if accepted are likely to enhance the effectiveness of the Court:-

2.4.1 Making the Jurisdiction Compulsory

The lack of compulsory jurisdiction is one important factor which is accountable for the fact that more disputes have not been presented to the Court.

The absence of compulsory jurisdiction is viewed as a fundamental defect in the organization of international society and must be subjected to repeated examinations. Some jurists have proposed that instead of giving the states an option to accept the compulsory jurisdiction of the Court, the Court's compulsory jurisdiction should automatically extend over all states which ratify its Statute leaving option to the States to 'Contract out' of the Court's compulsory jurisdiction.

The states which have accepted the contract with hesitation will accept the decision as specially made for them and may not be under pressure to contract out. Even if they did they would not be contracting out completely. It is likely that the contracting out would be by formulating reservations which, howsoever bad their intent may be, might still leave to the Court a usable proportion of compulsory jurisdiction.

Even when Article 36, para 2 was in the Draft stage majority of the delegates desired that compulsory jurisdiction be conferred on the Court, although they could not succeed. In 1945, almost all of the Committee of Jurists except United States, Soviet Russia, with United Kingdom and France following the lead of the United States, preferred compulsory jurisdiction for the Court.

With the membership of the World body having considerably increased today it is likely that if the issue is taken-up for reconsideration the major powers would be persuaded to accept it. Today, the concept of Sovereignty which is the main obstacle to the compulsory jurisdiction being conferred on the Court, has been considerably diluted. Specialised agencies of the United Nations are handling
matters which under the classical view of Sovereignty would be termed as "strictly within the domestic jurisdiction of the States." Besides, the weaker nations of the World are refusing to be persuaded by the quiet diplomacy of nations which are stronger militarily. Perhaps conferring compulsory jurisdiction on the Court may result in increases of respect for the provisions of the Charter. Article 2, para 4 of the Charter forbids states from using force or the threat of force in interstate relations, except in the case of self-defence or collective enforcement measures under Chapter VII of the Charter. On the one hand the Charter prohibits the use of force and on the other the Court is without compulsory jurisdiction. This leaves no choice for the states between adjudication or arbitration on one side and war or other forcible measures of redress on the other. They must either go for adjudication or arbitration or resort to arms to break any stalemate imposed against them. If they pick the latter course they run across Article 2, para 4 which ultimately has the effect of undermining the Charter. Sub-paragraphs (a), (c) and (d) of Article 36, para 2 of the Statute are but particularizations of sub-paragraph (b) wherein the phrase 'any question of international law' has been used. Any revised listing of the kinds of disputes to which compulsory jurisdiction will apply will in effect limit the scope of compulsory jurisdiction. Rather it would be advisable to eliminate sub-paragraphs (a), (c) and (d) and to merge sub-paragraph (b) into the main paragraph of Article 36, para 2, so that all legal disputes concerning any question of international law would come within the ambit of the compulsory jurisdiction of the Court.

2.4.2 Advisory Jurisdiction

As the United Nations Organs and International Organizations can not institute proceedings to set-up an ad hoc Chamber for Advisory Opinion, it is suggested that permanent Chambers of the Court be established so that these entities may be in a position to request advisory opinions. The fear that the extended use of Chambers may weaken the Court's existing advisory competence has given rise to some opposition against the extended use of the Chambers. However, the true fact is that extension of the Court's jurisdiction and perfection of newer procedural alternatives will have beneficial effect of perfecting by
confidence building measures. An increased and broader range of available remedies will not harm the competence of the Court or the moral force of its holdings.

2.4.3 Appellate Jurisdiction

The PCIJ kept the hearing of appeals or review of judgments of lower tribunals outside its purview. This conservative approach is still the accepted standard.

The Hague Court will remain a forum of first instance, with a few exceptions relating to the United Nations Administrative Tribunal. The recognized exceptions in these instances indicate some flexibility in the Court's jurisdiction which can serve as the basis for the reconstruction of this rubric, in view of the fact that such an appellate type of review is currently pending before the ICJ namely the Dispute between Iran and the United States in the Case concerning the Aerial Incident of July 3, 1988 in which an appeal was taken by Iran against the decision by the Council of Civil Aviation Organisation of March 17, 1989.

It is accordingly possible that ICJ can take-up subsequent investigation of disputes notwithstanding the fact that prior judgments and opinions have been rendered. To cite in particular, the Namibia Advisory Opinion has to a large extent corrected the tragic judgment in the 1966 South West Africa Cases.

In case the Court's appellate jurisdiction is extended, the competence of the Court gets by itself, extended. It is common with the provision in international agreements to take recourse to the International Court unless the parties are agreed on some other mode of settlement. If the parties are agreed on arbitration in relation to a particular dispute, it should be possible for them to agree that the arbitral decision could be challenged before the International Court in certain circumstances. It may also be possible that provision to this effect is incorporated in the original dispute settlement provision. Only, the currency of arbitral decisions and their finality might wither out but this would be for betterment only and there is no disputing the fact that International Court can very well function as

an appeal Court.

2.5 Improvement in the Definition of International Law

As a result of decolonisation, the membership of the United Nations has undergone considerable increase since its creation. The Statute of the ICJ is basically on the same lines as that of the PCIJ. It conceives the international community as it existed in the beginning, of the Century when Colonial and imperial powers dominated the World. Today, the countries which became independent after the Second World War may not find the compulsory jurisdiction of the Court acceptable for reasons dear to them. This may be so inspite of the fact that when the United Nations was created, majority of the nations favoured acceptance of the compulsory jurisdiction of the Court. Probably the law which the Court is bound to apply is the reason for the new States' reluctance to accept compulsory jurisdiction.

If the United Nations Law is included in the primary source category under Article 38, para 1, the interests of the Third World Countries would be better serviced. They will be brought on an equal footing with the major powers, and play the decisive role in shaping customary international law. The Third World Countries have to a large extent shaped the United Nations Law. Should the major powers be able to show adamance about not granting the United Nations law the Status of primary source of law, it can be included in the category of subsidiary sources of law. As for the Court it should treat United Nations Law as a means to the determination of rules of law. Another suggestion which may be implemented at the same time is the replacement of the phrase 'the General Principles of Law Recognised:- by Civilized Nations, by the Words, "the General principles of law recognised by the Community of Nations." This proposed change in the style of the language would remove the effect of distinction drawn by classical European legal writers between the so-called 'civilised,' and 'uncivilised' nations.

2.6 Changes Imposing a New System

The Court, as presently constituted with its limitations and handicaps may not be having the opportunity of a major role to play. Attempts to enhance the
Court's importance have miscarried, and international adjudication could not
occupy a Central position in; dispute resolution, committed to the process and
legal principles accepted for such adjudication. Yet, the prospects of hope have not
been reduced to nothingness.

In spite of a good amount of differences existing in the perspectives of the
nations of the materially developed and the developing Worlds there are factors
which bring them on the same ground where they may find principles common
and acceptable to both. Such factors are expected to evolve legal principles which
both may honour and accept. Some more vital dispute settlement mechanisms are
already in the process of development and getting supported by both the sets of
nations.

These nations have a common legal heritage—anglo-American Common
Law and European Civil Law which form the basis of most of the legal systems of
Asia and Africa. Although, introduced because of the colonial era, even the
independence acquired in recent times does not encourage aversion for these
systems of law among the newly independent states, because they provide the
definite measures of stability. Retention of these systems has involved acceptance
of many of the major principles of the international legal systems. The increased
economic interdependence has generated larger areas of mutual interests. The
existence of such mutual interests is to a great extent responsible for the amiable
existence between the two sets of nations. The Third World looks towards the
developed nations for financial and technological assistance, which is doubtlessly
forthcoming.

These factors may not entirely eliminate the differences of perspective or
deface the colonial past but they give the impression that development of more
useful conflict resolution mechanisms may be given the thrust. The development
of international legal institutions on the following lines may prove more useful.

2.6.1 Establishment of an International Dispute Resolution Institute

An International Dispute Resolution Institute sponsored by the Court, when
established, can offer a wider choice of mechanisms to the nations of the World to
resolve disputes. The problems of losing in terms of prestige and falling victim to imprecise and uncertain legal principles may be minimised with the help of depoliticised and result-oriented dispute resolution mechanisms. Here, mechanisms like arbitration and mediation may be put into action under the direct sponsorship of the Court as appropriate modes for disputes settlement.

2.6.2 Establishment of Regional Courts

Although, the functioning of the Court and its membership have been designed to bring on one platform the divergent as well as convergent perceptions of law as held by the main forms of civilisation and the principal legal systems of the World, yet the element of distrust of one another lingers and a system of law created by blending together different conceptions not respectful of one another is failing to achieve the desired intellectual cohesion. The Judges elected as members of the Court may be able to give up their past allegiances and become perfectly impartial and dispassionate to met-out justice, yet the masses are unable to trust them because of the letters own ignorance and lack of self-confidence. This is the greatest hurdle in the way of the success of adjudication and particularly international adjudication. This hurdle can be removed if the method of adjudication is given the authority to set-aside all other methods and have its way; in other words if adjudication is upheld as the only device for settlement of disputes. A single international court functioning in the World may not capture the confidence of the entire world population. Regional Courts, in the area of every principal legal system, created may win the confidence of the masses and be more effective to further the cause of adjudication in the international sphere. Of course, the ICJ functioning centrally may assume the authority and responsibility to coordinate the activities of the various regional Courts and supervise their proceedings in such a way that legality does not take on different colours in different regions. It can also assume the ultimate appellate authority. Due warning should be taken of the fact that such a situation does not provide basis for the notion of Judges' Sovereignty.

2.7 Standards to Safeguard Enforcement of the Court's Decisions

Though there are no special measures available to the ICJ or the United
Nations Organization to make sure that the decision given by the court is hundred percent complied with excepting the powers placed at the disposal of the Security Council, there has been hardly any instance during the entire life period of the World Court erstwhile when the judgments it rendered were disobeyed, except a single case of *Corfu Channel*\(^\text{18}\) in which Albania failed to pay damages awarded to the United Kingdom. Even in the case of International Arbitration the instances of non-compliance are rare.

If Court is bestowed with unconditional compulsory jurisdiction and if international organizations and individuals get access to the Court the problem of enforcement may develop in the future. Among many functions of the Security Council one is to enforce the Court's decisions. The atmosphere of the Security Council is not free of politics and there also exists the power of "Veto". In such circumstances hundred percent guarantee of the enforcement of the Court's judgment is not achievable. The mechanism create for the enforcement of the Court's judgments may have to be altered or modified in order to do away with the snags. The states who consented at one; time to grant the members of the Security Council power to exercise Veto can at another time make provisions which my enable third to skip over the hurdle. If they agree, the issue of enforcement of a judgment in the event of the Security Council exercising Veto against it may be subjected to a vote both in the Genera Assembly as well as the Security Council. If three-fourths or two-thirds, as the States may decide in advance, of the total strength in both the organs favour enforcement of the Court's decision, the Security Council may be called upon to employ its might of enforcing the judgment, disregarding the existence of an exercise Veto. The United Nations itself and one of its main organs, the ICJ have been reduced in authority and effectiveness, on account the Veto power which has often reversed the directions of the basic aims and objectives of both. This new suggested exercise may provide good ground for the member States to be prepared to moderate this effect, if not wholly at least in the context of enforcing the Court's decisions.

\(^{18}\) *United Kingdom v. Albania*, I.C.J. Reports 1949, pp. 4, 244.
2.8. Revising the Statute to Commensurate with the Present Day Values

Article 69 of the Statute deems amendment to the Statute as equivalent to an amendment of the United Nations Charter. For this two-thirds of the members of the General Assembly vote in favour to make any amendment effective. Article 108 of the Charter requires that any vote of two-thirds majority of the members of the General Assembly for amendment of the Charter, must be ratified by two-thirds of the members including all the five permanent members of the Security Council. The initiative amendment of Statute according to Article 70 of the Statute may be taken by the members of the United Nations or the Court itself.

If Article 38 of the Statute is required to be amended to include the United Nations law as a primary or subsidiary source of law that the Court must consult and if the World Organization is serious to undertake a review of the Statute it is quite possible that the major powers would resist compulsory jurisdiction as a negotiating tactic, perhaps, to get the 'United Nations Law' listed as one of the subsidiary sources of law rather than as the primary source. The bloc that initiates the suggestion that the Statute be reviewed and amended might feel weak in its negotiating action. As such member States taking such an initiative may take a very long time to achieve the goal. To redress this trouble the initiative may be taken by the Court itself. This will avoid long consumption of time and will have the benefit of giving the parties the opportunity of preserving their related bargaining power. The Court has previously made proposals for amending some of the Articles of its Statute and such an initiative would not be an unknown experience for the Court, hence onwards also.

The Fundamental problem that stands in the way of proper utilization of the ICJ is the Sovereignty of its hitherto subjects in contentious matters. The author agrees with Kelly that no procedural technique or well conceived suggestion will change that basic fact.

Despite endless disputes between the States, there are specific periods when not a single case was brought before the Court for settlement. These periods are 1952, 1963-66, 1968 and 1969; and in some part of 1971 there was not a single case pending before it. Besides, the advisory procedure of the Court has also not

---

19 Statute of ICJ, Art. 69.
been utilized to the full extent by the General Assembly, the Security Council and other authorised organs of the United Nations and the specialised agencies.

The Court was challenged by the United States which questioned its authority as well as usefulness, although the U.S. claims to be a Champion of the Rule of Law in national as well as international society and the World Court is said to be of American origin. This commitment of the United States faced the test in the *Military and Paramilitary Activities in and against Nicaragua* wherein it withdrew from appearing at the on-going proceedings, disobeyed the Court's judgment given in absentia and exercised Veto against its enforcement by the Security Council. It challenged the personal integrity of the Judges, particularly Soviet and Polish Judges and expressed its doubts about the future of the World Courts itself.

Having become hopeless about the outcome from the court the United States even withdrew its declaration accepting compulsory-jurisdiction of the Court. This extreme behaviour the United States has put the belief for other States that if they also go-back in identical way there will not be any repercussions for them. At the same time, this case has given rise to public opinion against the actions of defiance of the Court's judgments.

This public opinion has amply manifested itself in the expression by a number of influential international lawyers in the United States itself which include the President of the American Society of International Law who spoke against the United States Government's decision not to appear in the merits stage of the proceedings and; in favour of compliance with the Court's judgment.

Misled by inaccurate press reports that 'the Court had already awarded Nicaragua Compensation' many private individuals in the United States remitted moneys to the Registrar of the Court by way of contributions thereto. All moneys so received were politely returned to the senders as the award for reparation had not yet been announced and individuals were not liable to pay. Public opinion had its impact in the ancient times. It persisted as society was developing towards its present from and it may be helpful even now when humanity is passing from the national to the international age.

---

For somewhat unsatisfactory functioning of the international judicial process, the States are by far more responsible than is the Court. Their attitude of non-cooperation has a paralysing effect on the Court's functioning. States are primarily guided by the considerations of national interests. They would let their disputes remain unsettled rather than being settled unfavourably. There are obvious contradictions in States behaviour. The party in whose favour the judgment is given expresses its full faith and honour towards the Court but that which loses, treats the judgment something unworthy of notice. Many states do not show the same respect to the ICJ which they show to their national Courts.

Justice pronounced by the Court leaves an impression which is almost permanent. It brings the reality and the rightful position of facts to light and any States not willing to accept it may suffer isolation and deprecation at the hands of the international community.

Unless the international legal system is fully developed to assert equality of the Statuses of the Sovereign and the subject, it can not become effective to the fullest extent. However, as compared to many other international institutions the performance of the world Courts has been fairly and admittedly satisfactory. Nevertheless, there is always a room for improvement.

It has exercised its role as the principal judicial organ of the United Nations with dedication and diligence and in this sense has become both a United Nations Court and an International Judiciary. Further, "In terms of the judicial process the distrust of third party settlement and the manner in which States view their national interest together with the rather poor over all record of the United Nations on settling disputes have been of considerable significance in failing to employ the International Court".21

Some writers have expressed the view that the present Statute of the Court, is defective and should, therefore, be amended to increase the jurisdiction and

21 According to Brownlie, "The following factors explain the reluctance of States to resort to the Court: the political fact that haul another State before the Court is regarded as an unfriendly act; the greater suitability of other tribunal and other methods of review the both regional and technical matters; the general conditions of international relations, preference for the flexibility of arbitration in comparison with a compulsory jurisdiction; the lack of representation of Afro-Asia on the Court; and the distrust of the Court on the part of Communist and other States, [Principles of Public International Law (1973), p. 708].
functions of the Court." For example, Prof. Leo Gross has remarked, 'Unless we begin to think in terms of some rather drastic reform, the outlook for the court is very dim.' For the amendment of the statute he has made the following suggestions:

(1) The relevant articles of the Statute should be amended to make it possible for States to include in a treaty a new form of jurisdictional clause whereby the States would agree that any of the contracting parties could ask the court for an advisory opinion on any question relating to the application on interpretation of that treaty. States should agree in advance to accept the advisory opinion of the Court as binding.

(2) Yet another type of jurisdictional clause which might be included in treaties or conventions which provide for a procedure of conciliation as the Vienna Convention on, the Law of Treaties does. The new feature for such a commission would be to include a clause whereby the contracting parties could agree that the conciliation commission may ask the International Court of Justice for an advisory opinion on the legal aspect of the issues pending before the commission.

(3) The third suggestion relates to jurisdictional clause that States may include in a treaty whereby they would agree to allow their domestic tribunals to refer questions of international law to International Court of Justice for preliminary binding decision on the interpretation of the law."

(4) The last suggestion to broaden the advisory jurisdiction has been discussed earlier in the chapter and merits serious consideration.24

It has also been suggested that the Statute should be amended to enable even individuals to bring their cases before the Court. But in view of the present states of international politics and international relations, suggestions for the amendment of the statute of the Court do not seem to be practicable. It has been made clear earlier while discussing the reservations of the Declarations by States

of the acceptance of compulsory jurisdiction of the court that the trend is to restrict the jurisdiction of the court rather than to enhance it. As rightly pointed out by the judge Philip C. Jessup, 'The Court is what the States of the world choose to make it. The court can indeed improve its procedure but it is the States which must take advantage of the potentialities which already exist in the court Statutes.\textsuperscript{26} Further, court under its existing statute is an entirely flexible instrument. There are advantages in making use of it. In his view, therefore, the defect is not of the Statute but the need is that the States should make more use of it. Prof. Leo Gross has also conceded that the flexibility built in the statute have not been sufficiently explored.\textsuperscript{27}

As pointed out by Mr. Shigeru Oda, (Judge, International Court of Justice) "in the whole history of the International Court of Justice in only eight cases were the disputes to be settled by the immediate and unconditional will of both parties to appear before the Court.

As written by Shabtai Rosenne, "It is the international Court, more than any other organ of the United Nations, which has infused new dynamism into the International law of today.\textsuperscript{28} Judge Nagendra Singh has rightly remarked: "Humanity would, therefore, always lie in the right path so long as it survives to strengthen the International Court of Justice and the United Nations with a view to building up both these institutions for the purpose of maintenance of public order in international community.\textsuperscript{29} Thus despite several weaknesses and limitations, the International Court of Justice has performed its functions with distinction and has made a significant contribution for the development and classification of

\textsuperscript{25} Jenks has also aptly remarked : Judicial process is unhappily at a discount in a world in which the width and depth of divergences of ideology and interest have impaired faith in objectivity and narrowed the acceptance of Third party judgment", C.W. Jenks, Social Justice in the Law of Nations- The I.L.O. Impact After Fifty Years (1970), p. 47.
\textsuperscript{27} Leo. Gross, see Supra note 56 ; Prof. Goods peed has also remarked : "As long as the members of the United Nations are unable to resolve their basic differences, the Court will continue In a limited role, performing It with distinction but with little effect upon the course of international politics', Supra note 2 at p.359.
\textsuperscript{28} The World Court—What is and How it Works (1963) p. 174 ; Corbett has also written, "The Permanent Court of International Court of Justice and the present International Court of Justice, may fairly be regarded as major steps In the development of a world legal system" P. E. Corbett, The Growth of World Law (1971), p. 23.
\textsuperscript{29} Recent Trends In the Development of International Law and Organisation Promoting Inte- State Cooperation and World Peace (1969), p. 52.
International law in general and international constitutional and administrative law in particular. "The Court is indeed a *sine qua non* for the establishment of Rule of Law in inter-State relations."³⁰

To conclude in the words of Judge Shigeru Oda,".... it can hardly be doubted that the International Court of Justice has contributed a great deal to the development of International law. The content of the actual rules may sometimes be inadequate in international community where customary law rather than written law plays a more important role, so much so that the role of the judiciary in the international community cannot be over-emphasized. The International Court of Justice has played an important role in the past in ascertaining existing customary law and in formulating adequate rules of international law, and it cannot be accused of having failed to keep abreast of the current of times...... the International Court of Justice has been in the van of the development of International Law.

In the last, it could be said that International Court of Justice is the most valuable instrument yet available to the international community for developing international law adequately to meet the needs of a changing world, for radiating through the entire global community a consciousness of the international rule of law and for injecting an authoritative legal element into the process of preventive diplomacy. But the Court cannot play this role to the fullest without the co-operation of the world community. That means the co-operation not merely of governments but of concerned citizens, who take an active interest in the work of the Court and in its unmatched potential for the service of international law. The court cannot by itself open the portals to a fairy kingdom of international justice as many expect it to do. It needs the co-operation of all.

*****