INTERNATIONAL JUDICIAL GOVERNANCE

Dr. G. Ramesh Babu*

ABSTRACT

After liberalization, privatization and globalization, the entire global business scenario has been changed. The distance between nations had been changed drastically. The revolution in information technology created more business and trade relations between nations. The emerging markets created new markets; new opportunities for the business relations emerged exponentially. The globe is rotating on the flow of funds. The funds are traveling for a profit, which is an ultimate goal of all business ventures. The increased business opportunities among the nations had caused the technical, social, historical, economical and cultural relations. The relations are a strong bondage between two nations or two individuals or two business organizations.

International law can refer to three elements a) public international law b) private international law or conflict of laws c) the law of supra national organizations.

Public international law has a special status as law because, there is no international police force, and courts. Courts lack the capacity to penalize disobedience. However a few bodies, such as the WTO have effective systems of binding arbitration and dispute resolution backed up by trade sanctions. Public international law can be performed by international law organizations, such as United States, the international labor organization, the world trade organization or the international monetary fund. The sources for public international law development are custom, practice and treaties between sovereign nations such as Geneva conventions.

The establishment of an international tribunal to judge political leaders accused of war crimes was first made during the Paris peace conference in 1919 by the commission of responsibilities. The issue was addressed again at conference held in Geneva under the auspicious of the lead of nations on November 1-16, 1937. But no practical results followed. At the request of general assembly, the international law commission drafted two statutes by the early 1950s but these were shelved as the cold war made the establishment of an international criminal court politically unrealistic.

The international court of justice is the principal judicial organ of the United Nations. It was established in June 1945 by the charter of the United Nations and began work in April 1946. The seat of the court is at the peace palace in The Hague. It is one of the six organs of the United Nations, it is the only one not located in New York. The court's role is to settle, in accordance with international law, legal disputes submitted to it by states and to give advisory opinions on legal questions referred to it by the authorized United Nations organs and specialized agencies. The court is composed of 15 judges, who are elected for the terms of office of 9 years by the United Nations general assembly and the Security Council. It is assisted by a registry, and administrative organ. Its official languages are English and French.

*Head, Department of Commerce, S.S.R.J. College, Khammam, A.P., India.

INTRODUCTION:

After liberalization, privatization and globalization, the entire global business scenario has been changed. The distance between nations had been changed drastically. The revolution in information technology created more business and trade relations between nations. The emerging markets created new markets; new opportunities for the business relations emerged exponentially. The globe is rotating on the flow of funds. The funds are traveling for a profit, which is an ultimate goal of all business ventures. The increased business opportunities among the nations had caused the technical, social, historical, economical and cultural relations. The relations are a strong bondage between two nations or two individuals or two business organizations. The relationship management is more important for the development of the nations. The smooth functioning of governance depends upon a strong rules and regulations. The law is a system of rules usually enforced to a set of institutions. It shapes politics, economics, and society in society in numerous ways and serves as a primary social mediator of relations between people. The law is consisting of several forms, they are presented below

a) contract law
b) property law
c) trust law
d) criminal law
e) constitutional law
f) administrative law/international law

Contract law regulates every thing from buying a bus ticket to trading on derivatives markets. Property law defines rights and obligations related to the transfer and title of personal and real property.

Trust law applies to assets held for investment and financial security, while tort law allows claims for compensation if a person's rights or property are harmed. If the harm is criminalizing in a statute, criminal law offers means, by which the state can prosecute the perpetrator.

Constitutional law provides a frame work for the creation of law, the protection of human rights and the election of political representatives.

Administrative law is used to review the decisions of the government agencies, while international law governs affairs between sovereign nation's states in activities ranging from trade to environmental regulation or military action.

According to Aristotle, "the rule of law is better than rule of any individual".

Law raises important and complex issues like equality, fairness and justice. In a typical democracy the central institutions for interpreting and creating law are the three main branches of the government, mainly an impartial judiciary, a democratic legislature, and an accountable executive.

International law can refer to three elements a) public international law b) private international law or conflict of laws c) the law of supra national organizations.

Public international law has a special status as law because, there is no international police force, and courts. Courts lack the capacity to penalize disobedience. However a few bodies, such as the WTO have effective systems of binding arbitration and dispute resolution backed up by trade sanctions. Public international law can be performed by international law organizations, such as United States, the international labor organization, the world trade organization or the international monetary fund. The sources for public international law development are custom, practice and treaties between sovereign nations such as Geneva conventions.

Private international law or conflicts of law concerns which jurisdiction a legal disputes between private parties should be heard in and which jurisdiction's law should be applied. Today, businesses are increasing the capable of shifting capital and labor supply chains across the borders as well as training with overseas business, making the question of which country has jurisdiction even more pressing. Increasing numbers of businesses opt for commercial arbitration under the New York convention 1958.

European Union law is the first and, so far, only example of a supra national legal framework. The institutions are allowed the ability to enforce the legal norms both against and for member states and citizens in a manner which is not possible through public international law. In the European Union, sovereign nations have gathered their authority in a system of courts and political institutions. Due to the increasing global economic integration, many regional agreements especially the union of South American nations are track to follow the same model. As the European court of justice said, in the 1960s, European Union law constitutes "a new legal order of international law". For the mutual social and economic benefit of the member state.

International criminal court is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression. The court came into being on 1st July, 2002. The date its founding treaty, the Rome statute of the international criminal court, entered into force and it can only prosecute crimes committed on or after that date. As

of march 2010, 111 states are members of the court, and a further 37 countries have signed but not ratified the Rome statute. The official seat of the court is in The Hague, NETHERLANDS. But its proceedings may take place any where. However a number of the states including china, India, Russia and the United States are critical of the court and have not joined. The court is designed to compliment existing national judicial systems; it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. The ICC can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party or a situation is referred to the court by the United States Security Council. Primary responsibility to investigate and punish the crimes is therefore left to individual states. To date, the court has opened investigations into five situations; northern Uganda, the Democratic Republic of the Congo, the Central African Republic, Darfur (Sudan), and the republic of Kenya. The court has inducted 14 people; 7 of whom remain fugitives, two have died, 4 are in custody, and one is appearing voluntarily before the court.

EVOLUTION OF INTERNATIONAL JUDICIAL SYSTEM:

The establishment of an international tribunal to judge political leaders accused of war crimes was first made during the Paris peace conference in 1919 by the commission of responsibilities. The issue was addressed again at conference held in Geneva under the auspicious of the lead of nations on November 1-16, 1937. But no practical results followed. At the request of general assembly, the international law commission drafted two statutes by the early 1950s but these were shelved as the cold war made the establishment of an international criminal court politically unrealistic. The work began on a draft statue, the international community established ado tribunals to try war crimes in the former Yugoslavia and RWANDA, further highlighting the need for a permanent international criminal court. The first bench of 18 judges was elected by an assembly of state parties in February 2003. The court issued its first arrest warrants on 8th July 2005, and the first pre-trial hearings were held in 2006. Benjamin B. ferencz an investigator of Nazi war crimes after world war II and the chief prosecutor for the united states army at the einsatzgruppen trial, one of the 12 military trials held by us authorities at Nuremberg, later became a vocal advocate of the establishment of the international rule of law and of international criminal courts. He argued for the establishment of such as an international court. The idea was revived by in 1989 when A.N.R. Robinson. Then prime minister of Trinidad and Tobago proposed the creation of a permanent international court to deal with the illegal drug trade. After several years of

negotiations, the general assembly convened a conference in Rome in June 1998, with the aim of finalizing a treaty. On 17th July 1998, the Rome statute of the international criminal court was adopted by a vote of 120 to 7, with 21 countries abstaining. The 7 countries that voted against treaty were china, Iraq, Israeli, Libya, Qatar, the United States and Yemen. The Rome statue became a binding treaty on 11 April 2002, when the number of countries that had ratified it reached 60. The statue legally came into force on 1st July, 2002, and the ICC can only prosecute crimes committed after that date. They elected judges were sworn in at the inaugural session of the court on 1st march 2003. As of march 2010, 111 countries have joined the court, including nearly all of Europe and South America, and approximately half the countries in Africa. However these countries only account for a minority of the world's population. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. 3 of these states is rail, Sudan, and the united states have unsigned the Rome statue, indicating that they no longer intend to become states parties and as such they have no legal obligations arising from their signature of the statue. Many states wanted to add terrorism and drug trafficking to the list of crimes covered by the Rome statue; however the states where unable to agree on a definition for terrorism and it was decided not to include drug trafficking as this might over whelm the courts limited resources. India lobbied to have the use of nuclear weapons and other weapons of mass destruction included as war crimes but this move also was defeated. India has expressed concern that "the statue of icc lays down, by clear implication, that the use of weapons of mass destruction is not a war crime. This is an extraordinary message to send the international community."

TERRITORIAL JURSIDUCTION:

DURING the negotiations that led to the Rome statue, a large number of states argued that the court should be allowed to exercise universal jurisdiction. However this proposal was defeated due to large part of opposition from the United States. A compromise was reached, allowing the court to exercise jurisdiction, only under the following limited circumstances.

- where the person accused of committing a crime is a national of a state party (or where the persons state has accepted the jurisdiction of the court)
- where the alleged crimes was committed on the territory of a state party(or where the state on whose territory the crime was committed has accepted the jurisdiction of the court)
- Where the situation is referred to the court by the UN Security Council.

INTERNATIONAL COURT OF JUSTICE:

The international court of justice is the principal judicial organ of the United Nations. It was established in June 1945 by the charter of the United Nations and began work in April 1946. The seat of the court is at the peace palace in The Hague. It is one of the six organs of the United Nations, it is the only one not located in New York. The court's role is to settle, in accordance with international law, legal disputes submitted to it by states and to give advisory opinions on legal questions referred to it by the authorized United Nations organs and specialized agencies. The court is composed of 15 judges, who are elected for the terms of office of 9 years by the United Nations general assembly and the Security Council. It is assisted by a registry, it administrative organ. Its official languages are English and French.

EVOLUTION OF INTERNATIONAL COURT OF JUSTICE:

The creation of the Court represented the culmination of a long development of methods for the pacific settlement of international disputes, the origins of which can be traced back to classical times.

Article 33 of the united nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements; good offices should also be added to this list. Among these methods, certain involve appealing to third parties. For example, mediation places the parties to a dispute in a position in which they can themselves resolve their dispute thanks to the intervention of a third party. Arbitration goes further, in the sense that the dispute is submitted to the decision or award of an impartial third party, so that a binding settlement can be achieved. The same is true of judicial settlement (the method applied by the International Court of Justice), except that a court is subject to stricter rules than an arbitral tribunal, particularly in procedural matters.

Mediation and arbitration preceded judicial settlement in history. The former was known in ancient India and in the Islamic world, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes, in maritime customary law in medieval Europe and in Papal practice.

THE ORIGINS

The modern history of international arbitration is, however, generally recognized as dating from the so-called Jay Treaty of 1794 between the United States of America and Great Britain. This Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of American and British nationals in equal numbers, whose

task it would be to settle a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation. Whilst it is true that these mixed commissions were not strictly speaking organs of third-party adjudication, they were intended to function to some extent as tribunals. They reawakened interest in the process of arbitration. Throughout the nineteenth century, the United States and the United Kingdom had recourse to them, as did other States in Europe and the Americas.

The Alabama Claims arbitration in 1872 between the United Kingdom and the United States marked the start of a second, and still more decisive, phase. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The two countries stated certain rules governing the duties of neutral governments that were to be applied by the tribunal, which they agreed should consist of five members, to be appointed respectively by the Heads of State of the United States, the United Kingdom, Brazil, Italy and Switzerland, the last three States not being parties to the case. The arbitral tribunal's award ordered the United Kingdom to pay compensation and it was duly complied with. The proceedings served as a demonstration of the effectiveness of arbitration in the settlement of a major dispute and it led during the latter years of the nineteenth century to developments in various directions, namely:

- sharp growth in the practice of inserting in treaties clauses providing for recourse to arbitration in the event of a dispute between the parties;
- the conclusion of general treaties of arbitration for the settlement of specified classes of inter-State disputes;
- efforts to construct a general law of arbitration, so that countries wishing to have recourse to this means of settling disputes would not be obliged to agree each time on the procedure to be adopted, the composition of the tribunal, the rules to be followed and the factors to be taken into consideration in making the award;
- Proposal for the creation of a permanent international arbitral tribunal in order to obviate the need to set up a special *ad hoc* tribunal to decide each abatable dispute.

THE HAGUE PEACE CONFERENCES AND THE PERMANENT COURT OF ARBITRATION (PCA)

The Hague Peace Conference of 1899, convened at the initiative of the Russian Czar Nicholas II, marked the beginning of a third phase in the modern history of international arbitration. The chief object of the Conference, in which — a remarkable innovation for the

time — the smaller States of Europe, some Asian States and Mexico also participated, was to discuss peace and disarmament. It ended by adopting a Convention on the Pacific Settlement of International Disputes, which dealt not only with arbitration but also with other methods of pacific settlement, such as good offices and mediation.

With respect to arbitration, the 1899 Convention made provision for the creation of permanent machinery which would enable arbitral tribunals to be set up as desired and would facilitate their work. This institution, known as the Permanent Court of Arbitration, consisted in essence of a panel of jurists designated by each country acceding to the Convention — each such country being entitled to designate up to four — from among whom the members of each arbitral tribunal might be chosen. The Convention further created a permanent Bureau, located at The Hague, with functions corresponding to those of a court registry or a secretariat, and it laid down a set of rules of procedure to govern the conduct of arbitrations. It will be seen that the name "Permanent Court of Arbitration" is not a wholly accurate description of the machinery set up by the Convention, which represented only a method or device for facilitating the creation of arbitral tribunals as and when necessary. Nevertheless, the system so established was permanent and the Convention as it were "institutionalized" the law and practice of arbitration, placing it on a more definite and more generally accepted footing. The Permanent Court of Arbitration was established in 1900 and began operating in 1902.

A few years later, in 1907, a second Hague Peace Conference, to which the States of Central and South America were also invited, revised the Convention and improved the rules governing arbitral proceedings. Some participants would have preferred the Conference not to confine itself to improving the machinery created in 1899. The United States Secretary of State, Elcho Root, had instructed the United States delegation to work towards the creation of a permanent tribunal composed of judges who were judicial officers and nothing else, who had no other occupation, and who would devote their entire time to the trial and decision of international cases by judicial methods. "These judges", wrote Secretary Root "should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented". The United States, the United Kingdom and Germany submitted a joint proposal for a permanent court, but the Conference was unable to reach agreement upon it. It became apparent in the course of the discussions that one of the major difficulties was that of finding an acceptable way of choosing the judges, none of the proposals made having managed to command general support. The Conference confined itself to recommending that States should adopt a draft convention for the creation of a court

of arbitral justice as soon as agreement was reached "respecting the selection of the judges and the constitution of the court". Although this court was never in fact to see the light of day, the draft convention that was to have given birth to it enshrined certain fundamental ideas that some years later were to serve as a source of inspiration for the drafting of the Statute of the Permanent Court of International Justice (PCIJ).

Notwithstanding the fate of these proposals, the Permanent Court of Arbitration, which in 1913 took up residence in the Peace Palace that had been built for it thanks to a gift from Andrew Carnegie, has made a positive contribution to the development of international law. Among the classic cases that have been decided through recourse to its machinery, mention may be made of the *Carthage* and *Manouba* cases (1913) concerning the seizure of vessels, and of the *Timor Frontiers* (1914) and *Sovereignty over the Island of Palmas* (1928) cases. Whilst demonstrating that arbitral tribunals set up by recourse to standing machinery could decide disputes between States on a basis of law and justice and command respect for their impartiality, these cases threw into bold relief the shortcomings of the Permanent Court of Arbitration. Tribunals of differing composition could hardly be expected to develop a consistent approach to international law to the same extent as a permanently constituted tribunal. Besides, there was the entirely voluntary character of the machinery. The fact that States were parties to the 1899 and 1907 Conventions did not oblige them to submit their disputes to arbitration nor, even if they were minded so to do, were they duty-bound neither to have recourse to the Permanent Court of Arbitration nor to follow the rules of procedure laid down in the Conventions.

The Permanent Court of Arbitration has recently sought to diversify the services that it can offer, alongside those contemplated by the Conventions. The International Bureau of the Permanent Court has *inter alias* acted as Registry in some important international arbitrations, including that between Eritrea and Yemen on questions of territorial sovereignty and maritime delimitation (1998 and 1999), that concerning the delimitation of the boundary between Eritrea and Ethiopia (2002), and that between Ireland and the United Kingdom under the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR). Moreover, in 1993, the Permanent Court of Arbitration adopted new "Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State" and, in 2001, "Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment"

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THE PERMANENT COURT OF INTERNATIONAL JUSTICE (PCIJ)

Article 14 of the Covenant of the League of Nations gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice (PCIJ), such a court to be competent not only to hear and determine any dispute of an international character submitted to it by the parties to the dispute, but also to give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly. It remained for the League Council to take the necessary action to give effect to Article 14. At its second session early in 1920, the Council appointed an Advisory Committee of Jurists to submit a report on the establishment of the PCIJ. The committee sat in The Hague, under the chairmanship of Baron Decamps (Belgium). In August 1920, a report containing a draft scheme was submitted to the Council, which, after examining it and making certain amendments, laid it before the First Assembly of the League of Nations, which opened at Geneva in November of that year. The Assembly instructed its Third Committee to examine the question of the Court's constitution. In December 1920, after an exhaustive study by a subcommittee, the Committee submitted a revised draft to the Assembly, which unanimously adopted it. This was the Statute of the PCIJ.

The Assembly took the view that a vote alone would not be sufficient to0020establish the PCIJ and that each State represented in the Assembly would formally have to ratify the Statute. In a resolution of 13 December 1920, it called upon the Council to submit to the Members of the League of Nations a protocol adopting the Statute and decided that the Statute should come into force as soon as the protocol had been ratified by a majority of Member States. The protocol was opened for signature on 16 December. By the time of the next meeting of the Assembly, in September 1921, a majority of the Members of the League had signed and ratified the protocol. The Statute thus entered into force. It was to be revised only once, in 1929, the revised version coming into force in 1936. Among other things, the new Statute resolved the previously insurmountable problem of the election of the members of a permanent international tribunal by providing that the judges were to be elected concurrently but independently by the Council and the Assembly of the League, and that it should be borne in mind that those elected "should represent the main forms of civilization and the principal legal systems of the world". Simple as this solution may now seem, in 1920 it was a considerable achievement to have devised it. The first elections were held on 14 September 1921. Following approaches by the Netherlands Government in the spring of 1919, it was decided that the PCIJ should have its permanent seat in the Peace Palace in The

Hague, which it would share with the Permanent Court of Arbitration. It was accordingly in the Peace Palace that on 30 January 1922 the Court's preliminary session devoted to the elaboration of the Court's Rules opened, and it was there too that its inaugural sitting was held on 15 February 1922, with the Dutch jurist Bernard C. J. Loder as President.

The PCIJ was thus a working reality. The great advance it represented in the history of international legal proceedings can be appreciated by considering the following:

- unlike arbitral tribunals, the PCIJ was a permanently constituted body governed by its own Statute and Rules of Procedure, fixed beforehand and binding on parties having recourse to the Court;
- it had a permanent Registry which, *inter alia*, served as a channel of communication with governments and international bodies;
- its proceedings were largely public and provision was made for the publication in due course of the pleadings, of verbatim records of the sittings and of all documentary evidence submitted to it;
- the permanent tribunal thus established was now able to set about gradually developing a constant practice and maintaining a certain continuity in its decisions, thereby enabling it to make a greater contribution to the development of international law;
- in principle the PCIJ was accessible to all States for the judicial settlement of their international disputes and they were able to declare beforehand that for certain classes of legal disputes they recognized the Court's jurisdiction as compulsory in relation to other States accepting the same obligation. This system of optional acceptance of the jurisdiction of the Court was the most that it was then possible to obtain;
- the PCIJ was empowered to give advisory opinions upon any dispute or question referred to it by the League of Nations Council or Assembly;
- the Court's Statute specifically listed the sources of law it was to apply in deciding contentious cases and giving advisory opinions, without prejudice to the power of the Court to decide a case *ex aequo et bono* if the parties so agreed;
- It was more representative of the international community and of the major legal systems of the world than any other international tribunal had ever been before it.

Although the Permanent Court of International Justice was brought into being through, and by, the League of Nations, it was nevertheless not a part of the League. There was a close association between the two bodies, which found expression *inter alia* in the fact that the League Council and Assembly periodically elected the Members of the Court and that both

Council and Assembly were entitled to seek advisory opinions from the Court, but the latter never formed an integral part of the League, just as the Statute never formed part of the Covenant. In particular, a Member State of the League of Nations was not by this fact alone automatically a party to the Court's Statute.

Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions. At the same time several hundred treaties, conventions and declarations conferred jurisdiction upon it over specified classes of disputes. Any doubts that might thus have existed as to whether a permanent international judicial tribunal could function in a practical and effective manner were thus dispelled. The Court's value to the international community was demonstrated in a number of different ways, in the first place by the development of a true judicial technique. This found expression in the Rules of Court, which the PCIJ originally drew up in 1922 and subsequently revised on three occasions, in 1926, 1931 and 1936. There was also the PCIJ's Resolution concerning the Judicial Practice of the Court, adopted in 1931 and revised in 1936, which laid down the internal procedure to be applied during the Court's deliberations on each case. In addition, whilst helping to resolve some serious international disputes, many of them consequences of the First World War, the decisions of the PCIJ at the same time often clarified previously unclear areas of international law or contributed to its development.

MEMBERS OF THE COURT

The International Court of Justice is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and the Security Council. These organs vote simultaneously but separately. In order to be elected, a candidate must receive an absolute majority of the votes in both bodies. This sometimes makes it necessary for a number of rounds of voting to be carried out.

In order to ensure a measure of continuity, one third of the Court is elected every three years. Judges are eligible for re-election. Should a judge die or resign during his or her term of office, a special election is held as soon as possible to choose a judge to fill the unexpired part of the term.

Elections are held in New York (United States of America) on the occasion of the annual autumn session of the General Assembly. The judges elected at a triennial election enter upon their term of office on 6 February of the following year, after which the Court proceeds to elect by secret ballot a President and a Vice-President to hold office for three years.

All States parties to the Statute of the Court have the right to propose candidates. These proposals are made not by the government of the State concerned, but by a group consisting of the members of the Permanent Court of Arbitration designated by that State, i.e. by the four jurists who can be called upon to serve as members of an arbitral tribunal under the Hague Conventions of 1899 and 1907. In the case of countries not represented on the Permanent Court of Arbitration, nominations are made by a group constituted in the same way. Each group can propose up to four candidates, not more than two of whom may be of its own nationality, whilst the others may be from any country whatsoever, whether a party to the Statute or not and whether or not it has declared that it accepts the compulsory jurisdiction of the ICJ. The names of candidates must be communicated to the Secretary-General of the United Nations within a time-limit laid down by him/her.

Judges must be elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jury consults of recognized competence in international law.

The Court may not include more than one national of the same State. Moreover, the Court as a whole must represent the main forms of civilization and the principal legal systems of the world.

In practice this principle has found expression in the distribution of membership of the Court among the principal regions of the globe. Today this distribution is as follows: Africa 3, Latin America and the Caribbean 2, Asia 3, Western Europe and other States 5, Eastern Europe 2, which corresponds to that of membership of the Security Council. Although there is no entitlement to membership on the part of any country, the Court has always included judges of the nationality of the permanent members of the Security Council.

Once elected, a Member of the Court is a delegate neither of the government of his own country nor of that of any other State. Unlike most other organs of international organizations, the Court is not composed of representatives of governments. Members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously.

In order to guarantee his or her independence, no Member of the Court can be dismissed unless, in the unanimous opinion of the other Members, he/she no longer fulfils the required conditions. This has in fact never happened.

No Member of the Court may engage in any other occupation during his/her term. He/she is not allowed to exercise any political or administrative function, nor to act as agent, counsel or

advocate in any case. Any doubts with regard to this question are settled by decision of the Court.

A Member of the Court, when engaged on the business of the Court, enjoys privileges and immunities comparable with those of the head of a diplomatic mission. In The Hague, the President takes precedence over the doyen of the diplomatic corps, after which precedence alternates between judges and ambassadors. Each Member of the Court receives an annual salary consisting of a base salary (which for 2010 amounts to US$166,596) and post adjustment, with a special supplementary allowance of US$15,000 for the President. The post adjustment multiplier changes every month and is dependent on the UN exchange rate between the US Dollar and the Euro. On leaving the Court, they receive annual pensions which, after a nine-year term of office, amount to 50 per cent of the annual base salary.

Although the Court is deemed to be permanently in session, only its President is obliged to reside in The Hague. However, the other Members of the Court are required to be permanently at its disposal except during judicial vacations or leave of absence, or when they are prevented from attending by illness or other serious reasons. In practice, the majority of Court Members reside in The Hague and all will normally spend the greater part of the year there.

PRESIDENCY

The President and the Vice-President are elected by the Members of the Court every three years by secret ballot. The election is held on the date on which Members of the Court elected at a triennial election are to begin their terms of office or shortly thereafter. An absolute majority is required and there are no conditions with regard to nationality. The President and the Vice-President may be re-elected.

The President presides at all meetings of the Court; he/she directs its work and supervises its administration, with the assistance of a Budgetary and Administrative Committee and of various other committees, all composed of Members of the Court. During judicial deliberations, the President has a casting vote in the event of votes being equally divided.

In The Hague, where he/she is obliged to reside, the President of the Court takes precedence over the doyen of the diplomatic corps.

The President receives a special supplementary allowance of 15,000 dollars per annum, in addition to his/her annual salary.

The Vice-President replaces the President in his/her absence, in the event of his/her inability to exercise his/her duties, or in the event of a vacancy in the presidency. For this purpose

he/she receives a daily allowance. In the absence of the Vice-President, this role devolves upon the senior judge.

On 6 February 2009 the Court elected Judge Hibachi Owada (Japan) to be President and Judge Peter Tomka (Slovakia) to be Vice-President.

The following judges served as President or Vice-President before the present holders of those offices:

- 1946-1949 Guerrero and Basdevant
- 1949-1952 Basdevant and Guerrero
- 1952-1955 Sir Arnold McNair and Guerrero
- 1955-1958 Hackworth and Badawi
- 1958-1961 Klaestad and Sir Muhammad Zafrulla Khan
- 1961-1964 Winiarski and Alfaro
- 1964-1967 Sir Percy Spender and Wellington Koo
- 1967-1970 Bustamante y Rivero and Koretsky
- 1970-1973 Sir Muhammad Zafrulla Khan and Ammoun
- 1973-1976 Lachs and Ammoun
- 1976-1979 Jimenez de Aréchaga and Nagendra Singh
- 1979-1982 Sir Humphrey Waldock and Elias (Sir Humphrey Waldock died on 15 August 1981. The functions of the Presidency were thereafter exercised by Judge Elias as Acting President, by virtue of Articles 13 and 14 of the 1978 Rules of Court.)
- 1982-1985 Elias and Sette-Camara
- 1985-1988 Nagendra Singh and Ladreit de Lacharrière (Judge Ladreit de Lacharrière died on 10 March 1987. On 6 May 1987 the Court elected Judge Mbaye to be its Vice-President for the remainder of his predecessor's term.)
- 1988-1991 J. M. Ruda and Mbaye
- 1991-1994 Sir Robert Jennings and Oda
- 1994-1997 Bedjaoui and Schwebel
- 1997-2000 Schwebel and Weeramantry
- 2000-2003 Guillaume and Shi
- 2003-2006 Shi and Ranjeva
- 2006-2009 Higgins and Al-Khasawneh

CHAMBERS:

The court generally discharges its duties as a full court (a quorum of nine judges, excluding judge's adhoc, being sufficient) but it may also form permanent or temporary chambers.

The court has three types of chambers

- the Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required by Article 29 of the Statute to form annually with a view to the speedy dispatch of business;
- any chamber, comprising at least three judges, that the Court may form pursuant to Article 26, paragraph 1, of the Statute to deal with certain categories of cases, such as labor or communications;
- any chamber that the Court may form pursuant to Article 26, paragraph 2, of the Statute to deal with a particular case, after formally consulting the parties regarding the number of its members - and informally regarding their name - who will then sit in all phases of the case until its final conclusion, even if in the meantime they cease to be Members of the Court.

With respect to the formation of a Chamber pursuant to Article 26, paragraph 1, of the Statute, it should be noted that, in 1993, the Court created a Chamber for Environmental Matters, which was periodically reconstituted until 2006. In the Chamber's 13 years of existence, however, no State ever requested that a case be dealt with by it. The Court consequently decided in 2006 not to hold elections for a Bench for the said Chamber.

The provisions of the Rules concerning chambers of the Court are likely to be of interest to States that are required to submit a dispute to the Court or have special reasons for doing so but prefer, for reasons of urgency or other reasons, to deal with a smaller body than the full Court.

Despite the advantages that chambers can offer in certain cases, under the terms of the Statute their use remains exceptional. Their formation requires the consent of the parties. While, to date, no case has been heard by either of the first two types of chamber, by contrast there have been six cases dealt with by *ad hoc* chambers.

CHAMBER OF SUMMARY PROCEDURE:

The current composition of this Chamber which, at the request of the parties, may hear and determine cases by summary procedure is as follows:

Members:

President

Hisashi Owada

Vice-President

Peter Tomka

Judges

Abdul G. Koroma

Thomas Buergenthal

Bruno Simma

Substitute members:

Judges

Bernardo Sepúlveda-Amor

Leonid Skotnikov

Chambers under Article 26, paragraph 2 (*ad hoc* chambers)

No such chamber is currently active.

The first *ad hoc* chamber was formed in 1982 in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* between Canada and the United States, and the second in 1985 in the case concerning the *Frontier Dispute* between Burkina Faso and the Republic of Mali. The third was set up in March 1987 in the case concerning *Electronic Sicula Spa. (ELSI)* between the United States of America and Italy and the fourth was formed in May 1987 in the case concerning the *Land, Island and Maritime Frontier Dispute* between El Salvador and Honduras. The year 2002 saw the formation of the fifth, to deal with the Frontier Dispute (Benin/Niger) case, and the sixth, to hear the *Application for Revision of the Judgment of 11 Se*dges *ad hoc* chosen by the parties, and the two Chambers formed in 2002 were similarly composed.

PROCESS OF WORKING OF COURT

Contentious cases

Advisory proceedings

The Court may entertain two types of cases: legal disputes between States submitted to it by them (contentious cases) and requests for advisory opinions on legal questions referred to it by United Nations organs and specialized agencies (advisory proceedings).

Contentious cases

Only States (States Members of the United Nations and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions) may be parties to contentious cases.

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- by entering into a special agreement to submit the dispute to the Court;
- by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court;
- Through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of dispute.

States have no permanent representatives accredited to the Court. They normally communicate with the Registrar through the medium of their Minister for Foreign Affairs or their ambassador accredited to the Netherlands. Where they are parties to a case before the Court they are represented by an agent. An agent plays the same role, and has the same rights and obligations, as a solicitor or *avenue* with respect to a national court. But we are dealing here with international relations, and the agent is also as it were the head of a special diplomatic mission with powers to commit a sovereign State. He/she receives communications from the Registrar concerning the case and forwards to the Registrar all correspondence and pleadings duly signed or certified. In public hearings the agent opens the argument on behalf of the government he/she represents and lodges the submissions. In general, whenever a formal act is to be done by the government represented, it is done by the agent. Agents are sometimes assisted by co-agents, deputy agents or assistant agents and always have counsel or advocates, whose work they co-ordinate, to assist them in the preparation of the pleadings and the delivery of oral argument. Since there is no special International Court of Justice Bar, there are no conditions that have to be fulfilled for counsel or advocates to enjoy the right of arguing before it except only that they must have been appointed by a government to do so.

PROCEEDINGS MAY BE INSTITUTED IN ONE OF TWO WAYS:

- Through the notification of a special agreement: this document, which is of a bilateral nature, can be lodged with the Court by either of the States parties to the proceedings or by both of them. A special agreement must indicate the subject of the dispute and

the parties thereto. Since there is neither an "applicant" State nor a "respondent" State, in the Court's publications their names are separated by an oblique stroke at the end of the official title of the case, e.g., Benin/Niger;

- By means of an application: the application, which is of a unilateral nature, is submitted by an applicant State against a respondent State. It is intended for communication to the latter State and the Rules of Court contain stricter requirements with respect to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis - a treaty or a declaration of acceptance of compulsory jurisdiction - it claims the Court has jurisdiction, and must succinctly state the facts and grounds on which it bases its claim. At the end of the official title of the case the names of the two parties are separated by the abbreviation *"v."* (For the Latin *versus*), e.g., Nicaragua *v.* Colombia.

The date of the institution of proceedings, which is that of the receipt by the Registrar of the special agreement or application, marks the opening of proceedings before the Court. C contentious proceedings include a written phase, in which the parties file and exchange pleadings containing a detailed statement of the points of fact and of law on which each party relies, and an oral phase consisting of public hearings at which agents and counsel address the Court. As the Court has two official languages (English and French), everything written or said in one language is translated into the other. The written pleadings are not made available to the press and public until the opening of the oral proceedings, and then only if the parties have no objection.

After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment is final, binding on the parties to a case and without appeal (at most it may be subject to interpretation or revision). Any judge wishing to do so may append an opinion to the judgment.

By signing the Charter, a State Member of the United Nations undertakes to comply with any decision of the Court in a case to which it is a party. Since, furthermore, a case can only be submitted to the Court and decided by it if the parties have in one way or another consented to its jurisdiction over the case; it is rare for a decision not to be implemented. A State which contends that the other side has failed to perform the obligations incumbent upon it under a judgment rendered by the Court may lay the matter before the Security Council, which is empowered to recommend or decide upon the measures to be taken to give effect to the judgment.

The procedure described above is the normal procedure. Certain matters can however affect the proceedings. The most common case is that of preliminary objections rose in order to prevent the Court from delivering judgment on the merits of the case (the respondent State may contend, for example, that the Court lacks jurisdiction or that the application is inadmissible). The matter is one for the Court itself to decide. Then, there are provisional measures, which can be requested as interim measures by the applicant State if the latter considers that the rights which form the subject of its application are in immediate danger. It may further occur that a State seeks to intervene in a dispute involving other States because it considers that it has an interest of a legal nature which may be affected by the decision to be taken in the dispute between those States. The Statute also makes provision for cases where the respondent State does not appear before the Court, either because it totally rejects the Court's jurisdiction or for any other reason. Hence failure by one party to appear does not prevent proceedings in a case from taking their course. But in such a case the Court must first satisfy itself that it has jurisdiction. Finally, should the Court find that parties to separate proceedings are submitting the same arguments and submissions against a common opponent in relation to the same issue; it may order joinder of the proceedings.

The Court discharges its duties as a full court but, at the request of the parties, it may also establish *ad hoc* chambers to examine specific cases. A Chamber of Summary Procedure is elected every year by the Court in accordance with its Statute.

The sources of law that the Court must apply are: international treaties and conventions in force; international custom; the general principles of law; and judicial decisions and the teachings of the most highly qualified publicists. Moreover, if the parties agree, the Court can decide a case *ex aequo ET bono*, i.e., without limiting itself to existing rules of international law.

A case may be brought to a conclusion at any stage of the proceedings by a settlement between the parties or by discontinuance. In the latter case, an applicant State may at any time inform the Court that it is not going on with the proceedings, or the two parties may declare that they have agreed to withdraw the case. The Court then removes the case from its List.

ADVISORY PROCEEDINGS

Advisory proceedings before the Court are open solely to five organs of the United Nations and to 16 specialized agencies of the United Nations family.

The United Nations General Assembly and Security Council may request advisory opinions on “any legal question”. Other United Nations organs and specialized agencies which have been authorized to seek advisory opinions can only do so with respect to “legal questions arising within the scope of their activities”.

When it receives a request for an advisory opinion, the Court, in order that it may give its opinion with full knowledge of the facts, is empowered to hold written and oral proceedings, certain aspects of which recall the proceedings in contentious cases. In theory, the Court may do without such proceedings, but it has never dispensed with them entirely.

A few days after the request is filed, the Court draws up a list of those States and international organizations that will be able to furnish information on the question before the Court. Those States are not in the same position as parties to contentious proceedings: their representatives before the Court are not known as agents and their participation, if any, in the advisory proceedings does not render the Court’s opinion binding upon them. In general, the States listed are the Member States of the organization requesting the opinion. Any State not consulted by the Court may ask to be.

It is rare, however, for the ICJ to allow international organizations other than the one having requested the opinion to participate in advisory proceedings. With respect to non-governmental international organizations, the only one ever authorized by the ICJ to furnish information did not in the end do so (*International Status of South West Africa*). The Court has rejected all such requests by private parties.

The written proceedings are shorter than but as flexible as in contentious proceedings between States. Participants may file written statements, which sometimes form the object of written comments by other participants. The written statements and comments are regarded as confidential, but are generally made available to the public at the beginning of the oral proceedings. States are then usually invited to present oral statements at public sittings.

Advisory proceedings are concluded by the delivery of the advisory opinion at a public sitting.

It is of the essence of such opinions that they are advisory, i.e., that, unlike the Court’s judgments, they have no binding effect. The requesting organ, agency or organization remains free to give effect to the opinion by any means open to it, or not to do so. Certain instruments or regulations can, however, provide beforehand that an advisory opinion by the Court shall have binding force (e.g., conventions on the privileges and immunities of the United Nations).

It remains nevertheless that the authority and prestige of the Court attach to its advisory opinions and that where the organ or agency concerned endorses that opinion, that decision is as it were sanctioned by international law.

ROLE OF INTERNATIONAL COURT OF JUSTICE IN INTERNATIONAL PEACE AND COOPERATION:

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, and came into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, came into force on 12 June 1968.

The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members (formerly seven), including the concurring votes of the five permanent members of the Security Council.

The amendment to Article 61, which entered into force on 31 August 1965, enlarged the membership of the Economic and Social Council from eighteen to twenty-seven. The subsequent amendment to that Article, which entered into force on 24 September 1973, further increased the membership of the Council from twenty-seven to fifty-four.

The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members (formerly seven) of the Security Council. Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a “vote, of any seven members of the Security Council”, the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council.

CRITIQUE OF INTERNATIONAL JUDICIAL GERNANCE:

Globalization is everywhere but it still comes as a surprise to many lawyers and scholars who do not specialize in international law to learn that there are now more than 50 international courts, tribunals, and quasi judicial bodies, most of which have been established in the past 20 years. More legal professionals are aware, at least in some general way, but a large volume of disputes are resolved through binding international arbitration. National courts, too, are increasing being called upon to apply international law and to interact with these international courts of other nations. Consider a handful of recent cases, the world trade organization dispute settlement body considers where us regulations designed to protect endangered sea turtles violate free trade rules. The us supreme court considers whether to stay execution of foreign citizens at the request of the international court of justice. The international criminal tribunal for the former Yugoslavia considers whether to follow a president of the international court of justice on the issue of state responsibility for war crimes. On the surface these cases have little, in common. If they were studied in law school, they would be studied in four separate courses; the first might come up in a class on trade or environmental law, the second in a course on criminal procedure, the third in a class, on cyberspace, the fourth in a course on public international law. In fact each case represents a facet of an emerging and inters connected international judicial system. Matured judicial systems have highly articulated rules of procedure governing the relationships among the courts.

REFERENCE:

PUBLICATIONS OF ICJ of various years

1. Judgements, Advisory Opinions And Orders
2. Pleadings, Oral Arguments, Documents
3. Acts And Documents
4. Year Book