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The Role of the World Court in Settling
International Disputes: A Recent
Assessment

SUSAN W. TIEFENBRUN*

I. INTRODUCTION

This Article examines the role of the International Court of Justice (World Court)¹ as the principal judicial body of the United Nations.² In an attempt to evaluate the World Court's effectiveness as a forum for settling international disputes, this Article examines the current role of the court in light of its past record. Given the significant changes in the global political climate, the development of other international tribunals, the heightened use of international arbitration to settle disputes, and the increased activity of the World Court in its advisory capacity, an understanding of the future role of the World Court in settling international disputes is vital for those engaged in international law or politics.

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1. This Article uses the terms World Court, ICJ, or the Court to refer to the International Court of Justice.

2. U.N. CHARTER arts. 7, 92.

Many have criticized the World Court's effectiveness in the past.³ Its record dramatically improved, however, in 1991 after the fall of Communism in the former Soviet Union and in much of Eastern Europe. Earlier, during the Nicaraguan dispute in 1985, the United States adopted a highly negative view towards the World Court, echoing the critical sentiments of numerous nations. The United States believed that the World Court was politically motivated rather than impartial.⁴ In addition, critics at that time called the World Court a weak, irrelevant, and even "moribund" forum.⁵ Reservations about the World Court by the major world powers stemmed partly from widespread questioning of contemporary international law.⁶ Before the fall of Communism, many viewed international law as the product of European imperialism and the World Court as an institution that failed to take sufficient account of the changed patterns of international relations.⁷

In 1985, the United States not only voiced its general dissatisfaction with the World Court,⁸ it twice vetoed Nicaraguan attempts to enforce the World Court's decision in the U.N. Security Council. The United States withdrew its declaration accepting the compulsory jurisdiction of the World Court, and it entirely withdrew from

3. See generally J. Patrick Kelly, *The Changing Process of International Law and the Role of the World Court*, 11 MICH. J. INT'L L. 129 (1989) (discussing legal scholars' views on the role of the World Court, including the views of Thomas Franck, Louis Sohn, Michael Reisman, Eugene Rostow, and Richard Falk).

4. See generally MICHLA POMERANCE, *THE UNITED STATES AND THE WORLD COURT AS A 'SUPREME COURT OF THE NATIONS': DREAMS, ILLUSIONS AND DISILLUSION* (1996) (presenting a comprehensive review of U.S. attitudes toward the concept of a World Court, and U.S. disillusionment with the prospect and performance of the International Court of Justice and other international adjudicative bodies).

5. See generally John C. Guilds, III, "If It Quacks Like a Duck": *Comparing the ICJ Chambers to International Arbitration for a Mechanism of Enforcement*, 16 MD. J. INT'L L. & TRADE 43 (1992).

6. See generally SHABTAI ROSENNE, *THE LAW AND PRACTICE OF THE INTERNATIONAL COURT* 17 (1985) (citing OLIVER JAMES LISSITZYN, *INTERNATIONAL LAW TODAY AND TOMORROW* (1965)).

7. RICHARD FALK, *REVIVING THE WORLD COURT* x (1986).

It also made me aware of the reality of the International Court of Justice as an institution: its absurd formality and archaic quality; the deep sense of pride and commitment shared by its judges, who agree on little else; and most of all, the remoteness of this judicial atmosphere from the changing currents of international life.

Id.

8. See United States: Department of State Letter and Statement Concerning Termination of Acceptance of I.C.J. Compulsory Jurisdiction, *reprinted in* 24 I.L.M. 1742 (1985) This letter stated that as of October 7, 1985, the United States opted to end its 40 year acceptance of the compulsory jurisdiction of the International Court of Justice. See *id.*

the Nicaraguan proceedings.⁹ The United States boycotted the merits phase and did not participate in the subsequent compensation phase. The Sandinista regime claimed billions of dollars as damages, and the Chamorro administration withdrew this claim as part of the overall settlement.¹⁰ When the World Court entered its judgment against the United States,¹¹ criticism of the World Court escalated. Critics questioned the Court's role as a fair tribunal for the adjudication of international disputes.

In contrast, the World Court in the 1990s is increasingly respected as an international adjudicator, and it is busier than ever before.¹² The World Court no longer represents an "irrelevant" judicial institution. It has emerged as a viable international institution due, in part, to the steady performance of past duties.¹³

Currently, the World Court examines a wide variety of international legal issues.¹⁴ The World Court issues judgments, provides advice, and mediates settlement negotiations of cases being decided in the Court.¹⁵ Since 1946, the Court has delivered sixty dispute

9. See, e.g., *U.S. Decision to Withdraw from the Int'l Court of Justice: Hearing Before the Subcomm. on Human Rights and Int'l Orgs. of the Comm. on Foreign Affairs*, 99th Cong. 1 (1985) (statement of Gus Yatron, Chairman, Subcomm. on Human Rights and Int'l Org. of the Comm. on Foreign Affairs); U.S. Terminates Acceptance of ICJ Compulsory Jurisdiction, DEP'T ST. BULL., Jan. 1986, 67; U.S. Withdrawal from the Proceedings Initiated by Nicaragua in the ICJ, DEP'T ST. BULL., Mar. 1985, at 64; Abraham D. Sofaer, *Adjudication in the International Court of Justice: Progress Through Realism*, 44 REC. OF THE ASS'N OF THE BAR OF THE CITY OF N.Y. 459, 462 (1989).

10. See Keith Highet, *The Peace Palace Heats Up: The World Court in Business Again?*, 85 AM. J. INT'L L. 646, 647 (1991) [hereinafter *Peace Palace*].

11. See *Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27).

12. See *Peace Palace*, *supra* note 10, at 646.

13. See *id.*

14. For example, in 1992 a number of States came to the World Court by special agreement to settle disputes. These disputes included a territorial dispute between El Salvador and Honduras, a border dispute between Libya and Chad, and the Danube Diversion case between the Slovak Republic and Hungary. See *infra* Part III.B.1. States have brought other major disputes to the World Court including the *Aerial Incident* case, the *Oil Platforms* case between Iran and the United States, and the *East Timor* case between Portugal and Australia. Similarly, activity increased in both 1993 and 1994. See *infra* Part III.B.3. In 1995, the Court handled the *Fisheries Jurisdiction* case between Spain and Canada. In the same year, a total of 13 cases appeared on the general list of cases. In 1996, a new case was brought before the Court involving a boundary dispute between Botswana and Namibia over the Kasikili/Sedudu Island and the legal status of the island. See *infra* Part III.B.4. See also *Report of the International Court of Justice, August 1, 1995-July 31, 1996*, U.N. GAOR, 51st Sess., Supp. No. 4, at 37, U.N. Doc. A/51/4 (1996) [hereinafter *1995 Report*].

15. See Keith Highet, *The International Court of Justice in the Post-Cold War World*, 2 AM. SOC'Y INT'L BULL. EDUC. RESOURCES ON INT'L LAW 5 (1994) [hereinafter *ICJ*].

judgments concerning, *inter alia*, land frontiers and maritime boundaries, territorial sovereignty the non-use of force, and the non-interference in the internal affairs of States. In addition, other cases dealt with diplomatic relations, hostages, the right of asylum, nationality, guardianship, rights of passage, and economic rights.¹⁶

Part II of the Article discusses the history as well as the jurisdictional reach of the Court. Part III focuses on the Court's judicial record, beginning with the Court's lean years from 1922 to 1984, and then extensively examines the Court's increased activity since 1991. Part IV explains the general purpose of the World Court, discusses the Court's strengths and weaknesses and explains why States should select the World Court as a dispute resolution forum. Part V examines the Court's future in settling international disputes, given the changes in political climate, the development of other international tribunals, the increased use of international arbitration as a means of dispute settlement, and the Court's increased activity in its advisory capacity. Finally, Part VI concludes that notwithstanding the impact of the Court's weaknesses, the Court is busier than ever in maintaining world peace.

II. HISTORY OF THE WORLD COURT

A. Formation of the World Court

The United Nations Charter established the World Court as an organ of the United Nations.¹⁷ The Statute of the Court, a special part of the United Nations Charter, governs the Court.¹⁸ The Charter of the United Nations provides that "[a]ll Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice."¹⁹ The International Court of Justice embraces two courts, the Permanent Court of International Justice, set

16. See The International Court of Justice: An Overview of Organs (visited Mar. 5, 1997) <<http://www.un.org/overview/organs/icj.html>>.

17. The International Court of Justice is the "principal judicial organ" of the United Nations. U.N. CHARTER art. 92.

18. See NAGENDRA SINGH, THE ROLE AND RECORD OF THE INTERNATIONAL COURT OF JUSTICE 43 (1989).

19. U.N. CHARTER, STATUTE OF THE COURT art. 93, para. 1. Furthermore, it provides that "[a] State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon recommendation of the Security Council." *Id.* art. 93 para. 2. A State's membership in the United Nations, however, does not mean it must automatically accept the Court's compulsory jurisdiction. See *id.* art. 93, paras. 1-2.

up in 1919 as a tribunal for peace settlement, and the International Court of Justice, founded in 1945 as the principal judicial body of the United Nations.²⁰

The World Court is located in the Hague in a building called the Peace Palace.²¹ The United Nations General Assembly and Security Council elect fifteen judges from different countries²² for staggered terms of nine years.²³ Judges must be impartial and must decide cases according to the rules of international law.²⁴

In addition, judges must elect a President and a Vice-President of the Court. On February 6, 1987 the judges elected Stephen Schwebel of the United States as President, and Christopher Weeramantry of Sri Lanka as Vice-President of the Court.²⁵ Both of their terms of office will expire on February 6, 2000.²⁶

The current composition of the judges on the Court in order of seniority is: Shigeru Oda, Japan; Mohammed Bedjaoui, Algeria; Gilbert Guillaume, France; Raymond Ranjeva, Madagascar; Geza Herczegh, Hungary; Shi Jiuyong, China; Carl-August Fleischauer, Germany; Abdul G. Koroma, Sierra Leone; Vladlen S. Vereschetin, Russian Federation; Rosalyn Higgins, United Kingdom; Gonzalo Parra-Aranguren, Venezuela; Peter H. Kooijmans, Netherlands; and Jose F. Rezek, Brazil.²⁷

The World Court has two purposes: to settle legal disputes among States in accordance with international law and to give U.N. agencies advisory opinions on legal questions.²⁸ The Statute of the Court defines the tribunal's powers to decide disputes. In contentious cases, only sovereign States may apply to appear before the Court.²⁹ Currently, the 185 member States of the United Nations and the non-member States that have become parties to the Court's

20. See J.G. MERRILLS, *INTERNATIONAL DISPUTE SETTLEMENT* 109 (2d ed. 1991).

21. See SINGH, *supra* note 18, at 41.

22. See Merrill, *supra* note 20, at 123.

23. See U.N.CHARTER, STATUTE OF THE COURT art. 13; MERRILLS, *supra* note 20, at 109.

24. See U.N.CHARTER, STATUTE OF THE COURT art. 13.

25. See Peter H.F. Bekker, *Recent Developments at the World Court*, AM. SOC'Y INT'L L. NEWSL., Mar.-Apr. 1997, at 1, 8 [hereinafter *Recent Developments Mar.-Apr. 1997*].

26. See *id.*

27. See *id.*

28. See U.N.CHARTER, STATUTE OF THE COURT art. 65, para. 1; SINGH, *supra* note 18, at 14.

29. See *id.*

Statute may apply to appear before the Court.³⁰

The World Court can hear and decide disputes only when the States involved consent to its jurisdiction.³¹ Thus, the World Court does not have automatic compulsory jurisdiction.³² States may consent in one of three ways: (1) by the signing of a Special Agreement to submit the dispute to the Court; (2) by virtue of a jurisdictional clause in a treaty to which both States are parties; or (3) through the reciprocal effect of declarations made by the parties under the Statute. Where reciprocal declarations are made, each State accepts the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration.³³

Some legal scholars believe that compulsory jurisdiction must be implemented for the World Court to be an effective peace keeper.³⁴ Compulsory jurisdiction would enable the Court to better resolve international disputes,³⁵ without having to seek jurisdiction over the States in each submitted case.

There are three categories of jurisdiction: *ratione materiae*, *ratione personae*, and *ratione temporis*. Each of these categories imposes limitations on the Court's jurisdiction.

Jurisdiction *ratione materiae* grants the Court broad reach. This jurisdiction covers all cases that parties refer to the Court and all matters specially provided for in the U.N. Charter, or in treaties and

30. The two non-member States are Nauru and Switzerland. *See 1995 Report, supra* note 14, at 5.

31. *See* U.N. CHARTER, STATUTE OF THE COURT art. 36, para. 1. "The jurisdiction of the Court comprises all cases which the parties refer to in all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." *Id.* Therefore, the Court must first determine that all States involved have agreed to submit to the Court's exercise of jurisdiction.

32. *See id.* art. 36, para. 2.

33. This is said to have been brought by one party's "application."

34. *Cf.* THOMAS M. FRANCK, *JUDGING THE WORLD COURT* (1986). The United States should increase its utilization of the International Court of Justice, and reaccept the Court's compulsory jurisdiction subject to several important qualifications. In addition, the United States should reserve for the World Court disputes involving hostilities, armed conflict, and individual and collective self-defense. Moreover, the United States should also be able to choose the panel of judges through special chamber procedures. *See id.* at 65-73. Furthermore, the United States should also be able to request the Court to render a decision limited to a declaration of applicable legal principles rather than rendering a final order and eliminating the Connally reservation, which excludes matters of domestic jurisdiction from the World Court. *See id.* at 75-76.

35. *See* SINGH, *supra* note 18, at 29. Jurisdiction is the "key element" in international judicial settlement and in the assessment of the Court's performance. All hope of universal compulsory jurisdiction, however, was abandoned early in 1947. *See id.* at 12.

conventions currently in force.³⁶ The World Court under *ratione materiae* jurisdiction will only consider questions of law, not political or economic interest questions. Similarly, the Court will accept advisory jurisdiction cases only if they involve a "legal question."³⁷

The personality of the parties defines jurisdiction *ratione personae*. In the World Court only States may be parties in cases before the Court.³⁸ Thus, States that are parties to the present Statute including all U.N. members as well as other States such as Switzerland, Liechtenstein and San Marino, may seek judicial settlement of international disputes before the World Court.³⁹ The principles of jurisdiction *ratione materiae* and *ratione personae* are rough equivalents of personal and subject-matter jurisdiction in domestic law.

The third category, jurisdiction *ratione temporis* exists, but not as an independent jurisdictional requirement either in the Statute of the Court or in the opinions of the Permanent Court or World Court.⁴⁰ A state's reservations to this type of jurisdiction may restrict the period in which the Court can assert otherwise valid jurisdiction against the declarant.⁴¹ There are no jurisdictional statutes of limitations unless the State itself opts to impose a limit.⁴²

Once the Court asserts proper jurisdiction, the proceedings before the Court include a written phase and subsequent oral phase. During the written phase, the parties file and exchange pleadings called Memorial and Counter-Memorial. In the second round, these pleadings are called Reply and Rejoinder. The subsequent oral phase consists of public hearings at which agents and counsel address the Court.⁴³

36. *See id.* at 13.

37. *See id.*

38. *See* U.N. CHARTER, STATUTE OF THE COURT art. 34, para. 1

39. *See id.* art. 35.

40. *See* SINGH, *supra* note 18, at 12-13 (describing the three categories of jurisdiction).

41. *See id.* at 13 (stating that "a State is free to limit its acceptance of jurisdiction by reference to specific dates or periods").

42. *See* SINGH, *supra* note 18, at 13. For example, Israel excluded historical events from judicial scrutiny between May 5, 1948 and July 20, 1949. *See id.*

43. *See id.* at 237.

B. Jurisdiction of the World Court

1. Contentious Jurisdiction and the Nature of Consent

The World Court has three kinds of jurisdiction: contentious, incidental, and advisory jurisdiction. Contentious jurisdiction is based on the consent of the parties to the dispute.⁴⁴ A State can consent to jurisdiction in a number of ways, either *before* or *after* the dispute arises.⁴⁵ For example, consent to jurisdiction before the dispute arises may be made by means of a compromissory clause in a treaty, a declaration under Article 36(2) of the Statute of the Court or a special agreement. Alternatively, consent can be given after a dispute has arisen by a special agreement between the parties, by one party in response to the unilateral reference of a dispute to the World Court, or by performance of a legal act indicating consent.⁴⁶ A legal act indicating consent of jurisdiction establishes consent, even if the State is unwilling to litigate later when an actual case arises.⁴⁷ Thus, conflicts between the consensual basis and objections to the Court's jurisdiction from unwilling respondents do not arise.

Two types of treaties provide for the referral of the disputes to the World Court in advance of the dispute: multilateral instruments having a general aim and multilateral instruments having a more specific aim.⁴⁸ Multilateral treaties having a general aim of promoting peace, like the General Act of 1928, the 1948 Pact of Bogota, and the 1957 European Convention for the Peaceful Settlement of Disputes, represent general agreements to jurisdiction. These treaties bind signatories to jurisdiction. This type of multilateral instrument has generally failed, however, to provide jurisdiction by consent either because most States do not support them or because States that sign such treaties accept the Court's jurisdiction with substantial reservations.⁴⁹

Multilateral treaties having a more specific aim may contain an article which provides that disputes regarding the interpretation or application of that agreement can be referred to the World Court. Treaties of this type are less common but have provided the basis of

44. See MERRILLS, *supra* note 20, at 110.

45. See *id.* at 109-10.

46. See *id.* at 110 (describing the number of ways a State may give consent).

47. See *id.*

48. See *id.* (discussing the two types of multilateral instruments).

49. See *id.*

jurisdiction in several cases.⁵⁰

In addition, before the dispute arises, Article 36(2) of the Statute of the Court provides the states with an optional clause. If a State makes a declaration under the optional clause, it accepts the judicial settlement of a dispute on certain terms and conditions.⁵¹ If both signatory States agree to an optional clause declaration, then jurisdiction is established. However, less than one-third of the U.N. members, however, have made declarations under Article 36(2), and many of those declarations are weakened by reservations.⁵² The number of declarations accepting the Court's jurisdiction under the optional clause is on a slow but steady upward trend.⁵³

Provisions for reservations are stated in Article 36, paragraph 3 of the Statute, allowing States to include conditions regarding reciprocity and limiting the duration of a declaration under the optional clause.⁵⁴ Although the Statute conspicuously fails to refer to the possibility of making reservations that exclude certain types of disputes, matters, or parties from an acceptance of compulsory jurisdiction, it is "generally recognized that States have an inherent right

50. For example, in 1980 the Court decided the dispute over the detention of the U.S. diplomatic and consular staff in Teheran. The Court had jurisdiction because both the United States and Iran were parties to the Protocols Concerning the Compulsory Settlement of Disputes attached to the Vienna Convention on Diplomatic and Consular Relations of 1961 and 1963. *See id.*

51. *See id.*

52. *See id.* at 111 (citing J.G. Merrills, *The Optional Clause Today*, 50 B.Y.B.I.L. 8 (1979)).

53. In 1993, 58 of 185 member States made such acceptances. *See Report of the International Court of Justice, August 1, 1992-July 31, 1993*, U.N. GAOR, 48th Sess., Supp. No. 4, at 3, U.N. Doc. A/48/4 (1993) [hereinafter *1992 Report*]. Since August 1, 1992, two treaties providing for the jurisdiction of the Court in contentious proceedings and registered with the Secretariat of the United Nations have been brought to the knowledge of the Court: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation concluded at Rome on March 10, 1988 (art. 16, para. 1); and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris on January 13, 1993 (art. 14). In 1996, 59 out of 185 member States made such declarations with reservations. *See 1995 Report, supra* note 14, at 5. Since 1992, there have been several additions to the list of treaties with jurisdiction clauses. *See 1992 Report, supra* at 3.

54. *See Douglas J. Ende, Reaccepting the Compulsory Jurisdiction of the International Court of Justice: A Proposal for a New United States Declaration*, 61 WASH L. REV. 1145, 1152-53 (1986).

The Court has interpreted Article 36 to require that when the Court is seized of a dispute on the basis of compulsory jurisdiction, the reservations of each declaration will be binding on both parties, in the sense that each party is entitled to invoke any relevant reservation appearing in either party's declaration.

Id. at 1153.

to qualify their declarations under the optional clause through non-statutory reservations."⁵⁵

The Statute recognizes four broad categories of reservations: (1) reservations regarding termination and modification, such as conditions; (2) reservations *ratione temporis*, temporal reservations; (3) reservations *ratione personae*, reservations as to the parties; and (4) reservations *ratione materiae*, subject-matter reservations.⁵⁶

The United States' automatic reservation seems to include all four types of reservations. Its reservation, commonly referred to as the Connally Amendment, excludes "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America. . . ."⁵⁷ The Connally Reservation effectively grants the United States the power to avoid jurisdiction in all World Court matters.⁵⁸ Through the principle of reciprocity, other States can use this reservation to escape actions brought by the United States.⁵⁹

For consent to jurisdiction after the dispute arises, parties may negotiate a special agreement, similar to an arbitral *compromis*.⁶⁰

Jurisdiction over a dispute may be based on consent shown by a legal act. However, sometimes disagreements develop as to whether the States involved have given the Court the necessary consent. The Court must resolve this dispute pursuant to Article 36(6) of the Statute, which confers *compétence de la compétence*.

Initially, proceedings in the World Court often involve jurisdictional disputes, and these may form a separate stage of the proceedings. For example, in the Nicaragua case,⁶¹ brought by Nicaragua against the United States in 1984, the World Court accepted the respondent's argument that a reservation covering certain multilateral treaties applied. The Court held, however, that it still had jurisdic-

55. See *id.* at 1152.

56. See *id.* at 1156 (discussing the reservations in State practice).

57. United States Declaration of Aug. 14, 1946, 61 Stat. 1218.

58. See SINGH, *supra* note 18, at 21.

59. See Kelly, *supra* note 3, at 140 (discussing Aerial Incident of 27 July 1955 (U.S. v. Bulg.), 1960 I.C.J. 146 (May 30) where Bulgaria invoked the Connally Amendment reciprocally much to the embarrassment of the United States).

60. See SHABTAI ROSENNE, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* 65, 68 (3rd ed. 1973) [hereinafter *WORLD COURT*]; see also *Continental Shelf (Tunis. v. Libya)*, 1982 I.C.J. 18 (Feb. 24).

61. See *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27).

tion to decide the case on the basis of customary international law.⁶²

2. Incidental Jurisdiction

The second type of jurisdiction the World Court has is incidental jurisdiction. Incidental jurisdiction grants the World Court the power to order interim measures of protection, the power to allow a State to intervene,⁶³ and the power to revise or interpret a judgment.⁶⁴ The Statute of the Court confers these powers and does not require the States to give further consent.⁶⁵

3. Advisory Jurisdiction

The third type of jurisdiction granted to the World Court is advisory jurisdiction, which addresses rights and duties of international organizations.⁶⁶ Advisory jurisdiction enables the Court to give international organizations legal opinions at their request.⁶⁷ For example, the General Assembly may ask the Court to issue an advisory opinion regarding legal disputes between States.⁶⁸

Since 1946, the Court has issued twenty-three Advisory Opinions concerning, *inter alia*, admission to United Nations membership, reparation for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and Western Sahara, judgments rendered by international administrative tribunals, expenses of certain United Nations operations, and the applicability of the United Nations Headquarters Agreement.⁶⁹

62. *See id.*

63. *See* SHABTAI ROSENNE, INTERVENTION IN THE INTERNATIONAL COURT OF JUSTICE 28, 29 (1993) (setting forth the power of intervention in Articles 62 and 63) [hereinafter INTERVENTION].

64. *See* MERRILLS, *supra* note 20, at 116. Article 71 grants the World Court the power to revise a judgment; however, this power can only be exercised if new facts are discovered that would have had a decisive effect on the decision. The Court's ability to interpret a judgment represents a broader power and, according to Article 60, can be performed at the request of any party. *See id.* at 122.

65. *See* MERRILLS, *supra* note 20, at 116.

66. *See id.* at 122.

67. *See id.*

68. *See id.*

69. *See* *The International Court of Justice: An Overview of Organs* (visited Mar. 3, 1997) <<http://www.un.org/overview/organs/icj.html>>.

III. RECORD OF THE WORLD COURT

A. *The Lean Years: 1922-1940; 1946-1987*

The record supports the contention that the World Court has not lived up to the international community's expectations of having a single judicial forum which would resolve international disputes and promulgate binding international law.⁷⁰ From 1922 until 1940, the Permanent Court of International Justice heard twenty-nine cases and issued twenty-seven advisory opinions.⁷¹ From 1946 to 1987, the International Court of Justice or a Chamber of the Court conferred judgments on the merits of twenty-three cases,⁷² terminated twelve cases in the preliminary stages, discontinued five cases, and issued nineteen advisory opinions. Thus, in sixty-five years, the two institutions decided sixty-four contentious cases and forty-six advisory opinions.

In the years 1952, 1963-66, and 1968-69, the International Court did not receive any new cases, nor did it receive requests for advisory opinions.⁷³ This record indicates that the two tribunals heard an average of two cases per year—hardly a brilliant record.⁷⁴

Several explanations exist for the World Court's lean years. They include the World Court's location in the Hague, a persistent dispute between justiciable and non-justiciable cases,⁷⁵ two world wars, and governments' common fear of losing control over the resolution of disputes.⁷⁶ In addition, its lean years were due to a general lack of confidence in the Court, in its composition, and in international law which the Court applies.⁷⁷

70. See Leo Gross, *The International Court of Justice: Consideration of Requirements for Enhancing its Role in the International Legal Order*, 65 AM. J. INT'L L. 253, 253 (1971) [hereinafter *Consideration*].

71. See SINGH, *supra* note 18, at 219 (discussing the Court's achievements and a statistical appraisal of both the World Court and the Permanent Court of International Justice).

72. See *id.* at 219.

73. See Leo Gross, *Underutilization of the International Court of Justice*, 27 HARV. INT'L L.J. 571, 573 (1986) [hereinafter *Underutilization*].

74. See SINGH, *supra* note 18, at 219.

75. See *Underutilization*, *supra* note 73, at 571.

76. See *id.* at 572.

77. See *Consideration*, *supra* note 70, at 253.

B. Increased Activity of the Court: 1991-1997

1. 1991

Recent changes in the global political climate have dramatically increased the number of cases adjudicated by the World Court. The 1991 reports reveal that in the preceding two years, nine new cases were submitted to the Court.⁷⁸ The full Court, rather than the Chamber, heard these nine cases, which except for one,⁷⁹ were all filed by application.⁸⁰ The nine new cases brought to the Court by States included a variety of novel issues.⁸¹ The jurisdictional basis in these cases varied from assertions of commitments made in the course of mediation to straightforward reliance on the optional clause. They also included a variety of treaty compromissory clauses, including friendship, commerce and navigation treaties, and the Chicago Convention.

Due to the increased activity of the World Court in 1991, there was hope that the full Court, not the Chambers, would be busy developing new areas of international law. Commentators interpreted this increased activity as an indication that the World Court would primarily adjudicate matters relating to the law of the sea, and that participation in the Court's process would increase.⁸² Moreover, the increased activity in 1991 enabled the Court to serve as a forum for the reconciliation of the disparate interests of developed and developing countries. In the near future the Court will likely become a forum for a wide range of mid-level powers seeking to resolve important local problems probably concerning a boundary.⁸³

78. See *Peace Palace*, *supra* note 10, at 647.

79. See *id.* at 647 n.10 (citing *Territorial Dispute (Libya v. Chad)*, 1990 I.C.J. 149 (Oct. 26) as an amalgam of application and special agreement).

80. See *Peace Palace*, *supra* note 10, at 647 (discussing that the same judges were repeatedly used for chamber assignments, which left other judges little to do, and whether such chambers could maintain their quality as judicial institutions without inconsistencies rather than becoming arbitration panels). See also *Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.)*, 1990 I.C.J. 3 (Feb. 28) (Shahabuddeen, J., dissenting) (denying the validity of the chambers). See generally Andreas Zimmerman, *Ad Hoc Chambers of the International Court of Justice*, 8 DICK. J. INT'L L. 1 (1989) (discussing the use of Chambers).

81. See *Peace Palace*, *supra* note 10, at 647.

82. See *id.* at 653. In 1991, two-thirds of the cases on the docket involved the law of the sea directly. The Court is on a productive and convincing path toward mastery of the law of the sea, and has produced the only single body of jurisprudence in the area from 1969 to 1991. See *id.* In 1991, Denmark, Bahrain, Chad, Finland and Qatar were new parties to the Court. See *id.* at 652.

83. See *id.* at 654.

2. 1992-1993

As of October 15, 1993, the World Court had a full docket, with eleven cases at various stages of resolution.⁸⁴ Recent additions to the list include cases between Hungary and Slovakia over the Danube dams.⁸⁵ In addition, the list includes a request from the World Health Organization for an advisory opinion—the only advisory opinion request on the docket—concerning the use of nuclear weapons.⁸⁶

Twice during the 1992-1993 session, the Court dealt with complicated and lengthy requests for interim measures of protection in the case brought by from Bosnia and Herzegovina against Yugoslavia (Serbia and Montenegro) regarding the Genocide Convention.⁸⁷ Because these requests have priority over all other cases, the Court immediately resolved these two interim requests.⁸⁸

On June 14, 1993, the Court entered final judgment in the case between Denmark and Norway.⁸⁹ This case concerned the maritime boundary between the east coast of Greenland and the Norwegian Island of Jan Mayen.⁹⁰ Both parties considered the Court's judgment as a satisfactory final settlement of a long-term dispute.⁹¹

During this session, both the *Nauru v. Australia* case⁹² and the

Is this all that bad a result? Perhaps it is the correct one for the next decade. The greater powers could not be expected to abide by decisions of the Court in every instance; it is the lesser powers that by definition require the additional strength and protection of the Court and it is by their participation and willingness to use the Court that new ground is broken, and past prejudices and fears are set aside and allayed.

Id.

84. See Sir Robert Y. Jennings, *Speech by Sir Robert Jennings, President of the International Court of Justice, to the U.N. General Assembly*, 88 AM. J. INT'L L. 421 (1994). [hereinafter *Speech by Sir Robert Jennings*].

85. *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*, 1993 I.C.J. 151 (Dec. 20).

86. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, 1993 I.C.J. 467 (Sept. 13).

87. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo. (Serbia and Montenegro))*, 1993 I.C.J. 3 (Apr. 8).

88. See 1992 Report, *supra* note 53, at 3.

89. *Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.)*, 1993 I.C.J. 38 (June 14).

90. See *id.*

91. See Gary L. Scott et al., *Recent Activity Before the Court of Justice: Trend or Cycle?* 3 ILSA J. INT'L & COMP. L. 1, 14 (1996); see also *Maritime Delimitation in the Area between Greenland and Jan Mayen*, 1993 I.C.J. 38.

92. See *Speech by Sir Robert Jennings, supra* note 84, at 421. (citing *Certain Phosphate Lands in Nauru (Nauru v. Austl.)*, 1992 I.C.J. 345, 346 (June 29)).

Great Belt case between Finland and Denmark⁹³ settled out of court. The successful settlement of these two cases indicates a new role for the World Court. The Court's intervention made further negotiations between the parties possible and resulted in the successful settlement of the dispute. "No longer is resort to the International Court of Justice seen, to use the traditional phrase, as a 'last resort' when all negotiation has finally failed. Rather, it is sometimes now to be seen as a recourse that might usefully be employed at an earlier stage of the dispute."⁹⁴

Finally, during this period of heightened activity, the Court also established a Chamber for Environmental Matters, believing some litigants might prefer a Chamber composed of judges who expressed a special interest in that area.⁹⁵

3. 1993-1994

Similar to the previous two years, the Court accepted three new cases in 1993.⁹⁶ According to the Report of the General Assembly on the Work of the Organization, the World Court heard a record number of thirteen cases in the 1993-94 sessions.⁹⁷ The Court's docket included twelve contentious cases and one advisory opinion. The parties consisted of States "from nearly every region in the world. Judgment was rendered in two cases, and an Order on requests for the indication of provisional measures was made in a third case."⁹⁸

The twelve contentious cases were as follows: (1) *Aerial Incident of 3 July 1988*;⁹⁹ (2) *East Timor*;¹⁰⁰ (3) *Maritime Delimitation between Guinea-Bissau and Senegal*;¹⁰¹ (4) *Maritime Delimitation*

93. *Passage through the Great Belt (Fin. v. Den.)*, 1992 I.C.J. 348 (Sept. 10).

94. See *Speech by Sir Robert Jennings, supra* note 84, at 422.

95. See *id.* at 423.

96. See Peter H.F. Bekker, *Current Development: 1993-1994 Judicial Activity of the World Court*, 89 AM. J. INT'L L. 213 (1995) [hereinafter *Current Development*].

97. Report of the Secretary - General on the work of the Organization, September 1994, U.N. Doc. A/49/1 (1994) [hereinafter *1994 Report*].

98. *Id.* at 7.

99. *Aerial Incident of 3 July 1988 (Islamic Rep. of Iran v. U.S.)*, 1994 I.C.J. 6 (Feb. 3).

100. *East Timor (Port. v. Austl.)*, 1993 I.C.J. 32 (May 19).

101. On March 12, 1991, the Government of the Republic of Guinea-Bissau filed an Application against the Republic of Senegal in a dispute concerning the delimitation of maritime territories between the two States. *Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Sen.)*, 1991 I.C.J. 53 (Nov. 8).

and Territorial Questions between Qatar and Bahrain;¹⁰² (5) *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.K.)*¹⁰³ and (*Libya v. U.S.*);¹⁰⁴ (6) *Oil Platforms (Islamic Rep. of Iran v. U.S.)*;¹⁰⁵ (7) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo. (Serbia and Montenegro))*;¹⁰⁶ (8) *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*;¹⁰⁷ (9) *Land and Maritime Boundary (Cameroon v. Niger.)*;¹⁰⁸ (10) *Libya/Chad*;¹⁰⁹ and (11) *Nauru v. Australia* which settled in September, 1993.¹¹⁰

In September 1993, the World Health Organization also requested an advisory opinion on the legality of the use of nuclear weapons by a State in armed conflict.¹¹¹

4. 1994-1996

During the 1995 calendar year, the Court had two new contentious cases and one new advisory opinion case.¹¹² The two new cases were *Fisheries Jurisdiction* case,¹¹³ brought on Application on

102. On July 8, 1991, the Government of the State of Qatar filed an Application against the Government of the State of Bahrain concerning a dispute about the sovereignty of maritime boundaries between the two states. *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bah.)*, 1994 I.C.J. 112 (July 1).

103. *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.K.)*, 1995 I.C.J. 282 (Sept. 22).

104. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. U.S.)*, 1995 I.C.J. 285 (Sept. 22).

105. The United States filed preliminary objections to the jurisdiction of the World Court. In January 1994, the President of the Court set a time limit for the written statement by Iran on these objections. *Oil Platforms (Islamic Rep. of Iran v. U.S.)*, 1993 I.C.J. 35 (June 3).

106. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo. (Serbia and Montenegro))*, 1993 I.C.J. 325 (Sept. 13).

107. *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*, 1993 I.C.J. 319 (July 14).

108. Cameroon instituted proceedings against Nigeria in a dispute concerning questions of sovereignty over the peninsula of Bakassi on March 29, 1994. *Land Maritime Boundary between Cameroon and Nigeria (Cameroon v. Niger.)*, 1996 I.C.J. 13 (Mar. 13).

109. The World Court decided the *Libya/Chad* case on February 3, 1994. The U.N. Aouzou Strip Observer Group Council (UNASOG) will implement the decision. *See Territorial Dispute (Libya v. Chad)*, 1994 I.C.J. 6 (Feb. 3).

110. *Certain Phosphate Lands in Nauru (Nauru v. Austl.)*, 1993 I.C.J. 322 (Sept. 13).

111. *See Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, 1993 I.C.J. 467 (Sept. 13).

112. *See Peter H.F. Bekker, The 1995 Judicial Activity of the International Court of Justice*, 90 AM. J. INT'L L. 328 (1996) [hereinafter *1995 Judicial Activity*].

113. *See id.* (citing *Fisheries Jurisdiction (Spain v. Can.)*, 1996 I.C.J. 58 (May 8)).

March 28, 1995, and the *Nuclear Tests* case.¹¹⁴ In the *Nuclear Tests Case*, the Court heard New Zealand's request for an examination of the situation in light of the Court's December 20, 1994 judgment in the *Nuclear Tests* case.¹¹⁵ The U.N. General Assembly also requested an advisory opinion on the legality of the threat or use of nuclear weapons.¹¹⁶ Thus, in 1995, a total of thirteen cases appeared on the General List.¹¹⁷ The majority of these cases, however, were carried over from the previous session, except for the *Nauru v. Australia* case,¹¹⁸ which was settled in September 1993 and the *Libya/Chad* case,¹¹⁹ which was decided on February 3, 1994.¹²⁰

In 1995, the World Court issued a total of ten orders.¹²¹ These orders involved fixing time limits for the advisory opinions of the *Nuclear Tests* case,¹²² the *Qatar and Bahrain* cases,¹²³ the *Lockerbie* cases,¹²⁴ the *Genocide* case,¹²⁵ and the *Fisheries Jurisdiction* case.¹²⁶ The full Court held public sittings in four cases: *East Timor*,¹²⁷ *New Zealand v. France*,¹²⁸ and the two nuclear weapons advisory opinions.¹²⁹ On February 15, 1995, the Court delivered a judgment on

114. *See id.*

115. *See* Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the *Nuclear Tests* (N.Z. v. Fr.), 1995 I.C.J. 288 (Sept. 22).

116. *See* Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. (July 8).

117. *See* 1995 Judicial Activity, *supra* note 112, at 328.

118. *Certain Phosphate Lands in Nauru* (Nauru v. Austl.), 1993 I.C.J. 322 (Sept. 13).

119. *Territorial Dispute* (Libya v. Chad), 1994 I.C.J. 6 (Feb. 3).

120. *See* 1995 Judicial Activity, *supra* note 112, at 329; *see also infra* note 142.

121. *See id.*

122. *See id.* (discussing Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1995 I.C.J. 3 (July 8) and Legality of the Threat or Use of Nuclear Weapons 1996 I.C.J. (July 8)).

123. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahr.), 1995 I.C.J. 6 (Feb. 15).

124. *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie 282* (Libya v. U.K.), 1995 I.C.J. 282 (Sept. 9); *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie* (Libya v. U.S.), 1995 I.C.J. 285 (Sept. 9).

125. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosn. Herz. v. Yugo. (Serbia and Montenegro)), 1995 I.C.J. 80 (July 14).

126. *Fisheries Jurisdiction* (Spain v. Can.), 1996 I.C.J. 58 (May 8).

127. *East Timor* (Port. v. Austl.), 1995 I.C.J. 90 (June 30).

128. *See* Peter H.F. Bekker, *Recent Developments at the World Court*, AM. SOC'Y INT'L L. NEWSL., Nov. 1995, at 1. On September 22, 1995, the Court issued an order to dismiss the Request by New Zealand to reopen the nuclear test case, which claimed France's atmospheric tests caused deposits of radio active fall-out on New Zealand territory. *See id.*

129. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, 1995 I.C.J. 3

jurisdiction and admissibility in the *Qatar and Bahrain* case.¹³⁰ On June 30, 1995, the Court decided the *East Timor* case.¹³¹ However, the Court held by a 14 to 2 majority that it could not adjudicate the legal dispute between Portugal and Australia.¹³² The Court also held that East Timor must remain a self-governing territory and that the people of East Timor have the right to self-determination.¹³³ On September 22, 1995, the Court dismissed New Zealand's request to reopen the case against France.¹³⁴ On November 14, 1995, the Court issued a fifth order discontinuing the case concerning maritime delimitation between Guinea-Bissau and Senegal, which was brought on March 12, 1991.¹³⁵

In 1996, the Court continued its productive pace.¹³⁶ On February 12, 1996, Cameroon filed a Request for Provisional Measures—a form of injunction—to stop the fighting between Cameroon and Nigerian forces.¹³⁷ On February 23, 1996, the Court dismissed the case concerning the aerial incident between Iran and the United States because both parties had entered into negotiations for a friendly settlement of the matter on August 8, 1994.¹³⁸ On July 8, 1996, the Court ruled on the September 3, 1993 World Health Organization's Request for an Advisory Opinion relating to the use of nuclear weapons, and it also handed down its Advisory Opinion on the Legality of Nuclear Weapons.¹³⁹ On May 29, 1996, Botswana and Namibia jointly filed a case to determine the boundary between Botswana and Namibia around Kasikili/Sedudu Island as well as to determine the legal status of the island.¹⁴⁰ On December 12, 1996,

(July 6) and Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. (July 8).

130. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahr.)*, 1995 I.C.J. 6 (Feb. 15).

131. *East Timor*, 1995 I.C.J. 90.

132. *See id.*

133. *See* Peter H.F. Bekker, *Recent Developments at the World Court*, AM. SOC'Y. INT'L L. NEWSL., Sept. 1995, at 1 [hereinafter *Recent Developments*].

134. Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (N.Z. v. Fr.), 1995 I.C.J. 288, 307 (Sept. 22).

135. *Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Sen.)*, 1995 I.C.J. 423 (Nov. 8). Agents of Guinea-Bissau and Senegal informed the President of the International Court of Justice of their agreement to discontinue the proceedings through letters dated November 2 and 6, 1995, respectively.

136. *See Recent Developments*, *supra* note 133.

137. *See id.*

138. *See id.*

139. *See 1995 Report*, *supra* note 14, at 39-41.

140. *See Recent Developments*, *supra* note 133.

the Court rejected the U.S. objection to the Court's jurisdiction in the Oil Platforms case involving Iran and the United States.¹⁴¹ Thus, the Court dealt with twelve contentious cases and two advisory opinions for the period between August 1, 1995 to July 31, 1996.¹⁴²

5. 1997

In order to obtain evidence in the *Hungary v. Slovakia* dispute, the Court issued an order on February 5, 1997 for World Court investigators to visit the site of the Gabčíkovo-Nagymaros hydroelectric dam project near Bratislava in the Slovak Republic. A Special Agreement between Hungary and the Slovak Republic on July 2, 1993 referred the dispute between the two countries to the Court.¹⁴³

IV. WHY SELECT THE WORLD COURT?

A. Purposes of the World Court

In 1991, President George Bush announced the beginning of the air strikes against Iraq. In his speech, he submitted to the American people a plea for a new world order, saying, "[w]e have before us the opportunity to forge for ourselves and for future generations a new world order, a world where the rule of law, not the law of the jungle, governs the conduct of nations."¹⁴⁴ It is generally accepted that peace under the rule of law is an ideal.¹⁴⁵ The World Court provides for the peaceful settlement of disputes by intervening in, and enhancing the role of, international legal order.¹⁴⁶

"Now that the use of force is generally prohibited, the only

141. See 1995 Report, *supra* note 14, at 37.

142. The General List is published yearly in the *Report of the International Court of Justice*, e.g., August 1, 1995-July 31, 1996 is in the General Assembly official records. See *id.* This General List for the period August 17, 1995-July 31, 1996 contains the same as those which appeared on the list which appears above for the period 1993-1994, excluding the *East Timor* case, the *Libya/Chad* case, and the *Nauru v. Australia* case, and including the *Fisheries Jurisdiction* case (Spain v. Canada), the *New Zealand v. France* case, the *Kasili/Sedudu Island* case (Botswana v. Namibia) and the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons requested by the United Nations*. See 1994 Report, *supra* note 97.

143. See *Recent Developments Mar.-Apr. 1997*, *supra* note 25, at 1.

144. Andrew Rosenthal, *No Ground Fighting Yet: Call to Arms by Hussein*, N.Y. TIMES, Jan. 17, 1991, at A8.

145. See Joseph L. Daly, *Is the International Court of Justice Worth the Effort*, 20 AKRON L. REV. 391, 403 (1987).

146. See *id.*

way one can solve a dispute is by a decision of some impartial international body. Despite the doubts of some people, the International Court of Justice is the closest thing we have to such an impartial international body."¹⁴⁷

B. Weaknesses of the World Court

Nations sometimes view the submission of a dispute to the World Court as an "unfriendly" act.¹⁴⁸ This attitude may account for its under-utilization. The delays of the Court proceedings, due to a large number of separate and dissenting opinions, have also discouraged parties from using the Court.¹⁴⁹

Some nations object to the procedure by which the judges of the Court are elected, claiming that the judges do not have uniformly high qualifications, impartiality, or independence.¹⁵⁰ In addition, reservations *ratione temporis* of the optional clause have weakened the effectiveness of the Court, and it has been suggested that the Court should adopt a resolution on the subject of these reservations.¹⁵¹

Furthermore, the unpredictability of the Court's decisions due in part to the application of uncodified customary international law represents one of its most serious weaknesses. Agreement about the content and process of international law is not shared by all nations.¹⁵² Moreover, the new nations of the Third World, representing the majority of the world's people, contend that they are not bound by customary norms and that U.N. resolutions instead should create international legal norms.¹⁵³ Thus, the substantive norm to be applied by the Court is, itself, indeterminate.¹⁵⁴ In view of this uncertainty and the contested principles of customary international law,¹⁵⁵ some argue that the Court should reconsider application of customary international law until it is properly codified.¹⁵⁶ In addition, uncertainty about the Court's application of the law contributes

147. Louis B. Sohn, Forum, *American Acceptance of the Jurisdiction of the International Court of Justice: Experiences and Prospects*, 19 GA. J. INT'L & COMP. L. 489, 489 (1989).

148. See *Consideration*, *supra* note 70, at 253.

149. See *id.* at 301.

150. See *id.* at 308.

151. See *id.* at 315.

152. See Kelly, *supra* note 3, at 129.

153. See *id.*

154. See *id.*

155. See *id.*

156. See *Consideration*, *supra* note 70, at 317.

to the fear of many governments that they will lose control if they submit their cases to World Court jurisdiction.¹⁵⁷

Scholars espouse different views regarding the causes of the World Court's weaknesses. Richard Falk argues convincingly that the World Court's judicial style and narrow perspective have significantly impaired its functioning and have isolated it from the majority of nations.¹⁵⁸ Through a study of cases, Falk shows that the Court's opinions contain a subtle, jurisprudential paradigm that is positivist in legal style, Western in its use of sources, non-normative and obtuse in character, as well as indeterminant.¹⁵⁹ The Court's Western positivist judicial style makes it less-responsive to non-Western cultures. The substance of the decisions grounded in Western hegemony creates an institution inhospitable to non-Western interests. Falk proposes that the Court utilize a normative pluralistic jurisprudence that will consider panhumanistic commitments derived from principles set forth in the U.N. Charter and the diverse cultural, ideological, and national perspectives throughout the world.¹⁶⁰

In contrast, another scholar Michael Reisman, disagrees with Falk's view that the weakness of the Court is its domination by Western ideology and its bias in favor of the United States. Reisman argues that the changing composition of the Court has led to a bias against the United States.¹⁶¹ He believes that this bias caused the United States to withdraw its optional clause declaration and to refuse to appear in the *Nicaragua* case.¹⁶²

Professor Patrick Kelly argues that Falk's proposal for a normative pluralistic jurisprudence will cause the disintegration of the Court and of international law.¹⁶³ In addition, Professor Kelly argues that "the frequent use of special chambers procedures, voluntar[il]y or not, in contested substantive areas," would lead to a pluralistic and fragmented jurisprudence.¹⁶⁴ He recommends a

157. *See id.*

158. *See* FALK, *supra* note 7, at 178-80.

159. *See id.* at 179-80.

160. *See id.* at 190-91.

161. *See* W. Michael Reisman, *Termination of the United States Declaration Under Article 36(2) of the Statute of the International Court*, in *THE UNITED STATES AND THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE*, Aug. 1985, at 73.

162. *See id.* at 74-75.

163. *See* Kelly, *supra* note 3, at 159.

164. *Id.* at 164.

"universal jurisprudence agreed upon by all nations."¹⁶⁵

The United States pioneered international adjudication when it signed the Jay Treaty with the United Kingdom in 1794, establishing several arbitral tribunals.¹⁶⁶ The United States has more recently shown ambivalence toward the World Court.¹⁶⁷ Thomas Franck and Jerome Lehrman¹⁶⁸ persuasively argue that United States policy has veered between "messianism," fired by a utopian belief that the United States could lead states into accepting the world rule of law, and "chauvinism," reflecting the United States' "real-politik" counter-tendency and its distrustful view of other States and of international involvement in general.¹⁶⁹ The messianic vision, which states that law rather than war should settle disputes, appeared to triumph with the passage of the optional clause declaration. The chauvinistic tradition of untrammelled sovereignty found expression in the Connally Reservation, which erases the commitment of the United States to compulsory jurisdiction.¹⁷⁰ Franck and Jerome argue that, to achieve the messianic vision, proponents must find appropriate substantive areas for international adjudication and must design tribunals whose judges will be receptive to United States' interests.¹⁷¹

Until recently, an applicant State would select the World Court to adjudicate its dispute only if it believed that it would win. Or, if the applicant State wanted to make a statement or teach a lesson without using force, it also might bring its dispute before the World Court. Furthermore, a State could only rightfully bring the dispute before the World Court if the dispute did not involve national life or domestic issues. Until recently a State generally appealed to the World Court to settle or solve the dispute only if it were absolutely desperate.¹⁷²

165. *Id.* at 164.

166. Treaty of Amity, Commerce and Navigation, Nov. 19, 1794, U.S.-U.K., 8 Stat. 116 [hereinafter Treaty of Amity].

167. See Kelly, *supra* note 3, at 129.

168. Thomas M. Franck & Jerome M. Lehrman, *Messianism and Chauvinism in America's Commitment to Peace Through Law*, in THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 3 (Lori F. Damrosch ed., 1987).

169. See Richard B. Bilder, *The United States and the World Court in the Post "Cold War" Era*, 40 CATH. U.L. REV. 251, 253 (1991).

170. Kelly, *supra* note 3, at 135.

171. See Franck, *supra* note 168, at 18.

172. See SINGH, *supra* note 18, at 225 (discussing the reasons why States use the International Court of Justice).

Sir Robert Jennings believes that this cold climate surrounding the World Court has changed and that "there can be only one 'principal judicial organ of the United Nations,' as there is normally only one supreme court of any legally ordered community; and that position of the International Court of Justice ought always to be remembered and strenuously protected."¹⁷³ Sir Robert Jennings defends the Court's delays by stating, "one is justified in saying that the Court itself really works remarkably quickly, and the time taken will be found in any event . . . to compare favourably with other superior courts of both domestic and international jurisdiction."¹⁷⁴

One of the reasons the World Court has not expanded its adjudicative role is the requirement that its subject-matter jurisdiction be limited to legal and not political issues. Scholars have suggested that the increased activity of the World Court in recent years may be due partly to a more realistic appreciation of an international court of justice's place in a global society governed by international law. Rather than thinking of the Court as a forum for the settlement of all international disputes, it is more realistic to accept that some disputes require political decisions by a political body.

Such a body will of course work within the framework of the law, but the reasons for the decision will be political rather than legal People are much more likely to resort to the Court if they have a clear idea of what it can and should do, and what it cannot do.¹⁷⁵

The questionable qualifications and lack of impartiality of the Judges weakens the Court. To overcome this criticism, the Court has recently employed the panel approach to adjudication, in which only five out of the fifteen judges hear a case.¹⁷⁶ However, this chamber procedure has itself been criticized. "If States choose only to use such specially selected panels, the World Court could become a series of ad hoc arbitral tribunals sitting at a common seat, rather than remaining a 'World Court.'"¹⁷⁷ Moreover, the use of panels may erode the concept of the World Court as a global institution for the preservation of peace and may foster the idea that the judges of

173. See *Speech by Sir Robert Jennings, supra* note 84, at 424.

174. *Id.* at 423. It should also be noted that the Court's standing Chamber of Summary Procedure has never been employed, although it is available for expedited cases. See *Id.*

175. *Id.*

176. See, e.g., *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.)*, 1984 I.C.J. 246, 247 (Oct. 12).

177. See *Bilder, supra* note 169, at 256-57.

the Court are biased.

During a Jurisprudential Lecture at the University of Washington, Honorable Stephen Schwebel, then a judge of the International Court of Justice, commented that the refusal of certain defendant States to appear in Court, even where the Court clearly or arguably had jurisdiction, cripples the Court.¹⁷⁸

Finally, the lack of compliance with the Court's final judgments undermines the World Court's strength.¹⁷⁹ The current structure of international adjudication reinforces the failure of States to comply with the Court's judgments.¹⁸⁰

The Court's recent heightened activity has placed it under exceptional strain and has subjected staff and resources to severe cuts. Despite budgetary restrictions, for example, the Court has been deliberating on three cases simultaneously, instead of taking one case at a time.¹⁸¹

C. *Strengths of the World Court*

Peace under law is an ideal;¹⁸² the World Court was established to address the universal need for the peaceful settlement of international disputes. The World Court provides a State the opportunity to resolve an international dispute if it has a legal interest.¹⁸³ The very existence and active use of the Court enhance international legal order. The Court plays the role of a teacher, an advisor, a source of developing international law, and the hope of a world built on law and justice. The World Court also offers opportunities to depoliticize decisions by allowing a losing party to simply blame the Court for the judgments.

The development of the Chambers of the Court confers the advantages of both arbitration and adjudication.¹⁸⁴ The Chamber System provides an accepted body of procedural rules and the facilities

178. See Stephen M. Schwebel, *Reflections on the Role of the International Court of Justice*, 71 WASH. L. REV. 1061, 1067 (1986).

179. See *id.*

180. See *id.*

181. See 1995 Report, *supra* note 14, at 5.

182. See Daly, *supra* note 145, at 403 (listing the strengths and weaknesses of the World Court).

183. See U.N. CHARTER art. 62; see also Taslim O. Elias, *The Limits of the Right of Intervention in a Case before the International Court of Justice*, in VOLKERRECHT ALS RECHTSORDNUNG INTERNATIONALE GERICHTS BARKEIT MENSCHENRECHTE, (1983); INTERVENTION, *supra* note 63, at 46.

184. See Schwebel, *supra* note 178, at 1070.

of the Court in the Hague. Moreover, proceedings before a chamber are less expensive for the parties than those which require finding and the establishment of an arbitral tribunals.

V. THE FUTURE ROLE OF THE WORLD COURT

The Court's future role may be limited by a number of factors. First, other types of dispute resolution such as negotiation, mediation, and conciliation exist. Second, as set forth in U.N. Charter Article 33, the United Nations and other regional agencies may settle international disputes.¹⁸⁵ According to the U.N. Charter, States may use other international tribunals to resolve disputes.¹⁸⁶ As a result, many cases are currently decided in other international arenas, in bilateral arbitrations, in the dispute resolution mechanisms of the General Agreement on Tariffs and Trade and the World Trade Organization, and in the panels of the North American Free Trade Agreement. Furthermore, World Court adjudication can be risky, costly, unpredictable, not always impartial, and sometimes unenforceable. The risk of entrusting national interests to foreign judges who may be biased is overwhelming for some States, causing those States to choose other dispute resolution mechanisms.

Despite these issues, the World Court should play a greater role in the future because adjudication as a means of dispute resolution is dispositive and final. The Court is usually principled, impartial and orderly. It can provide time for parties that are in a protracted dispute to reach an agreement that is mutually beneficial. It settles disputes and provides advisory opinions, and as an impartial tribunal, it can "depoliticize" a dispute and reinforce the rule of law.

The World Court may be especially helpful in certain types of disputes in which governments are not particularly concerned about the outcome but are, nevertheless, unable to compromise the issue in negotiations.¹⁸⁷ The Court has proven to be an ideal forum for the reconciliation of serious, local problems like boundary disputes.¹⁸⁸ Furthermore, if a dispute involves difficult factual or technical issues, the Court can provide impartial assistance.

The World Court should also play a greater role in the future because of the increasing demand for the resolution of environ-

185. See U.N. CHARTER art. 33.

186. See U.N. CHARTER art. 95.

187. See Bilder, *supra* note 169, at 259.

188. See *Peace Palace*, *supra* note 10, at 654; see also *supra* text accompanying note 83.

mental disputes. It is in a unique position to settle such disputes because it has created a special chamber to deal with each environmental dispute brought to it.¹⁸⁹

For new States with middle-level power, the Court is the forum to resolve serious local problems. The Court could become the forum for the reconciliation of the interests of developing countries with those of the super powers. With the rise of developing countries after World War II, the world has seen the emergence of a large group of prominent non-Western jurists in the World Court.¹⁹⁰ Of the fifteen judges ruling in 1988, almost half were from developing countries including Senegal, Guyana, and Nigeria.¹⁹¹ This development should aid in re-establishing a more accurate balance of power in the Court and allowing the Court to better reflect the change in political climate and patterns of international relations. However, in January 1996, there was only one inter-African case pending between Cameroon and Nigeria.¹⁹²

One way to improve and enhance the use of the World Court in the future is to expand its advisory jurisdiction. Professor Louis Sohn has suggested possibilities for such an expansion.¹⁹³ For example, the General Assembly should authorize other general or regional public international organizations to request advisory opinions.¹⁹⁴ Furthermore, the court should allow two or more States to submit a dispute for advisory opinion.

Leo Gross, another scholar, has offered a practical suggestion for the expansion of the Court's role in the future.¹⁹⁵ In view of the development of European Union law and the successful role that the European Court of Justice has played in Western Europe through the extensive use of referral of cases from national courts to the European Court of Justice, a viable option is the use of a similar referral system for the World Court.¹⁹⁶ National courts of the

189. See Barbara Kelly, *The International Court of Justice: Its Role in a New World Legal Order*, 3 TOURO J. TRANSNAT'L L. 223 (1992) [hereinafter *New World Order*].

190. See Anthony Clark Arend, *The International Court of Justice, International Law, and United States Foreign Policy*, in THE UNITED STATES AND THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE 189, 191-92 (1986).

191. See *New World Order*, *supra* note 189, at 243.

192. See *Recent Developments*, *supra* note 133.

193. See Louis B. Sohn, *Broadening the Advisory Jurisdiction of the International Court of Justice*, 77 AM. J. INT'L L. 124, 124 (1983).

194. See *id.* at 125.

195. See *generally Consideration*, *supra* note 70.

196. See *id.*

European Union often refer cases to the European Court of Justice pursuant to an Article 177 proceeding¹⁹⁷ concerning questions that arise about the interpretation or validity of European Union law.¹⁹⁸ Similarly, national tribunals could refer a complex international law question to the World Court.¹⁹⁹

VI. CONCLUSION

The World Court is expanding its efforts to maintain world peace and to adjudicate international disputes. New States of middle-level power have begun submitting cases to the World Court. The Court is performing new functions as an advisor, a settler of disputes, and a conciliator of the interests of developing nations with those of the super powers. The demise of Communism, resulting in a sudden and marked increase in the use of the Court, undermines the arguments regarding the Court's weaknesses and emphasizes the inextricable link between law and politics.

197. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11, 76.

198. See *Consideration*, *supra* note 70, at 309.

199. See *id.* at 312.

