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# Maritime Delimitation and Territorial Questions Between Qatar and Bahrain

Marla C. Reichel

"[T]here is no State so powerful that it may not some time need the help of others outside itself, either for purposes of trade, or even to ward off the forces of many foreign nations united against it... [E]ven the most powerful peoples and sovereigns seek alliances, which are quite devoid of significance according to the point of view of those who confine law within the boundaries of States. Most true is the saying that, all things are uncertain the moment [one] depart[s] from the law."

Hugo Grotius in 1625, Founding Father of International Law

## I. INTRODUCTION

The *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*<sup>1</sup> poses two main issues to the International Court of Justice: those of admissibility and jurisdiction. Initially, the Court has to decide whether Qatar followed proper procedure by unilaterally admitting the dispute for adjudication. Did Qatar properly seise the tribunal when it, alone, submitted an application to the Court's registry? Seisin is the procedural means a State uses to bring its case before the international tribunal, and it is the act of the Applicant which seises the Court.<sup>2</sup> Qatar and Bahrain argue here over the proper method of seisin. Qatar assumes the position that unilateral seisin is proper; one party acting alone may bring the entire dispute.<sup>3</sup> On the other hand, Bahrain argues the Parties must jointly seise the tribunal.<sup>4</sup> Thus, the Court must determine whether Qatar's unilateral application adequately brought the dispute before it. Bahrain, arguing joint seisin, maintains the position that the Parties must seise the Court by Special Agreement. This method of seisin enables the Parties,

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1. *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* (Qatar v. Bahrain), 1995 I.C.J. 6, 18 (Judgment of February 15) [hereinafter referred to in text as *Case Concerning Maritime Delimitation*].

2. *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nic. v. U.S.), 1986 I.C.J. 14, 238 (June 27).

3. *Case Concerning Maritime Delimitation* (Qatar v. Bahrain), 1995 I.C.J. 6, 18 (Judgment of February 15).

4. *Id.*

by dual consent, to confer an adjudicatory role upon the Court.<sup>5</sup> Therefore, the Court must determine whether Qatar's unilateral application adequately brought the dispute before it or whether the Parties had to jointly seise the tribunal.

In addition to deciding the correct procedural method of seisin, the Court must decide whether it has jurisdiction over the actual territorial dispute. Jurisdiction presents special problems for the Court because its Parties are sovereign states. Only States may invoke the Court's jurisdiction. Indeed, it is implicit in the notion of sovereignty that States may not be subjected to the Court's jurisdiction without their consent.<sup>6</sup> In the case at hand, Qatar accepts jurisdiction. Bahrain, however, contends jurisdiction over the maritime territorial dispute.<sup>7</sup> Bahrain asserts Qatar never properly seised the Court, and alternatively, even if it had properly seised the Court, then it does not have jurisdiction because Bahrain, as a sovereign, did not consent.<sup>8</sup> In response, the Court asserts another means of invoking jurisdiction, the notion that States may compulsorily accept jurisdiction through a treaty's provisions.<sup>9</sup> In the *Case Concerning Maritime Delimitation* Bahrain argues a treaty never existed, forcing the Court to determine whether there was a binding international agreement sufficient to subject Qatar and Bahrain to its jurisdiction. If the Court finds for a binding agreement it may enforce the provision referring disputes to it, known as a compromissory clause, to bring the case within its jurisdiction.<sup>10</sup> In summary, two major issues face the Court in the *Case Concerning Maritime Delimitation*: the proper method of seisin and the Court's ability to invoke jurisdiction in order to adjudicate the territorial dispute. This article considers these issues, as well as possible impacts of the Court's decision and its ability to entertain future disputes.

## II. THE PRINCIPLES OF SEISIN OF THE INTERNATIONAL COURT OF JUSTICE: THE NOTION OF A UNILATERAL APPLICATION

### A. *Origins of Seisin In The Qatari-Bahraini Dispute: The Qatari Application*

In July of 1991, the Minister for Foreign Affairs of the State of Qatar filed an Application in the Court's Registry to institute proceed-

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5. *Case Concerning Maritime Delimitation in Area Between Greenland and Jan Mayen*, (Den. V. Nor.), 1993 I.C.J. 38, 112 (June 14).

6. Richard E. Levy, *International Law and the Chernobyl Accident: Reflections on an Important but Imperfect System*, 36 KAN. L. REV. 81, 110 (1987).

7. *Qatar v. Bahrain*, 1995 I.C.J. 6, 8.

8. *Id.* at 9.

9. Levy, *supra* note 6, at 110.

10. *Id.* at 108.

ings against the State of Bahrain.<sup>11</sup> The Application referred to the Court disputes between the two States regarding sovereignty over the Hawar Islands, sovereign rights over the shoals of Dibal and Qi'tat Jaradah and delimitation of the maritime areas of Qatar and Bahrain.<sup>12</sup> The Qatari Application founded jurisdiction upon letters exchanged between the two Parties in December 1987, and on the December 1990, Doha Minute agreements that resulted from meetings between the States.<sup>13</sup> In a previous judgment the Court determined the letters between the King of Saudi Arabia and the Amir of Qatar, in addition to the Doha Minutes signed by the respective Ministers for Foreign Affairs, were international agreements that conferred jurisdiction upon the tribunal.<sup>14</sup> What came to be known as the "Bahraini formula" circumscribed the Court's jurisdiction, defining its subject matter and scope.<sup>15</sup> The "Bahraini formula" stated: "The Parties request the Court to decide any matter of territorial right or other title or interest which may be a matter of difference between them; and to draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters."<sup>16</sup> Bahrain proposed this formula to Qatar in December 1988, and in turn Qatar accepted in December 1990. In the 1995 judgment, analyzed here, the Court bases its jurisdiction on the "Bahraini formula," yet the main issues are not jurisdictional content but rather the validity of Qatar's unilateral application to seise the tribunal and whether this action adequately conferred jurisdiction to entertain the dispute.

Pursuant to Article 40, paragraph 1, of the Statute of the Court, States party to the statute may bring a case before the Court by a written application addressed to the Registrar.<sup>17</sup> In addition to the Statute,

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11. Qatar v. Bahrain, 1995 I.C.J. 6.

12. *Id.* at 8.

13. Qatar v. Bahrain, 1995 I.C.J. 6. The King of Saudi Arabia sent the Amirs of Qatar and Bahrain letters dated December 19, 1987, in which he put forward new proposals. These proposals included four points: 1) All disputed matters shall be referred to the International Court of Justice for a final ruling, binding on both parties; 2) maintenance of status quo; 3) formation of a tripartite committee for the purpose of approaching the Court; and 4) the Kingdom of Saudi Arabia will continue its good offices to guarantee implementation of these terms. The Heads of State of Qatar and Bahrain accepted these proposals in letters dated 21 and 26 December, 1987. Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain), 1994 I.C.J. 112, 116-17 (Judgment of July 1994).

14. Qatar v. Bahrain, 1994 I.C.J. 112, 122.

15. Qatar v. Bahrain, 1995 I.C.J. 6, 9. See Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain), 1994 I.C.J. 112 (Judgment of July 1994), for more detail regarding the letters of December 1987, the Doha Minutes of December 1990 and the "Bahraini formula."

16. Qatar v. Bahrain, 1994 I.C.J. 112, 118.

17. The Statute provides that, "Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be

the Rules of the Court provide for the initiation of proceedings. In conjunction with Article 40 of the Statute, a State may institute proceedings by means of a unilateral application in accordance with Article 38(1) of the Rules of the Court.<sup>18</sup> Qatar invoked these provisions to seize the Court and to commence proceedings against Bahrain regarding maritime delimitation and territorial disputes. Bahrain, in turn, contested jurisdiction on the basis of Qatar's unilateral application, arguing that the Parties had to jointly seize the Court.<sup>19</sup> Seisin is a procedural step, independent of the basis of jurisdiction invoked, and is governed by the Statute and Rules of the Court.<sup>20</sup> Bahrain contended that without mutual seisin the Court lacked jurisdiction over the dispute.<sup>21</sup> Mutual, or joint seisin, is the notion that a complementary agreement is a legal prerequisite for seisin of the Court.<sup>22</sup> In its prior judgment of July 1, 1994, the Court found the unilateral application of Bahrain was admissible and afforded to the Parties an opportunity to submit the whole of the dispute.<sup>23</sup> However, the tribunal did not determine the link between unilateral seisin<sup>24</sup> and jurisdiction in the former judgment.

As noted, Qatar's unilateral application premised jurisdiction upon two agreements between the Parties concluded in December 1987 and December 1990. The Court found the letters and Minutes constituted binding international agreements,<sup>25</sup> bringing the Parties within the compulsory jurisdiction of the Court. One form of compulsory jurisdiction occurs when States agree to refer certain legal disputes to the Court, and the Court may then exercise its jurisdiction on this basis.<sup>26</sup> This type of jurisdiction, treaty-based compulsory jurisdiction, obligates a State to accept the Court's jurisdiction over a legal dispute the State expressed in a treaty in force.<sup>27</sup> Article 36(1) of the Statute of the International Court of Justice references this form of compulsory jurisdic-

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indicated." STATUTE OF THE COURT, art. 40, para. 1.

18. "When proceedings before the Court are instituted by means of an application addressed as specified in Article 40, paragraph 1, of the Statute, the application shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute." RULES OF THE COURT, art. 38, para. 1.

19. *Qatar v. Bahrain*, 1995 I.C.J. 6, 8.

20. *Id.* at 23.

21. *Id.* at 8.

22. *Aegean Sea Continental Shelf Case (Greece v. Turk.)*, 1978 I.C.J. 3, 40 (December 19).

23. *See Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain)*, 1994 I.C.J. 112.

24. Whereas mutual seisin is the idea that both parties to the dispute must agree to seize the Court, unilateral seisin is the notion that one party, acting alone, may seize the tribunal. *See Aegean Sea Continental Shelf Case (Greece v. Turk.)*, 1978 I.C.J. 3, 40.

25. *Qatar v. Bahrain*, 1994 I.C.J. 112, 126.

26. STANIMIR A. ALEXANDROV, RESERVATIONS IN UNILATERAL DECLARATIONS ACCEPTING THE COMPULSORY JURISDICTION OF THE COURT 4, 6 (1995).

27. *Id.*

tion.<sup>28</sup> The article allows States, in connection with the procedures of Article 40(1), and Article 38(1), *supra*, to unilaterally bring a dispute under the Court's compulsory jurisdiction when treaties and conventions in force refer cases.<sup>29</sup> A treaty clause referring a dispute between States to the Court is known as a "compromissory clause," and it triggers compulsory jurisdiction. Thus, a "compromissory clause" may bring a case before the Court pursuant to the terms of the treaty between the Parties, which refer to the disputed matters.<sup>30</sup> After deciding that the December 1987, and December 1990 agreements were treaties in force,<sup>31</sup> the Court admitted Qatar's Application based upon them, finding for compulsory jurisdiction. According to the Court's decision, Qatar effectively seised the Court by unilateral application.

Bahrain contended it had not agreed to refer the whole of the dispute by the letters and Minutes, and that the two Parties must jointly seise the Court by special agreement.<sup>32</sup> States parties to a dispute may refer a case to the Court by a special agreement, or *compromis*.<sup>33</sup> A special agreement, or *compromis*, is an *ad hoc* agreement between the parties concerning the specific dispute, and it becomes the legal basis of the Court's jurisdiction.<sup>34</sup> Bahrain argued that Qatar's unilateral application was insufficient to confer jurisdiction because on grounds of special agreement some form of agreement between the Parties must exist referring the dispute. The majority replied by stating that, "[T]here would have been nothing to prevent Bahrain's saying in its reply of 26 December 1987 that its acceptance of the Court's jurisdiction was subject to the conclusion of a special agreement providing for joint seisin of the Court."<sup>35</sup> Since the Parties continued to argue whether Qatar could unilaterally seise the tribunal or whether it had to be jointly seised, the Court found it incumbent upon them to resolve this issue.

### *B. Resolving the Question of the Method of Seisin*

In the December 1990 Minutes, paragraph 2, both Qatar and Bah-

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28. The Statute sets forth: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force" (emphasis added). STATUTE OF THE COURT, art. 36, para. 1.

29. ALEXANDROV, *supra* note 26, at 6.

30. Gary L. Scott, *Recent Activity Before the International Court of Justice: Trend or Cycle?*, 3 ILSA J. INT'L & COMP. L. 1, 22 (1996). See W. Michael Reisman, *The Other Shoe Falls: The Future of Article 36(1) Jurisdiction in Light of Nicaragua*, 81 AM. J. INT'L L. 166 (1987), for a discussion of "treaty-based jurisdiction."

31. See Section II of this Article for a discussion on whether the December 1987 and December 1990 agreements between Qatar and Bahrain were binding in nature.

32. Qatar v. Bahrain, 1995 I.C.J. 6, 17.

33. ALEXANDROV, *supra* note 26, at 2.

34. *Id.*

35. Qatar v. Bahrain, 1995 I.C.J. 6, 16.

rain refer to seisin of the Court.<sup>36</sup> For Qatar, paragraph 2 authorized unilateral seisin by means of an application filed by one or the other of the Parties, while for Bahrain the Minutes authorized only joint seisin of the Court by means of a special agreement.<sup>37</sup> This contention between the two States rests upon the meaning of the expression "al-tarafan," used in the second sentence of paragraph 2 of the original Arabic text of the Doha Minutes. Qatar translated the words as "the Parties" whereas Bahrain translated them as "the two Parties."<sup>38</sup> The Court found the expression, pursuant to its ordinary meaning, did not require seisin by both Parties acting in concert pursuant to a special agreement, but on the contrary allowed unilateral seisin.<sup>39</sup> Thus, the international tribunal determined Qatar could seize it by unilateral application, so as to bring the dispute within its jurisdiction. However, as Judge Schwebel notes in his dissent,<sup>40</sup> the government of Oman introduced a preliminary draft of the Doha Minutes at the meeting, and Bahrain subsequently had them amended. The draft form read, "[E]ither of the two parties may submit the matter to the International Court of Justice."<sup>41</sup> Bahrain then amended the provision to specify in place of "either of the two Parties" the expression "al-tarafan" meaning "*the two Parties*" (emphasis added).<sup>42</sup> If the Court incorrectly determined the plain meaning of the term, in light of Bahrain's request to amend the Minutes, then Qatar could not unilaterally seize the tribunal. The Court's jurisdiction, in turn, would be defective.

Indeed, because the Court's basis for compulsory jurisdiction is treaty-based, it has a duty to accurately determine the meaning of the so-called binding agreements. As Judge Schwebel states, "[i]f the object of the Parties - if their common intention - was to make clear that 'both Qatar and Bahrain had the right to make a unilateral application to the Court,' the provision that 'either of the two Parties may submit the matter' would have been left unchanged."<sup>43</sup> It seems the original

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36. Paragraph (2) of the Doha Minutes states that,

The good offices of the Custodian of the Two Holy Mosques, King Fahd Ben Abdul Aziz, shall continue between the two countries until the month of Shawwal 1 A.H., corresponding to May 1991. Once that period has elapsed, *the two parties may submit the matter to the International Court of Justice* in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it. The good offices of the Kingdom of Saudi Arabia will continue during the period when the matter is under arbitration.

*Id.* at 17 (emphasis added).

37. *Id.* at 18.

38. *Id.*

39. Qatar v. Bahrain, 1995 I.C.J. 6, at 19.

40. *Id.* at 34.

41. *Id.*

42. *Id.*

43. *Id.*

wording of the Doha Minutes, proposed by the government of Oman, would have achieved the goal of allowing unilateral seisin and not the inverse. Judge Oda, also dissenting, feels that Qatar did not take into account Bahrain's deletion of the original wording, and that neither the December 1987, nor the December 1990 agreements, were sufficient to enable Qatar to unilaterally seize the Court.<sup>44</sup> In fact he states that:

[Neither text confers] jurisdiction upon the Court in the event of a unilateral application under Article 38, paragraph 1, of the Rules of Court, and the Court is not empowered to exercise jurisdiction in respect of the relevant disputes unless they are jointly referred to the Court by a special agreement under Article 39, paragraph 1, of the Rules - which has not been done in this case.<sup>45</sup>

Judge Oda determined the unilateral method of seisin used by Qatar to invoke the Court's jurisdiction was deficient, and the Parties should have reached a special agreement under the circumstances. The Court should have looked more closely at its precedents. For example, in *Fisheries Jurisdiction* the United Kingdom proposed to insert in its agreement the words "at the request of either two Parties," making it clear either Party could unilaterally seize the Court.<sup>46</sup> Looking at the context of paragraph 2 of the Doha Minutes, and the manner in which Bahrain altered the wording, it is not clear the Court should have allowed Qatar to unilaterally seize the tribunal.

Indeed, as Qatar's counsel noted:

[The] method of seisin may, to be sure, be agreed between the parties; but, in the absence of any agreement between [the parties] on that point, as is the case here, it is for the Court to appreciate the regularity of the seisin, the mode of submission of a case to the Court being regulated by the provisions of its functioning.<sup>47</sup>

When a State seises the international tribunal by means of a unilateral application based on a treaty provision, the Court has a duty to ensure that the States intended the documents to be a treaty and that they agreed upon the provision conferring jurisdiction. For example, in

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44. *Qatar v. Bahrain*, 1995 I.C.J. 6, at 49.

45. *Id.* See Article 39(1) of the Rules of Court which sets forth, "When proceedings are brought before the Court by the notification of a special agreement, in conformity with Article 40, paragraph 1, of the Statute, the notification may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to the other party." RULES OF COURT, art. 39, para. 1.

46. *Qatar v. Bahrain*, 1995 I.C.J. 6, at 57. (Judge Shahabuddeen quoting *Fisheries Jurisdiction* (U.K. v. Ice) 1973 I.C.J. Reports 11).

47. *Id.* at 59 (Judge Shahabuddeen quoting Qatar's counsel in *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*, 1995 I.C.J. 6, 59).



one other case submitted to the Court by unilateral application based upon an earlier agreement, the language was clear the two parties intended the agreement to confer jurisdiction.<sup>48</sup> In the *Territorial Dispute Between Libya and Chad* the tribunal derived its jurisdiction from a special agreement between the States that explicitly conferred jurisdiction with respect to the settlement of the territorial dispute.<sup>49</sup> However, in the dispute between Libya and Chad the Parties submitted a special agreement expressly stating the "two Parties" agreed to refer the dispute for judgment to the Court, in the absence of an alternative settlement.<sup>50</sup> Thus, there was no contention both Parties desired to bring the dispute before the tribunal. Yet when intentions appear uncertain, as between Qatar and Bahrain, the Court should not allow unilateral seisin until fully establishing a binding agreement existed between the two States.

### III. THE INTERNATIONAL COURT OF JUSTICE'S JURISDICTION OVER THE QATARI - BAHRAINI DISPUTE

#### A. *The Court's Basis for Jurisdiction: A Treaty between Two States*

The International Court of Justice found for treaty-based compulsory jurisdiction in the *Case Concerning Maritime Delimitation*. Treaty-based compulsory jurisdiction arises when a treaty in force contains a clause referring a certain dispute to the international tribunal. Qatar's unilateral application to seise the Court derived its basis for jurisdiction on the December 1987, letters between the two countries and on the December 1990, Doha Minutes.<sup>51</sup> The Court determined these two documents constituted internationally binding agreements, that by their terms they submitted the whole of the dispute to the Court, and that the agreements thus conferred jurisdiction upon the Court.<sup>52</sup>

Bahrain initially contended that, "[e]very State possesses the sovereign right to determine whether it consents to the jurisdiction of the Court and to determine the limits, conditions and method of implementation of its consent. [In addition], every State possesses the sovereign right to decline to appear before the Court."<sup>53</sup> The international tribunal cannot compel jurisdiction, and so States must initially agree to appear before the tribunal before it can entertain a dispute. In order to

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48. Scott, *supra* note 30, at 20.

49. *Id.* For further information regarding the dispute between Libya and Chad, see the I.C.J. judgment in the *Case Concerning the Territorial Dispute*, in 33 I.L.M. 791 (1994).

50. *Id.*

51. *Qatar v. Bahrain*, 1995 I.C.J. 6, at 8.

52. *Id.*

53. *Id.* at 10-11.

submit to jurisdiction, States must make a declaration under Article 36 of the Court's Statute, which allows them to be subject to claims or to submit a dispute for adjudication.<sup>54</sup> Indeed the idea that, "the Court can only exercise jurisdiction over a State with its consent" is a well established principle of international law embodied in the Court's Statute.<sup>55</sup> Article 36(1) of the Statute of the Court sets forth in its first clause that jurisdiction, "comprises all cases which *the Parties* refer to it . . ." (emphasis added).<sup>56</sup> The wording indicates the Court has jurisdiction only if both Parties to a dispute refer it, thus ensuring mutual consent. Indeed, Bahrain's government contended that the July 1994 Judgment finding for jurisdiction did not use the words:

"[e]ither of the Parties" to indicate that one party alone could complete the process of reference to the court. It is to 'the Parties' and not to either one of them that the Court afforded the opportunity to seise it of the case. This reflects the Court's adherence to the dominant requirement of the consent of [both] Parties . . .<sup>57</sup>

The majority itself noted, "[t]here is no doubt that the Court's jurisdiction can only be established on the basis of the will of the Parties, as evidenced by the relevant texts."<sup>58</sup> In *The Case Concerning Maritime Delimitation*, the majority interpreted the December 1987, and December 1990, documents as expressing the will of Qatar and *implying* the will of Bahrain, to allow the Court to entertain jurisdiction.<sup>59</sup> Bahrain argued the *explicit* consent of both parties would be necessary to confer jurisdiction upon the Court.<sup>60</sup> In fact, Bahrain stated the texts in question expressed only the Parties' consent in principle to seise the Court, but this consent was subject to the conclusion of a Special Agreement (setting forth the questions to present to the Court by mutual agreement).<sup>61</sup>

The majority decided to circumvent Bahrain's claim a special agreement was necessary by finding for treaty based jurisdiction. By founding its decision on Article 36(2) of the Statute of the Court, the tribunal could bring the dispute within its jurisdiction.<sup>62</sup> As previously

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54. David M. Reilly & Sarita Ordonez, *Effect of the Jurisprudence of the International Court of Justice on National Courts*, 28 N.Y.U. J. INT'L. L. & POL. 435, 438-39 (1996).

55. Case of the Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States), Judgment of June 15, 1954 (Preliminary Question), 1954 I.C.J. Reports 19, 32.

56. STATUTE OF THE COURT, art. 36, para. 1 (1954).

57. Qatar v. Bahrain, 1995 I.C.J. 6, at 11.

58. *Id.* at 23.

59. *Id.* at 36-37.

60. *Id.* at 15-16.

61. Qatar v. Bahrain, 1995 I.C.J. 6, 16.

62. "[A]nd all matters specially provided for in the Charter of the United Nations or in *treaties* and conventions in force (emphasis added)." *Id.*

stated, the Court concluded in its Judgment of July 1994, that the letters of December 1987, and the Doha Minutes of December 1990, constituted binding international agreements.<sup>63</sup> In this way, the tribunal could rationally base its jurisdiction on Article 36(1), compulsory treaty-based jurisdiction, in order to hear the dispute. Bahrain based its argument against treaty-based jurisdiction on the Doha Minutes, pointing out Bahrain never meant the Doha Minutes to become an internationally binding agreement.<sup>64</sup> The Foreign Minister of Bahrain contended territorial treaties only take effect *after becoming law* in their country, and he did not intend to give the Minutes legal effect at the time they were written.<sup>65</sup> The majority rejected this argument, pointing out that intent under the circumstances at hand did not matter.<sup>66</sup> Pursuant to the majority's understanding of compulsory jurisdiction, a State may express its consent to adjudicate by becoming a party to such a treaty. In this instance, no further consent is required.<sup>67</sup>

Furthermore, the majority reasoned that binding international agreements can take on a number of diverse forms and can be given any number of names.<sup>68</sup> According to the Court, the letters between Qatar and Bahrain and the meeting minutes could thus constitute an international treaty.<sup>69</sup> In the *Aegean Sea Continental Shelf Case*, the Court supported this view by stating that no rule of international law exists determining joint communiqués may not become an internationally binding agreement.<sup>70</sup> However in the *Aegean Sea Continental Shelf Case*, Greece alone asked to base jurisdiction on a joint communiqué, and the Court found Turkey's intention was to jointly submit the dispute by means of a Special Agreement.<sup>71</sup> So the communiqué between Greece and Turkey was not intended to, and did not, constitute an immediate commitment to unconditionally accept unilateral submission of

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63. The Court found:

that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, are international agreements creating rights and obligations for the Parties. . . .

Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain), 1994 I.C.J. 112, 125-26 (Judgment of July 1994).

64. Qatar v. Bahrain, 1994 I.C.J. 112, at 121.

65. Amy M. Campbell, *International Law - Maritime Delimitation and Territorial Dispute - Qatar v. Bahrain*, 1994 I.C.J. 112 (July 1), 19 SUFFOLK TRANSNAT'L L. REV. 573, 575 (1996).

66. *Id.*

67. ALEXANDROV, *supra* note 26, at 6.

68. Qatar v. Bahrain, 1994 I.C.J. 112, at 120.

69. Qatar v. Bahrain, 1995 I.C.J. 6, at 14.

70. Qatar v. Bahrain, 1994 I.C.J. 112, at 120-121 (*quoting Aegean Sea Continental Shelf Case (Greece v. Turk.)*), 1978 I.C.J. 3, 39, (Dec. 19).

71. ALEXANDROV, *supra* note 26, at 5.

the dispute to the tribunal.<sup>72</sup> The Court goes a step further in *The Case Concerning Maritime Delimitation*, by reading sufficient intent into the joint communiqués to conclude that together they formed an internationally binding agreement.<sup>73</sup>

The Court also referred to the Vienna Convention on the Law of Treaties as one of the governing principles of international law to uphold this conclusion. The Court noted Article 2, paragraph (1)(a) provides that, "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."<sup>74</sup> The majority stated the content of the texts expressed the plain meaning that both Qatar and Bahrain were setting forth the parameters of the dispute, as well as the decision to submit it to adjudication if they did not come to an agreement themselves.<sup>75</sup>

However, the majority reached this striking decision by *inferring* intent, and then concluded the documents constituted a treaty. It was only by implying intent that the majority could establish treaty-based compulsory jurisdiction. The question remains, then, whether both Parties really meant to consent to the Court's jurisdiction. A critical aspect of international jurisdiction is that sovereign States must consent to the Court's power to hear a disagreement. Even in cases of compulsory jurisdiction, States must have originally consented to the Court's jurisdiction in some manner.<sup>76</sup> As Judge Koroma said in his dissent, "[b]oth legal principles and the fundamental jurisprudence of the Court have always founded jurisdiction upon the clear and unambiguous consent of the Parties to a dispute."<sup>77</sup> Although the documents relied upon by the majority may have outlined the conflict, it is not clear that both Parties consented to adjudicate the dispute in them. If there was no clear consent then there could be no jurisdiction.

#### *B. Arguments of the Dissenting Judges Regarding Whether the Joint Communiqués Formed an Internationally Binding Agreement*

Bahrain and the dissenting judges argue the letters and Minutes do not form an internationally binding agreement capable of subjecting Bahrain to compulsory jurisdiction under Article 36(2) of the Statute of the Court. The opposing view holds forth Bahrain did not intend these communications to be an internationally binding agreement and with-

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72. *Id.*

73. *Qatar v. Bahrain*, 1994 I.C.J. 112, at 121-22.

74. *Id.* at 120-21.

75. *Id.* at 126-27.

76. MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 126 (2d ed. 1993).

77. *Qatar v. Bahrain*, 1995 I.C.J. 6, at 70.

out intent there can be no treaty.<sup>78</sup> Vice-President Schwebel quoted Lord McNair in his dissent:

Many references are to be found . . . to the primary necessity of giving effect to the 'plain terms' of a treaty, or construing words according to their 'general and ordinary meaning' . . . [B]ut this so-called rule of interpretation like others is merely a starting-point, a prima facie guide and cannot be allowed to obstruct the essential quest in the application of treaties, *namely to search for the real intention of the contracting parties in using the language employed by them* (emphasis added).<sup>79</sup>

According to this view, both parties must intend to enter into a binding international agreement, for if there is no intent then they may enter into an agreement unwillingly or unknowingly. As a consequence, the Court may subject them to its jurisdiction without their consent, violating their sovereignty. International legal principles establish that where the meaning of a treaty is unclear, one must look to the intentions of the Parties to facilitate interpretation.<sup>80</sup>

The Vienna Convention on the Law of Treaties, the primary basis of international law regarding treaties, provides recourse to preparatory work (*travaux préparatoires*) to ascertain the intent of the parties.<sup>81</sup> The Vienna Convention advocates relying on Parties' preparatory work not only when the treaty's text is ambiguous but also to confirm a text's unambiguous meaning.<sup>82</sup> Bahrain argues submitting the dispute to the Court's jurisdiction was not within its contemplation when it exchanged letters with Bahrain and when it accepted the Doha Minutes.<sup>83</sup> In Bahrain's view the provision in the December 1987, letters purporting to create a Tripartite Committee meant this body would formulate a special agreement, consented to by both Parties, that would confer jurisdiction upon the Court.<sup>84</sup> Indeed, Vice-President Schwebel points out if the intention of Bahrain had been to authorize unilateral application to

78. *Id.* at 28.

79. *Id.* at 27 (quoting Lord McNair, *THE LAW OF TREATIES*, at 366 (1961)).

80. See Vienna Convention on the Law of Treaties, Article 32:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

Vienna Convention on the Law of Treaties, art. 32, U.N. Doc. A/CONF. 39/27 (1969).

81. *Id.*

82. Maria Frankowska, *The Vienna Convention on the Law of Treaties Before United States Courts*, 28 VA. J. INT'L L., 281, 333 (1988).

83. Qatar v. Bahrain, 1995 I.C.J. 6, at 32.

84. *Id.*

seise the Court, it would not have been necessary to form a committee.<sup>85</sup> The meaning of Parties' intentions in exchanging letters and drafting minutes at meetings could potentially become a litigious problem under Article 36(2) treaty-based compulsory jurisdiction. If the Court can infer the intent of a party to enter a binding international agreement, in order to establish its jurisdiction based on that agreement, then disputes may arise regarding proper intentions. This could further deprive the validity of the Court's jurisdiction, as it would appear the tribunal must formulate States' intentions for them so as to hear disputes. Some judicial scholars believe the Article 36(2) clause, providing treaty-based jurisdiction, should be "permitted to die in peace."<sup>86</sup>

In *The Case Concerning Maritime Delimitation*, for instance, the majority construes the Doha Minutes to mean either Party could unilaterally seise the Court, but Judge Schwebel notes this could not have been the common intention of Qatar and Bahrain.<sup>87</sup> He believes the Court's construction of the Minutes is at odds with the rules of interpretation set out by the Vienna Convention and does not comport with a good faith interpretation.<sup>88</sup> The *travaux préparatoires* (preparatory works) should reveal the Parties' proper intentions and provide the Court with supplementary material to interpret the meaning of the texts. If doubt or ambiguity exists regarding the Parties' purpose, the Court must look to preparatory work before deciding the States have entered a binding international agreement. As Judge Schwebel advocates, the majority should look to intent and, "[w]here the *travaux préparatoires* of a treaty demonstrate the lack of a common intention of the Parties to confer jurisdiction on the Court, the Court is not entitled to base its jurisdiction on that treaty."<sup>89</sup>

In addition to discussing the content of the texts, Judge Oda notes in his dissent Qatar's failure to register the Agreement of December 1987 with the United Nations Registrar.<sup>90</sup> He then surmises this indi-

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85. *Id.* at 33.

86. See Gary L. Scott & Craig L. Carr, *The ICJ and Compulsory Jurisdiction: The Case for Closing the Clause*, 81 AM J. INT'L L. 57, 57 (1987) (discussing the merits of abolishing Article 36(2) compulsory jurisdiction).

87. Qatar v. Bahrain, 1995 I.C.J. 6, at 36.

88. *Id.* See also, Article 31(1) of the Vienna Convention on the Law of Treaties, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." *Supra*, note 12, art. 31, para. 1. Judge Schwebel says that the Court's decision regarding the Minutes as an internationally binding agreement does not comport with a good faith interpretation of the treaty's terms "in the light of its object and purpose" because the object and purpose of both parties was not to authorize unilateral recourse to the Court. Qatar v. Bahrain, 1995 I.C.J. 6, at 36.

89. Qatar v. Bahrain, 1995 I.C.J. 6, at 39.

90. *Id.* at 44. Article 102 of the United Nations Charter sets forth:

1. Every treaty and every international agreement entered into by any

cates doubt the State always regarded the agreement as "a treaty in the true sense of the word."<sup>91</sup> Although failing to register the documents is not dispositive that Qatar did not regard them as binding international agreements, it may indicate the State did not consider them as such until it became necessary to invoke jurisdiction.<sup>92</sup> If the Court is to invoke treaty-based compulsory jurisdiction, then the terms of the agreement should clearly set forth that both Parties intend to confer power upon the tribunal to hear the case.

*C. Problematic Jurisdiction: The Failure to Submit the Whole of the Dispute*

In addition to the problem of treaty-based compulsory jurisdiction, it is problematic the Court allowed Qatar to unilaterally submit the whole of the dispute without Bahrain's consent. Qatar's unilateral application did not comprise the entire dispute in the eyes of both Parties.<sup>93</sup> As Judge Shahabuddeen notes in his dissent:

If Qatar's unilateral act of November 30, 1994 did not satisfy the Court's Judgment of July 1, 1994, it follows that all the Court has before it is Qatar's unilateral Application of July 8, 1991. The Court has already found 'that the subject-matter of [that] Application corresponds to only part of the dispute contemplated by the 'Bahraini formula' and that this 'was in effect acknowledged by Qatar'.<sup>94</sup>

Thus, the Court may not have had before it the entire subject-matter of the dispute. This would result in defective jurisdiction.<sup>95</sup>

Judge Shahabuddeen points out:

Bahrain correctly argued that there was no agreement to confer jurisdiction in such a way as to enable the Court to consider part of the dispute without having to consider the remainder at the same time. Since the Court has only part of the dispute before it, it follows that it has no jurisdiction.<sup>96</sup>

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Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it. 2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

U.N. CHARTER, art. 102, para. 1-2.

91. *Id.*

92. *Qatar v. Bahrain*, 1995 I.C.J. 6, at 44.

93. *Id.* at 10.

94. *Id.* at 54. (*quoting* I.C.J. Reports 1994, p. 124, para. 36).

95. *Qatar v. Bahrain*, 1995 I.C.J. 6, at 55.

96. *Id.*

According to Judge Shahabuddeen's dissent, the Parties defined the subject-matter of the dispute in their 1983 principle as "all matters being *complementary and indivisible*" (emphasis added).<sup>97</sup> Thus, Bahrain correctly argued that there was no agreement to confer jurisdiction as to only part of the dispute.<sup>98</sup> If there are doubts regarding a State's intention to submit a dispute, the Court is bound to take steps to establish whether the State accepts the Court's jurisdiction as far as that particular dispute is concerned.<sup>99</sup> If the tribunal does not have the whole of the subject-matter before it, then it follows the Court could not have jurisdiction over the entire dispute.

In *The Case Concerning Maritime Delimitation*, the majority decided that the Parties' mutual assent in accepting the "Bahraini formula" put an end to the argument regarding the subject of the dispute and showed that they concurred on the extent of the Court's jurisdiction.<sup>100</sup> The "Bahraini formula" defined the disputed area to encompass: (1) the Hawar Islands, including Janan, (2) Fasht al Dibal and Qit'at Jaradah, (3) the archipelagic baselines, (4) Zubarah, and (5) the areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries.<sup>101</sup> However, the issue of Zubarah remained a contentious point between the two countries.<sup>102</sup> This makes acceptance of the "Bahraini formula," as defining the extent of jurisdiction, doubtful. Bahrain also argues that the questions to be put to the Court were to derive from a mutual agreement.<sup>103</sup> The Parties' subsequent conduct revealed this because the work of the Tripartite Committee was exclusively concerned with forming a Special Agreement to determine the whole of the dispute.<sup>104</sup> Accordingly, in Bahrain's eyes the whole of the dispute was still at issue.

The majority seems to gloss over this matter by stating it could not agree with Bahrain, and it was apparent the Parties did not envisage seising the Court without prior discussion in the Tripartite Committee.<sup>105</sup> The majority went on to opine that the States nonetheless agreed to submit all of the matters disputed between them, but they did so without rationalizing this decision.<sup>106</sup> The Court fails to lay a foundation for determining Qatar and Bahrain agreed on all issues sur-

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97. *Id.*

98. *Id.*

99. Qatar v. Bahrain, 1995 I.C.J. 6, at 55.

99. ALEXANDROV, *supra* note 26, at 19.

100. Qatar v. Bahrain, 1995 I.C.J. 6, at 17.

101. Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain), 1995 I.C.J. 83, at 118 (April 18).

102. Qatar v. Bahrain, 1995 I.C.J. 6, at 14.

103. *Id.* at 16.

104. *Id.*

105. *Id.*

106. *Id.*



rounding the dispute and did not properly conclude they had jurisdiction over all issues in the case. As Judge Koroma's points out in his dissent, an agreement between both Parties regarding the entire subject-matter of the dispute was a condition precedent for jurisdiction to be conferred.<sup>107</sup> Although a Party may unilaterally seize the Court by means of an application, at the least there should be consent between them as to what matters to submit. The majority relies upon Qatar's "Act" of November 1994, wherein the State declared it was submitting the "whole of the dispute" referred to in the 1990 Doha Minutes and the "Bahraini formula" to acquire subject-matter jurisdiction over the entire dispute.<sup>108</sup> Yet, Bahrain's "Report of November 1994," made it clear the State felt the submission of the whole of the dispute to be "consensual in character, that is, a matter of agreement between the Parties."<sup>109</sup> Indeed, Judge Koroma says neither Qatar's "Act" nor Bahrain's "Report" evinced a mutual agreement to submit the whole of the dispute, so it follows the Court does not have before it the entire dispute, and thus no jurisdiction.<sup>110</sup> Absent a clear agreement between Qatar and Bahrain as to the scope of jurisdiction, it is difficult to see how the Court concludes it has jurisdiction over the whole of the dispute.

#### IV. THE IMPACT OF THE INTERNATIONAL COURT OF JUSTICE'S DECISION ON THE FUTURE OF ITS ABILITY TO ENTERTAIN A DISPUTE

##### *A. The Court's Role in International Law: Aspects of a Successful Dispute Resolution Mechanism*

In *The Case Concerning Maritime Delimitation* the International Court of Justice, in exercising its judicial powers, seems to take on the role of a regular domestic tribunal rather than that of a world court. For instance, in this case the Court did not merely issue an advisory opinion. The tribunal interpreted and used international law to arrive at a decision. This was only the third case in the Court's history where the issues of admissibility and jurisdiction arose pursuant to a State's application,<sup>111</sup> and it gave the Court occasion to adjudicate as an inter-

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107. Qatar v. Bahrain, 1995 I.C.J. 6, at 69.

108. *Id.* at 9.

109. *Id.* at 10.

110. Qatar v. Bahrain, 1995 I.C.J. 6, at 73.

111. As noted at the Embassy of Columbia, the Hague:

To begin with a question of vital importance for international adjudication, namely jurisdiction, it is worth noting that, aside from the fact that most of the cases currently before the Court were submitted by unilateral application, there is another element that is no less important: in most of these cases, the respondent state consented to litigation and has gone ahead with the proceedings without resorting to the usual tactic of challenging the

national lawmaker. It appears that the Court now has precedent to follow regarding a State's ability to submit a dispute by unilateral seisin.

Moreover, the Court resembled a national adjudicatory body when it decided the joint communiqués between Qatar and Bahrain constituted a binding international agreement. The Court had to interpret the meaning of the December 1987, letters and the Doha Minutes, before concluding the documents together constituted a binding international treaty.<sup>112</sup> Much like a domestic court decides a contractual issue, the Court took leeway to interpret the Parties' words and actions to determine a treaty existed. Contractual interpretation is generally within the province of a domestic court system. Perhaps the Court, behaving more like a regular domestic court, may draw more cases.

In addition, the Court interpreted case documents under the Vienna Convention which is the major body of international law governing treaties.<sup>113</sup> Under Article 38 of its Statute, the Court correctly referred to the Vienna Convention as a primary source of international law.<sup>114</sup> By following accepted international law, the Court validated its decision. This seems to be much like a domestic court following its law to arrive at a decision. The Court also referred to custom to help interpret the agreements. Customary international law, alongside treaty law, is one of the two central forms of international law.<sup>115</sup> As one international scholar points out:

The fundamental idea behind the notion of custom as a source of international law is that States in and by their international practice may implicitly consent to the creation and application of international legal

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Court's jurisdiction by entering preliminary objections. Indeed, in only three of the eight cases instituted by application has it been necessary to open a preliminary procedure on admissibility and jurisdiction.

J.J. Quintana, *Correspondence*, 86 AM. J. INT'L. L. 542 (1992). The three cases listed are, Aerial Incident of 3 July 1988 (Iran v. United States), Certain Phosphate Lands in Nauru (Nauru v. Austrl.), and Maritime Delimitation and Territorial Questions (Qatar v. Bahrain).

112. Qatar v. Bahrain, 1995 I.C.J. 6, at 2.

113. "The Vienna Convention on the Law of Treaties is accepted by this Court as an authoritative codification of international law." Qatar v. Bahrain, 1995 I.C.J. 6, at 28.

114. Article 38(1) of the Statute sets forth what principles the Court may use:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; (b) international custom, as evidence of a general practice accepted as law. (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

STATUTE OF THE COURT, art. 38, para. 1.

115. JANIS, *supra* note 76, at 42.

rules. In this sense, the theory of customary international law is simply an implied side to the contractual theory that explains why treaties are international law.<sup>116</sup>

Under principles of customary international law, the Court may look to a State's practices, for instance, it may examine statements made at meetings or conventions, to determine a dispute's outcome.<sup>117</sup> Indeed, the majority in *The Case Concerning Maritime Delimitation* relied in large part on the statements of the Doha Minutes of December 1990, to find Qatar could unilaterally seize the tribunal.<sup>118</sup> Moreover, like judges in a domestic court the majority and the dissent employed precedent, when applicable, to arrive at their respective outcomes regarding the merits of jurisdiction. Normally precedent does not bind the Court; the rule of *stare decisis* does not apply.<sup>119</sup> However, in the case at hand, the tribunal did apply precedent to establish its decision. For instance, it revisited the principles of treaty interpretation it used in the *Libyan/Arab-Jamahiriya/Chad Territorial Dispute* to determine a text must be interpreted foremost in light of its ordinary meaning.<sup>120</sup> The Court, as a domestic tribunal, does follow prior decisions to reach its current conclusion.

The International Court of Justice will be a successful dispute resolution mechanism if it continues to follow the precedents it has formed over the years. Although the Court does not have a rule of precedent, its willingness not to depart from previous cases lends its decisions an aspect of authority.<sup>121</sup> Indeed, the Court may find that party States are less willing to accept its adjudication if it wanders from precedent. This happened in *The Case Concerning Maritime Limitation* where it simply inferred Bahrain's intent to establish jurisdiction. There was no precedent to infer intent, and Bahrain did not accept the Court's conclusion. States guard their sovereignty jealously and do not easily accept the Court's decisions. The international tribunal's effort to follow its own prior cases establishes a consistent pattern of judicial decision, giving States a greater confidence in its holdings.<sup>122</sup> If the Court does not follow its previous decisions, unless they are inconsistent, States are unlikely to accept its subsequent decisions.

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116. *Id.* at 42-43.

117. Barbara Kelly, *The International Court of Justice: Its Role in a New world Legal Order*, 3 *TOURO. J. TRANSNT'L L.* 223, 227 (1992).

118. Qatar v. Bahrain, 1995 I.C.J. 6, at 16-17.

119. Olav A. Haazen, *Precedent in the World Court*, 38 *HARV. INT'L L. J.* 587, 588 (1997).

120. Qatar v. Bahrain, 1995 I.C.J. 6, at 18.

121. Haazen, *supra* note 119, at 590.

122. JANIS, *supra* note 76, at 140-41.

*B. The Future of the International Court of Justice's Jurisdiction*

Jurisdiction is a vital question in international law. The Court is not a domestic tribunal, and it does not possess the jurisdictional regime of such courts. Therefore, the methods by which it derives jurisdiction must not be highly objectionable, and States must regard the means by which the Court reaches its decision as valid. It continues to be necessary to build confidence in the Court.<sup>123</sup> If States' confidence is well-founded then their acceptance of the Court's jurisdiction and of its work will grow.<sup>124</sup>

As noted above, there have only been eight cases in the international tribunal's history instituted by application, and in only three of these has it been necessary to open a preliminary procedure on admissibility and jurisdiction.<sup>125</sup> The *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* is one of these.<sup>126</sup> The Court may choose to adjudicate whether it has jurisdiction, if the Parties do not agree, so as to remain consistent with the idea that States have the right of consent. For, "[i]t is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States to mediation, arbitration, or any other kind of pacific settlement."<sup>127</sup>

However, in the case at hand, the Court's decision regarding jurisdiction appears to be outcome determinative, in an effort to confer power to hear the case on the Court. On the bright side, the Court could have gone even further by determining jurisdiction without adjudicating Bahrain's preliminary objection. Indeed, the Court could have imposed its jurisdiction. The Court may exercise judicial functions with regard to a State prior to, and regardless of, any finding of the existence of valid consent.<sup>128</sup> Indeed, Article 36(6) of the Statute of the Court directly confers on the tribunal the right to decide its own jurisdiction.<sup>129</sup>

In the instant case, the Court did not employ this method, perhaps

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123. Fred L. Morrison, *The Future of International Adjudication*, 75 MINN. L. REV. 827, 846 (1991).

124. *Id.*

125. See *supra* note 63 and accompanying text, for a discussion of the three cases where preliminary objections to the International Court of Justice's jurisdiction have been made.

126. Quintana, *supra* note 111. The other two cases are, *Aerial Incident of 3 July 1988 (Iran v. U.S.)* and *Certain Phosphate Lands in Nauru (Nauru v. Austl.)*

127. ALEXANDROV, *supra* note 26, at 1 (*quoting* Status of Eastern Carelia, Reply to request of advisory opinion (July 23, 1923), 1923 P.C.I.J., Series B, No. 5, p. 7, at 27).

128. Stanimir A. Alexandrov, *Non-Appearance before the International Court of Justice*, 33 COLUM. J. TRANSNAT'L L. 41, 62 (1995).

129. *Id.* See Article 36(6) of the I.C.J. Statute which reads, "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." STATUTE OF THE COURT, art. 36, para. 6.

in deference to the rights of the Parties. A sovereign State's consent to give the international tribunal the power to adjudicate is fundamental under principles of international law. In fact, the majority of the instant opinion notes that, "There is no doubt that the Court's jurisdiction can only be established on the basis of the will of the Parties . . ." <sup>130</sup> If the Court had established jurisdiction based on the will of both Qatar and Bahrain, then there would be no doubt the tribunal did not employ extraordinary measures to bring the dispute within its jurisdiction. However, the Court inferred the intent of Bahrain to submit to jurisdiction, and thus the Court may have acted outside its scope of authority. This appears to weaken compulsory jurisdiction, particularly treaty-based compulsory jurisdiction, in the eyes of States, leaving the future of the Court's jurisdiction in question. A tribunal adjudicating disputes between sovereign States must defer to the will of those Parties if it wishes to succeed in the international legal arena.

## V. CONCLUSION

The International Court of Justice, antecedent to the first world court, is an important international adjudicatory body. However the tribunal does not exist without problems, such as jurisdiction and international legal procedure. As evidenced by this article, the Court is still determining proper procedural methods, such as seisin. In addition, it is attempting to formulate the correct methods for bringing a State party within its jurisdiction and once within deciding the scope of its jurisdiction. It appears the Court is slowly resolving these issues, as seen in decisions like *The Case Concerning Maritime Delimitation*. As the tribunal solves these problems, it will gain validity as an international lawmaker.

The Court is arriving at a more workable international legal system. It is difficult because States are sovereign creatures, and they generally do not abide by the Court's decisions with complete willingness. On the other hand, they could refuse to follow its decisions at all. Yet the Court's future seems bright as the world moves toward interdependence, with States as major actors on the scene. Hopefully, States will come to employ the tribunal more often, giving it the invaluable opportunity to continue determining which procedures and substantive methods work.

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130. Qatar v. Bahrain, 1995 I.C.J. 6, 23.