ICJ & Peaceful Settlement of Disputes

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The history of peaceful settlement of dispute dates back from Jay Treaty of 1794 bet. U.S.A. & Great Britain. This treaty of Amity, Commerce and Navigation led to creation of mixed commissions and intended to function to some extent as tribunals.

In 1872 – the Albama claims arbitration between U.K. and U.S.A. marked the start of a IIInd Phase. Under the Treaty of Washington of 1871, the U.S.A. and U.K. agreed to submit to arbitration claim by United State for alleged breaches of neutrality by U.K. during American Civil war.

The Hague Peace Court of 1899 convened at the initiative of Russian Czar Nicholas II marked the beginning of IIId Phase in the modern history of peaceful settlement of dispute. The remarkable contribution of this conference is adopting a convention on the Pacific Settlement of International disputes which dealt not only with arbitration, but also with other method of pacific settlement like good offices and mediation. In 1907 – IIInd Hague Peace Conference revised the convention and initiated for the creation of permanent tribunal composed of judges and to decide cases by judicial method. This led to the establishment of Permanent Court of Arbitration to facilitate peaceful settlement of dispute between state.

The League of Nations, the first International Organisation the P.C.I.J. was established in 1922. This court was a working reality and accessible to all state to the judicial settlement of international disputes. In 1931, there was PCIJ’s Resolution concerning the Judicial Practice of the court which laid down the internal procedure to be applied during courts deliberations in each case. The decisions of the
court clarified previously unclear areas of international law and contributed towards overall development of the nation.

The outbreak of war in 1939 gave a serious blow to PCIJ. In 1942 various super powers declared themselves in favour of the establishment of an International Court of Justice.

In April 1945 a committee of jurists set up by the sponsoring Powers of the United Nation at San Francisco prepared a report in which it was declared that the PCIJ should cease to exist and a new court (ICJ) should be set up. The present ICJ is based on PCIJ.

International Court of Justice is one of the principal judicial organs of the United Nations (Article 7 of the Statute of ICJ). The court has a broad interpretational approach towards jurisdictional disputes.

The International Court of Justice plays a part in the peaceful settlement of International dispute in furtherance of the first purpose of the United Nations – “to bring about by peaceful means and in conformity with the principles of justice and International Law”. ICJ preserves the character of arbitration which holds importance in International Law (Procedures in International Law by Gernot Biehlor, Springer, Verlag Berlin Heidelberg, p. 285).

International disputes after comprise various aspects–political, legal, economic, social and cultural. The ICJ acts solely to legal consideration and work together with political organs of United Nations while preserving its Judicial integrity.¹ Article 92-96 of the United Nations Charter deal with the provisions of the International Court of Justice.²

All the members of United Nations are ipso facto members of the statute of ICJ. Any state which is not a member of United Nations may also become a part to statute of ICJ on the recommendation of Security Council or on the conditions laid down by the General Assembly (Art. 93 of the U.N. Charter).
The ICJ is composed of 15 judges elected to 9 years terms by the U.N. General Assembly and the UN Security Council from a list of persons nominated by the National groups in the Permanent court of Arbitration – Judges Serve for 9 years terms and may be re-elected for up to two further terms. All the decisions of the Court are on the basis of the majority of the judges. The seat of the court is at the Hague. This does not prevent the court from sitting and exercising its functions elsewhere when ever the court considers it desirable (Art 22 of the Statute of ICJ).

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 convention in force. ICJ is not the only International Court. There are regional court such as European Court of Human Right (ECHR) and or there are many specialised international courts such as International Criminal Court, but ICJ remains the only court that continues the tradition of the Permanent Court of securing the pacific settlement of International disputes.

The ICJ have no original jurisdiction and only the explicit and voluntary submission of a defendant in a given case will establish the court’s jurisdiction. The disputes which are referred to the court decide the cases in accordance with international law and apply:

a) international conventions whether general or particular;
b) international custom, as evidence of a general practice accepted as law;
c) the general principles of law recognized by civilized nations;
d) judicial decisions and teaching of most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law (Article 38 of the statutes of ICJ).

Under article 36, paragraph 1, of the Statute, the Court has jurisdiction over all cases which the parties refer to it; such reference would normally be made by the notification of a bilateral agreement known as a compromis. As would
appear, however, from the Court’s Yearbooks a document concluded by the parties as a ‘Special Agreement’, rather than a compromis, has become more recently the most usual form used for bringing a case before the Court. The provision in article 36, paragraph 1, is not to be taken as meaning that the Court has jurisdiction only if the proceedings are initiated through a joint reference of the dispute by the contesting parties. A unilateral reference of a dispute to the Court by one party, without a prior special agreement, will be sufficient if the other party or parties to the dispute consent to the reference, then or subsequently. It is enough if there is a voluntary submission to jurisdiction (ie the principle of forum prorogatum), and such assent is not required to be given before the proceedings are instituted or to be expressed in any particular form.6

Only states may be parties in cases before the Court, but the Court is empowered to obtain or request information from public international organisations relevant to these cases, or such organisations may furnish this information on their own initiative (see article 34 of the Court’s Statute). Moreover, the Court has been given jurisdiction under the Statutes of the Administrative Tribunals of the United Nations and of the International Labour Organisation (ILO) to determine by advisory opinion whether judgments of these tribunals have been vitiated by fundamental errors in procedure, etc, and in that connection upon requests for an advisory opinion by the international organisations concerned, may take into account written observations and information forwarded on behalf of individuals, ie, the officials as to whom the judgments have been given.

The Court has compulsory jurisdiction where:

1. The parties concerned are bound by treaties or conventions in which they have agreed that the Court should have jurisdiction over certain categories of disputes.
2. The parties concerned are bound by declarations made under the so-called ‘Optional Clause’ – paragraph 2 of article 36 of the Statute. This clause appeared in the former Statute, in substantially the same terms as in
the present Statute. It now provides that the parties to the Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement ‘in relation to any other State accepting the same obligation’, the jurisdiction of the Court in all legal disputes.7

The court jurisdiction is two fold:

a) to decide contentious cases;
b) to give advisory opinions.

In contentious cases – the exercise of the court’s jurisdiction is conditional on the consent of the parties to the dispute. Under Art. 36 of ICJ – The Court has jurisdiction over all cases with the parties refer to it and such reference would be made by the notification of a bilateral agreement.

Article 36(2) of ICJ confers optional jurisdiction upon the court which provides that the state parties may confer compulsory jurisdiction upon the court by making such declaration in respect of any other state which also accept similar obligations.8

The state party to the statute may confer compulsory jurisdiction upon the court in respect of following matters:

i) Interpretation of a Treaty.
ii) Any question of International Law.
iii) The existence of any fact which if established would constitute a breach of International obligation.
iv) The nature and extent of the reparation to be made for the breach of an international obligation.9

In reaching decision, the Court applies general principles, treaties and judgement of authorities in the field of International law.
It can take decision Ex AEQUO ET BONO (according to what is just and fair), as well as by the tenets of existing International law.

Article 41 of ICJ provides that the court shall have power to indicate if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. Further, pending the final decision, notices of the measures suggested shall be given to the parties and security council.

ICJ contributes for the peaceful settlement of International disputes with contentious jurisdiction mentioned within the provision of the statute of the court.

Some of the cases decided under contentious jurisdiction:

i) The Corpa Channel Case10, ICJ (1949) – In this case, the court settled the matter relating self-defence, intervention and innocent passage.

ii) Nuclear Tests Case11, ICJ (1969) (New Zealand V. France) – In this case ICJ dealt with law relating to state responsibility in respect of conduct of nuclear tests.

iii) Nicaragua V. U.S.A.12 (1984) – In this case, the court indicated provisional measures asking the U.S. to immediately cease and refrain from any action restricting, blocking or endangering access to and from Nicaragua posts and in particular laying of mines.

iv) Germany V. Italy13 (2008) – This case is concerned with the Jurisdictional Immunities of the state.


Advisory Opinions:
Under Art 65 of ICJ, “the court may give on advisory opinion on any ‘legal question’ to any body which has been authorized in accordance with the Charter of U.N. or in accordance with the Statute of ICJ.

Under Art 96 of UN Charter, “The Security Council and the General Assembly may request to the court to give an advisory opinion on any ‘legal question’, arising within the scope of their activities if so authorized by the General Assembly”.

Court’s advisory opinions are consultative in character and as such do not generally result in judgement that aim to resolve specific controversies.

i) Incident of Advisory Opinions: The competence of General Assembly regarding Admission of a State to U.N. – The Court’s advisory opinion in 1950, the world court ruled that for a state to be admitted to the U.N. both the affirmative recommendation of the security council and decision of the General Assembly is necessary.

ii) Reparation of the Injuries suffered in the service of the U.N. (1949) – In its advisory opinion – ICJ ruled that the UN is a legal person and has capacity to claim compensation for injuries suffered by the persons who are in the service of the U.N.

iii) On 9th July 2004 – ICJ, rendered it Advisory Opinion in the case concerning the legal consequences of the construction of a wall in the occupied Palestinian Territory. In its opinion, the court gave the advisory opinion requested by the UNGA that the construction of the wall being built by Israel, the occupying power in the occupied Palestinian Territory including in and around East Jerusalem and its associated regime is contrary to international law.

The Decision of ICJ on difference occasions has played a significant role in the peaceful settlement of disputes. The Court has dealt with major questions in conformity with international law.
The court has delivered judgement on dispute concerning land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal offers of a states, diplomatic relations, hostage taking, the right of asylum, natonality, right of passage and economic right.

The court has contributed towards dispute resolution mechanism. ICJ has interpreted and applied the existing rules in such a way so as to resolve issues affecting the life of the nations.

Disputes come before ICJ which was the subject of bilateral negotiation and debates in Security Council of U.N. While case is pending before ICJ, the UK and Iceland concluded an agreement on the matter through bilateral negotiations (U.K. V. Iceland (Fisheries Jurisdiction) 1974, ICJ. The existence of this agreement was naturally considered by the Court after its conclusion during the hearing on the merits. Several Judges asked council whether the agreement between the parties rendered the proceedings before the court meaningless. U.K. indicated that judgement might be helpful to on-going negotiations on long term arrangement beyond the present agreement between the parties. The court asserted that such agreement should be encouraged as being in line with the aim of the UN to support the peaceful settlement of dispute.

In the event of a dispute as to whether the court has jurisdiction, matter shall be settle by the decision of the court (Art. 36, Para-6).

It Fisheries Jurisdiction case, (Spain V. Canada) (1998), ICJ pointed out that the establishment of jurisdiction is not a matter for the parties but for the court itself. Although a party seeking to assert a fact must bear the burden of proving it.16

Since 1946, the court has delivered judgement on disputes concerning land frontiers, maritime boundaries, territorial sovereignty, the use of force, non-interference in
the internal affairs of a state, diplomatic relations, hostage taking, the right of asylum, nationality and right of passage (Malanczuk, 1997).

References