

THE INTERNATIONAL COURT OF JUSTICE: JURISDICTIONAL BASIS AND STATUS

Ahmed Olatunji Isau*

Abstract

The emergence of independent and sovereign States in the world necessitated the need to ensure peaceful co-existence among these independent States as none of these States is willing to submit to the will of the other. Accordingly, since there were no commonly accepted standards of conduct among these States, there are tendencies of collisions, and the use of force or war to press home their demands is very possible. Bearing this in mind, the United Nations at its inception in 1945 established the International Court of Justice (ICJ) as a successor to the Permanent Court of International Justice established by the League of Nations after the conclusion of the First World War. The ICJ commonly referred to as the 'World Court' is one of the principal organs and the primary judicial branch of the United Nations saddled with the responsibility of resolving legal disputes submitted to it by States that have accepted its jurisdiction. This article will therefore examine the status and jurisdiction of the ICJ and also examine the key features and provisions of the Statute of the ICJ. The criticisms against the ICJ will equally be examined and appropriate recommendations will be made.

1.0 Introduction

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations based in the Peace Palace in The Hague¹. It was established in June 1945 by the Charter of the United Nations and began work in April 1946². The Creation of the International Court of Justice represented a culmination of long

* LL.B (Unilorin), LLM (Lond.), ACTI., Department of Law, Kwara State University, Malete, Kwara State, Nigeria. Tel No: 07030070078 and 08054942865. E-mail: ahmed.isau@yahoo.com and ahmed.isau@kwas.edu.ng

¹ The ICJ is the only principal organ of the United Nations not located in New York (United States of America) <<http://www.icj-cij.org/court/index.php?p1=1>> accessed on July 7 2014.

² The History of the International Court of Justice <<http://www.icj-cij.org/court/index.php?p1=1&p2=1>> accessed on July 7, 2014.

process in which methods for pacific settlement of international disputes were gradually developed and evolved³.

The idea of settling disputes peacefully at the international level is a very old one. Although, there were some systems and forms of mediation and arbitration, there was no permanent establishment of a bench of judges to settle disputes employing strict judicial techniques⁴.

Mediation and arbitration preceded judicial settlement in history. The former was known in ancient India and in the Islamic world, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes, in maritime customary law in medieval Europe and in Papal practice⁵.

The modern history of international arbitration is, however, generally recognized as dating from the Jay Treaty of 1794⁶ between the United States of America and Great Britain. This Treaty also known as the Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of American and British nationals in equal numbers, whose task it would be to settle a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation⁷.

³ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj.cij.org>> accessed on 7 July 2014.

⁴ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) <<http://www.unctad.org>> accessed on 7 July 2014.

⁵ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7 2014.

⁶ The Jay Treaty also known as the British Treaty and the Treaty of London 1794 was a Treaty of Amity, Commerce, and Navigation between His Britannic Majesty and the United States of America. See <http://avalon.law.yale.edu/18th_century/jay.asp> accessed on 10 July 2014

⁷ Estes T., 'The Jay Treaty Debate, Public Opinion, and Evolution of the Early American Political Culture' (2009) 66 (1) *The William and Mary Quarterly* 205, 209.

The Alabama Claims Arbitration⁸ of 1862-1872 between the United Kingdom and the United States however marked a more decisive phase in settlement of international disputes⁹. Both the United States of America and the United Kingdom agreed to submit to arbitration claims submitted by the United States of America for alleged breaches of neutrality by the United Kingdom during the American Civil War. At the end of the arbitral tribunal, the United Kingdom was ordered to pay compensation and it was duly complied with¹⁰.

This arbitral proceeding served as a demonstration of the effectiveness of arbitration in the settlement of a major international dispute¹¹ and its success prompted States to think about a permanent international court that will be responsible for peaceful settlement of disputes in order to avoid the need to set up a special (ad hoc) tribunal to decide each individual arbitral dispute¹². This led to developments in various directions during the latter years of the 19th century.

⁸ The Alabama Claims were a series of claims for damages by the United States Government brought in 1869 against the British Government as a result of ships, such as the Alabama, it built that aided the confederate cause in seizing American merchant ships during the American Civil War <<http://www.legal.un.org/riaa/cases/vol.../125-134.pdf>> accessed on 10 July 2014.

⁹ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁰ The Alabama Claims Arbitration 1862-1872 <<http://www.legal.un.org/riaa/cases/vol.../125-134.pdf>> accessed on 10 July 2014.

¹¹ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7 2014.

¹² United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj.cij.org>> accessed on 7 July 2014.

In 1899, the Hague Peace Conference¹³ was convened and this Conference marked a significant development in the modern history of international arbitration. The high point of the Conference was the adoption of the Convention for the Pacific Settlement of International Disputes¹⁴ which included the creation of a Permanent Court of Arbitration¹⁵ which exists to this day.

The Permanent Court of Arbitration was established in 1900 and began full operations in 1902¹⁶. This was the first standing institution intended to settle disputes between sovereign States through binding decisions based on international laws¹⁷.

However, the machinery of the Permanent Court of Arbitration relied entirely on the consent of States who have agreed on the various practical items and procedures of the Court before arbitration can begin¹⁸. This was a major fundamental flaw

¹³ The Hague Peace Conference of 1899 was convened on the initiative of the Czar of Russia Nicholas II, with the object of seeking the most effective means of ensuring all peoples the benefits of a real and lasting peace and above all limiting the progressive development of existing armament <<http://www.icrc.org/ihl/INTRO/145?OpenDocument>> accessed on 11 July 2014.

¹⁴ The Convention for the Pacific Settlement of International Disputes was one of the 3 main conventions signed at the Hague Peace Conference. See <http://www.pca-cpa.org/showfile.asp?fil_id and <http://www.avalon.law.yale.edu/19th.../hague01.asp>> accessed on 11 July 2014.

¹⁵ The Permanent Court of Arbitration (PCA) is an international organization based in The Hague in the Netherlands. It was established in 1899 at the first Hague Peace Conference. It provides services for the arbitration and resolution of dispute involving States, States entities, inter-governmental organization and private parties. The PCA is different from the International Court of Justice which is housed in the same building, the Peace Palace in The Hague <http://www.pca-cpa.org/showfile.asp?fil_id > accessed on 11 July 2014.

¹⁶ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7 2014).

¹⁷ Romano C., 'International Justice And Developing Countries: A Quantitative Analysis' (2002) 1 *The Law and Practice of International Courts and Tribunals, Kluwer Law International* 367.

¹⁸ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal

of the Permanent Court of Arbitration and as early as in 1907 when the second Hague Peace Conference was convened at the instance of the United States¹⁹, several States called for a permanent international tribunal that would settle disputes by applying judicial procedures which have a greater element of compulsion than arbitration²⁰.

At the end of the First World War²¹ and with the creation of the League of Nations²², a concrete shape was given to the idea of the establishment of a Permanent Court of International Justice (PCIJ). After many deliberations, the PCIJ was established with 15 judges elected by the Assembly and the Council of the League of Nations²³ and the PCIJ was situated at The Hague. However, it was only States that could be parties before the PCIJ but it was also empowered to give advisory opinions to the Assembly and the Council of the League of Nations²⁴.

Although the jurisdiction the PCIJ was still largely dependent on States' will to refer dispute to it, the PCIJ may

Organ of the United Nations" 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁹ The Second Hague Peace Conference was convened at the instance of Theodore Roosevelt, the President of the United States and was held from 15 June to 18 October 1907, <http://www.en.m.wikipedia.org/wiki/Hague_Conventions_of_1899_and_1907> accessed on 11 July 2014.

²⁰ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations" 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj.cij.org>> accessed on 7 July 2014 11

²¹ The first World War was a global war centered in Europe that began on 28 July 1914 and lasted until 11 November 1918 <http://www.en.m.wikipedia.org/wiki/World_War_1> accessed on 11 July 2014.

²² The League of Nations was a an intergovernmental organization founded on 10 January 1920 as a result of the Paris Peace Conference that ended the First World War . It was the first international organization whose principal mission was to maintain World peace <<http://www.un.org/pubs/.../unitro3.htm>> accessed on 11 July 2014.

²³ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) <<http://www.unctad.org>> accessed on 7 July 2014.

²⁴ Ibid.

however unilaterally summon a State upon request by another State without the States having to reach prior agreement on submission of a case²⁵. Another significant departure from the Permanent Court of Arbitration was that the PCIJ consisted of permanent judges representing the principal legal systems of the World and are elected by the Council and Assembly of the League of Nations²⁶. The PCIJ was governed by its own Statute and Rules of Procedure which are binding on the States and it can give an advisory opinions upon any legal question referred to it by the Council or Assembly of the League of Nations²⁷.

However, notwithstanding the fact that the establishment of the PCIJ was a significant development in the international settlement of disputes and the fact that PCIJ had an outstanding success for the period it was in existence²⁸, it still had some fundamental defect. The PCIJ, even though it was financed by the League of Nations, it was not part of the League of Nations and its Statute was not part of the Covenants of the League of Nations²⁹. The implication of this is that States members of the League of Nations were not automatically a party to the PCIJ's Statute. To cure this defect however, treaties conferring jurisdiction upon the PCIJ were signed between various States³⁰.

²⁵ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 6 <<http://www.icj.cij.org>>accessed on 7 July 2014.

²⁶ Ibid.

²⁷ Ibid.

²⁸ The PCIJ between 1922 and 1940 when it was in existence, it rendered judgment in 29 cases between States and gave 27 advisory opinions. See Publications of the Permanent Court of International Justice (1922-1946) <<http://www.icj-cij/pcj/index.php?p1=9>> accessed 12 July 2014.

²⁹ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) <<http://www.icj-cij.org>> accessed on 7 July 2014.

³⁰ Ibid.

The outbreak of the Second World War³¹ in 1939 inevitably affected the activities of the PCIJ. After its last public sitting on 4 December 1939, the PCIJ did not in fact deal with any judicial business and no further elections of judges were held³². The pressure of the War coupled with the diminished activities of the PCIJ called into question the future of the Court as well as the creation of a new permanent international court to handle international disputes³³. By the time the PCIJ ceased functioning in 1940; it had dealt with 29 contentious cases and gave 27 advisory opinions³⁴.

In 1942, the United States Secretary of State³⁵ and the Foreign Secretary of the United Kingdom³⁶ declared themselves in favour of the establishment or re-establishment of an international court after the war³⁷. Early in 1943, the United Kingdom Government took the initiative of inviting a number of experts to London to constitute an informal inter-allied Committee to examine the matter. This Committee, under the chairmanship of Sir William Malkin (United Kingdom), held 19 meetings, which were attended by jurists from 11 countries. In its report, which was published on 10 February 1944, it recommended among other

³¹ The Second World War was a global war that lasted from 1939-1945 <http://www.en.m.wikipedia.org/wiki/World_War_II> accessed on 11 July 2014.

³² The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on July 7, 2014.

³³ Ibid.

³⁴ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 5 <<http://www.icj-cij.org>> accessed on 7 July 2014.

³⁵ Cordell Hull was the 47th United states Secretary of State and was in office between 4 March 1933 and 30 November 1944.

³⁶ Anthony Eden was the United Kingdom Foreign Secretary and was in office between 22 December 1940- 26 July 1945.

³⁷ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on 7 July 2014.

things that the Statute of any new international court should be based on that of the Permanent Court of International Justice³⁸.

The next step was the convening of a meeting in Washington, in April 1945, of a committee of jurists representing 44 States. This Committee, under the chairmanship of G. H. Hackworth (United States), was entrusted with the preparation of a draft Statute for the future international Court of Justice, for submission at the San Francisco Conference, which during the months of April to June 1945 was to draw up the United Nations Charter³⁹.

The PCIJ was eventually dissolved in 1946 following a decision at the San Francisco Conference⁴⁰ to create a new International Court of Justice (ICJ) on the same lines as the PCIJ, but as a principal judicial organ of the United Nations⁴¹.

Contrary to the Statute of the PCIJ, the Statute of the ICJ was an integral part of the Charter of the United Nations⁴². The implication of this is that States members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice⁴³.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ The San Francisco Conference also known as the United Nations Conference on International Organization (UNCIO) was a convention of delegates from 50 Allied nations that took place from 25 April to 26 June 1945 in San Francisco, United States. The Convention resulted in the creation of the United Nations Charter which was opened for signature on 26 June 1945. See <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014.

⁴¹ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) <<http://www.unctad.org>> accessed on 7 July 2014.

⁴² Chapter XIV and Article 92 of the United Nations Charter established the ICJ while most of the provisions that relates to the ICJ are contained in the Statute of the International Court of Justice which is annexed to the Charter <<http://www.un.org/en/about/index.shtml>> and <<http://www.un.org/en/documents/charter/chapter14.shtml>> accessed on 13 July 2014.

⁴³ All 193 United Nations member States are parties to the Statute of the ICJ by virtue of their ratification of the United Nations Charter, See Article 93(1) of the United Nations Charter 1945 <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014.

In addition, a State which is not a member of the United Nations may become party to the Statute of the ICJ on conditions to be determined in each case by the General Assembly upon recommendation of the Security Council⁴⁴. The Charter however does not preclude members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future⁴⁵.

It is important to note that the Statute of the ICJ did not repeal the Statute of the PCIJ; rather, the Statute of the PCIJ was the basis upon which the Statute of the ICJ was drawn. Necessary steps were taken to transfer the jurisdiction of the PCIJ so far as was possible to the ICJ⁴⁶. The Charter of the United Nations therefore plainly stated that the Statute of the ICJ was based upon that of the PCIJ⁴⁷.

The judges of the ICJ met for the first time in April 1946 and it elected Judge José Gustavo Guerrero⁴⁸, the last President of the PCIJ as the first President of the ICJ⁴⁹. The ICJ appointed the members of its Registry (largely from among former officials of the PCIJ) and held an inaugural public sitting on the 18 April

⁴⁴ Article 93(2) of the United Nations Charter 1945 <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014.

⁴⁵ Article 95 of the United Nations Charter 1945 <<http://www.un.org/en/document/charter/>> accessed on 13 July 2014.

⁴⁶ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on 7 July 2014.

⁴⁷ Article 92 of the United Nations Charter 1945 provides thus 'The International Court of Justice shall be the principal organ of the United Nations. It shall function in accordance with the annexed statute which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

⁴⁸ José Gustavo Guerrero was a Salvadorian diplomat and jurist. He served as the last president of the PCIJ from 1937 to 1945. He was also the first president of the ICJ from 1946-1949 and remained on the ICJ as a regular judge until his death in 1958.

⁴⁹ The History of the International Court of Justice <<http://www.icj.cij.org/court/index.php?p1=1&p2=1>> accessed on 7 July 2014.

1946⁵⁰. The current President of the ICJ is Ronny Abraham⁵¹ who took up the position on 6th February 2015 while the Vice-President of the ICJ is Abdulqawi Ahmed Yusuf⁵² who had been in the position since 2006 and his term will end in 2015⁵³.

As at 17 July 2014, a total of 160 cases have been entered in the General list of the ICJ⁵⁴ while the first case entered in the General list of the ICJ was submitted by the United Kingdom on 22 May 1947⁵⁵.

On 10 October 2002, the ICJ gave a judgment in a case concerning disputed land claims between Nigeria and Cameroon. In its judgment, the ICJ decided that the Bakassi peninsular fall within Cameroonian sovereignty and ordered Nigeria to withdraw its administration, military and police forces from the disputed area. The ICJ further ordered Cameroon to also withdraw its own administration, military and police forces from the Lake Chad area which the ICJ decided fall within the sovereignty of Nigeria⁵⁶.

⁵⁰ Ibid.

⁵¹ He has been a member of the Court since 15 February 2005 and was re-elected as a member on 6 February 2009. He became the President of the Court on 6 February 2015. See <<http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=1&judge=136>> accessed on 15 March 2016.

⁵² He has been a member of the Court since 6 February 2009 and was appointed the Vice-President of the Court on 6 February 2015. See <<http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=1&judge=168>> accessed on 15 March 2016.

⁵³ See <<http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=1>> accessed 14 July 2014.

⁵⁴ The International Court of Justice Cases <<http://www.icj-cij/docket/index.php?p1=3>> accessed on 18 July 2014.

⁵⁵ The case concerned incidents in the Corfu Channel and was brought by the United Kingdom against Albania, See <<http://www.icj-cij/docket/index.php?p1=3>> accessed on 18 July 2014.

⁵⁶ Land and Maritime Boundary between Cameroon and Nigeria (Cameroon V. Nigeria: Equatorial Guinea Intervening), available online at <<http://www.icj-cij.org/docket/index.php?pr=294&code=cn&p1=3&p2=3&p3=6&case=94&k>> accessed on 18 July 2014.

2.0 OVERVIEW AND KEY FEATURES OF THE STATUTE AND RULES OF THE INTERNATIONAL COURT OF JUSTICE

The ICJ was established by the Charter of the United Nations as the principal judicial organ of the United Nations⁵⁷. The ICJ functions in accordance with the provisions of its Statute and Rules. The Statute of the ICJ is annexed to the Charter of the United Nations and thus forms an integral part of the Charter⁵⁸. Its main object is to organize the composition and functioning of the ICJ⁵⁹. On the other hand, the rules of the ICJ are rules framed by the ICJ to enable it carry out its function⁶⁰. The rules are intended to supplement the general rules set forth in the ICJ Statute and to make detailed provisions for the steps to be taken to comply with them.

The following represents a summary of some of the key provisions and features of the ICJ Statute and Rules:

2.1 Structure of the ICJ Statute and Rules

The ICJ Statute is divided into five (5) chapters consisting of 70 articles. The chapters of the Statute are: Organization of the Court⁶¹, Competence of the Court⁶², Procedure⁶³, Advisory Opinions⁶⁴ and Amendment⁶⁵. The Rules of the ICJ were framed up pursuant to Article 30 of the ICJ Statute. The Rules were adopted on 14 April 1978 and entered into force on 1 July 1978⁶⁶.

⁵⁷ Article 1 of the United Nations Charter 1945.

⁵⁸ Article 92 of the United Nations Charter 1945.

⁵⁹ Statute of the International Court of Justice <<http://www.icj-cij.org/documents/?p1=4&p2=2&p3=0>> accessed on 7 July 2014.

⁶⁰ Article 30(1) of the United Nations Charter 1945 provides ‘the Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure’.

⁶¹ Chapter 1, Articles 2-33 of the United Nations Charter 1945.

⁶² Chapter 2, Articles 34-38 of the United Nations Charter 1945.

⁶³ Chapter 3, Articles 39-64 of the United Nations Charter 1945.

⁶⁴ Chapter 4, Articles 64-68 of the United Nations Charter 1945.

⁶⁵ Chapter 5, Articles 69-70 of the United Nations Charter 1945.

⁶⁶ International Court of Justice, Rules of the Court <<http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>> accessed on 7 July 2014.

The Rules of the ICJ consists of a Preamble⁶⁷, three (3) parts⁶⁸ and 109 Articles.

The seat of the ICJ is at The Hague. This, however, does not prevent the ICJ from sitting and exercising its functions elsewhere whenever the ICJ considers it desirable⁶⁹. The President and the Registrar reside at the seat of the ICJ⁷⁰.

2.2 Membership and Composition of the ICJ

All Member States of the United Nations are automatically parties to the ICJ Statute⁷¹. States that are not Members of the UN can become members of the ICJ with the approval of the General Assembly, on the recommendation of the Security Council⁷². Only States can be parties in a proceeding before the ICJ⁷³.

The ICJ is composed of 15 judges elected for a period of nine-year terms by the United Nations' General Assembly and the United Nations' Security Council.⁷⁴ The judges are appointed from a list of persons nominated by national groups in the Permanent Court of Arbitration⁷⁵ and no more than one national of any State may be a member of the ICJ⁷⁶. The ICJ elects, for a term of three

⁶⁷ The Preamble of the Rules of the ICJ provides as follows 'The Court, Having regard to Chapter XIV of the Charter of the United Nations; Having regard to the Statute of the Court annexed thereto; Acting in pursuance of Article 30 of the Statute; Adopts the following Rules'. <<http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>> accessed on 7 July 2014.

⁶⁸ Part I of the Rules of the ICJ which consist of Articles 1-21 made provisions with regards to the Court, Presidency, Chambers and International functions of the Court. Part II of the Rules of the ICJ which consist of Articles 22-29 made provisions with regards to the Registry of the ICJ while Part III of the ICJ consisting of Articles 30-109 made provisions for the proceedings before the ICJ <<http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>> accessed on 7 July 2014.

⁶⁹ Article 22 (1) of the United Nations Charter 1945.

⁷⁰ Article 22 (1) of the United Nations Charter 1945.

⁷¹ Article 93(1) of the United Nations Charter 1945.

⁷² Article 93(2) of the United Nations Charter 1945.

⁷³ Article 34(1) of the Statute of the International Court of Justice 1945.

⁷⁴ Article 3(1) of the Statute of the International Court of Justice 1945.

⁷⁵ Article 4(1) of the Statute of the International Court of Justice 1945.

⁷⁶ Article 3(2) of the Statute of the International Court of Justice 1945.

years, the President and Vice-President of the ICJ⁷⁷. The ICJ is assisted by a Registry, headed by a Registrar⁷⁸.

The election process of the judges is set out in articles 4-19 of the ICJ Statute. Elections are held every three years for five vacancies in order to ensure continuity within the ICJ. Eligible as judges are persons of high moral character and possessing the qualifications required in their respective countries for appointment to the highest judicial offices, or recognised competence in international laws⁷⁹. The election is held simultaneously both in the General Assembly and in the Security Council, each voting independently of the other. In order to get elected, a candidate must obtain an absolute majority in both forums⁸⁰.

2.3 The Bench

All the judges of the ICJ, including ad-hoc judges⁸¹ constitute the Bench of the ICJ in a case. No member can be dismissed unless, in the opinion of other members, he/she has ceased to fulfill the required conditions⁸². The full Court shall sit except when it is expressly provided otherwise in the Statute⁸³. A quorum of nine judges shall suffice to constitute the Court⁸⁴.

During his/her term of office, no judge should engage in any political or administrative functions or in any other occupation of a professional nature⁸⁵. Further, no judge may participate in a case brought before the ICJ in which he/she has previously been

⁷⁷ Article 21(1) of the Statute of the International Court of Justice 1945.

⁷⁸ Article 21(2) of the Statute of the International Court of Justice 1945.

⁷⁹ Although no specific quota to different regions of the world is assigned, so far the practice has been to elect one judge from each of the States which are Permanent Members of the Security Council, three judges from Asia, three judges from Africa, two judges from Latin America and one judge each from Western Europe and other States and from the Eastern European States.

⁸⁰ Article 21 of the Statute of the International Court of Justice 1945.

⁸¹ Article 31 of the Statute of the International Court of Justice 1945.

⁸² Article 18 of the Statute of the International Court of Justice 1945.

⁸³ Article 25(1) of the Statute of the International Court of Justice 1945.

⁸⁴ Article 25(2) of the Statute of the International Court of Justice 1945.

⁸⁵ Article 16 of the Statute of the International Court of Justice 1945.

involved as agent or counsel for one of the parties, as a member of a commission of inquiry, or as a member of a national or international tribunal or arbitration⁸⁶.

2.4 The Registry

The Registry is headed by a Registrar whom the ICJ shall elect by secret ballot from amongst candidates proposed by Members of the ICJ. The Registrar shall be elected for a term of seven years and He may be re-elected⁸⁷. The ICJ can also elect a Deputy-Registrar⁸⁸.

The function of the Registry include but not limited to transmitting to the parties copies of all pleadings and documents annexed upon receipt thereof in the Registry⁸⁹, keep under the supervision of the President, and in such form as may be laid down by the ICJ, a General List of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry⁹⁰, communicate to the government of the country in which the ICJ or a Chamber is sitting⁹¹ and so on. Other functions of the Registry can be found in Article 26(1) (a-n) of the Rules of the International Court of Justice 1978.

2.5 Official and Working Languages

The official languages of the ICJ are English and French. If the parties agree, the case can be conducted and the judgment delivered exclusively in either English or French. The Court may also authorize, at the request of a party, a language other than French or English to be used by that party. In such a case, an English or French translation has to be attached to the judgment⁹².

⁸⁶ Article 17(1-3) of the Statute of the International Court of Justice 1945.

⁸⁷ Article 22(1) of the Rules of the International Court of Justice 1978.

⁸⁸ Article 23 of the Rules of the International Court of Justice 1978.

⁸⁹ Article 26(1) (d) of the Rules of the International Court of Justice 1978.

⁹⁰ Article 26(1) (b) of the Rules of the International Court of Justice 1978.

⁹¹ Article 26(1) (e) of the Rules of the International Court of Justice 1978.

⁹² Article 39(1-3) of the Statute of the International Court of Justice 1945.

2.6 Applicable Law

Article 38 of the ICJ Statute sets out the sources of international law that the ICJ is to apply in reaching its decisions. These includes international conventions, whether general or particular, establishing rules expressly recognized by the contesting states, international custom, as evidence of a general practice accepted as law, the general principles of law recognized by civilized nations 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 law⁹³.

2.7 Judgment and Appeal

The judgment of the ICJ is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party⁹⁴. However, an application for revision of the judgment may be made only when it is based upon the discovery of some facts of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the ICJ and also to the party claiming revision and that such ignorance was not due to negligence⁹⁵.

2.8 Amendment

Amendments to the Statute of the ICJ shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to the Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of States which are parties to the Statute but are not Members of the United Nations⁹⁶.

⁹³ Article 38(1)(a-d) of the Statute of the International Court of Justice 1945.

⁹⁴ Article 60 of the Statute of the International Court of Justice 1945.

⁹⁵ Article 61 of the Statute of the International Court of Justice 1945.

⁹⁶ Article 69 of the Statute of the International Court of Justice 1945, Amendment of the Charter of the United Nations is provided under Articles 108 and 109 of the United Nations Charter 1945.

3.0 Jurisdiction of the International Court of Justice

The ICJ derives its jurisdiction from the Statute of the ICJ which is annexed to the United Nations Charter⁹⁷. Generally, the ICJ has jurisdiction in two types of cases. It has jurisdiction in respect of disputes of a legal nature that are submitted to it by the States, this is otherwise known as jurisdiction in contentious cases and it also has jurisdiction to give advisory opinions on legal questions submitted to it by the organs of the United Nations or specialized agencies authorized to make such a request otherwise known as advisory jurisdiction⁹⁸.

Thus, the ICJ has a dual jurisdiction to wit: jurisdiction in contentious cases and jurisdiction to give advisory opinion⁹⁹. These jurisdictions of the ICJ are discussed below.

3.1 Jurisdiction in Contentious Cases

The jurisdiction of the ICJ in contentious cases is simply the consideration by the ICJ of legal disputes submitted to it by the States¹⁰⁰. It is worthy to take note that only States may be parties in contentious cases before the ICJ and hence submit cases to it¹⁰¹. What this portends is that the ICJ in its contentious jurisdiction cannot consider legal disputes between a state and International organization or between two international organizations and also, the ICJ cannot deal with any written or oral applications from private entities (e.g. corporations and non-governmental

⁹⁷ Posner E. A., 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics 25.

⁹⁸ The Jurisdiction of the International Court of Justice, available online at <<http://www.icj.cij.org/jurisdiction/index.php?p1=5>> accessed on 14 July 2014.

⁹⁹ Ibid.

¹⁰⁰ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26, <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁰¹ Article 34(1) of the Statute of the International Court of Justice 1945.

organizations) or individuals that are received at the Registry, however meritorious or moving they may be¹⁰².

The States that can submit legal disputes to trigger the contentious jurisdiction of the ICJ include States members of the United Nations who by ratifying the Charter of the United Nations, accepted its obligations and thus automatically becomes parties to the Statute of the ICJ which forms an integral part of the Charter¹⁰³. In addition, a State can trigger the contentious jurisdiction of the ICJ even if it is not a member of the United Nations but it is a party to the Statute of the ICJ¹⁰⁴ while a State that is neither a member of the United Nations nor is a party to the Statute of the ICJ can also activate the contentious jurisdiction of the ICJ if the State deposited with the Registry of the ICJ a declaration laid down by the Security Council whereby it accepts the jurisdiction of the ICJ and undertakes to comply in good faith with the ICJ's decision¹⁰⁵.

However, the fact that it is only a State that can submit legal disputes to activate the contentious jurisdiction of the ICJ does not preclude non-state interests from being the subject of proceedings before the ICJ if one State brings the case against another. Example of this can be found in the case of diplomatic protection where a State can bring a case on behalf of one of its nationals or corporations¹⁰⁶.

¹⁰² United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26 <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁰³ Article 93(1) of the Statute of the International Court of Justice 1945.

¹⁰⁴ Article 93(2) of the Statute of the International Court of Justice 1945, Example of this is Switzerland which only joined the United Nations in 2002 but had been a party to the Statute of the ICJ since 1948.

¹⁰⁵ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26 <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁰⁶ The *Nottebohm Case (Liechtenstein V. Guatemala)* is a good example of where a State can bring a case on behalf of its national. The contentious case was brought before the ICJ by Liechtenstein on behalf of its national Friedrich Nottebohm against Guatemala and sought for a ruling of the ICJ to force

It is important to note that the mere fact that a State is a member of the United Nations or a party to the Statute of the ICJ does not automatically confer jurisdiction on the ICJ. The ICJ can only exercise its jurisdiction in contentious cases only if the States involved have in some manner or the other consented to be made a party to the proceedings before the ICJ. This is a fundamental principle governing the international settlement of dispute as States being sovereign are free to choose the means of resolving their disputes¹⁰⁷.

Accordingly, the basis for jurisdiction of the ICJ in contentious cases is the consent of the States parties to a dispute¹⁰⁸. Consent can be expressed in one of the following ways:

3.1.1 Special Agreement or Compromise

Jurisdiction conferred on the ICJ by special agreement arises when the disputing States agree to submit their dispute to the ICJ. The ICJ, in special agreement cases, serves as an elaborate arbitration device¹⁰⁹. However, unlike traditional arbitration, the State parties that use the ICJ do not select most of the judges, so that the ICJ, unlike traditional arbitration panels, may be willing to decide cases in a way that reflects the interests of States other than the two parties¹¹⁰.

Accordingly, two or more States in a dispute on a specific issue can agree to jointly submit the dispute to the ICJ and to

Guatemalan recognition of Friedrich Nottebohm as a Liechtenstein national. For the summary of the case, see <<http://www.icj-cij.org/docket/index.php?sum=215&p1=3&p2=3&case=18&p3=5>> accessed on 14 July 2014.

¹⁰⁷ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 26 <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁰⁸ United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) <<http://www.unctad.org>> accessed on 7 July 2014.

¹⁰⁹ Posner E. A., 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics 25.

¹¹⁰ Ibid.

conclude a special agreement in that respect¹¹¹. This method is based on explicit consent of the States and is, perhaps, the most effective basis for the ICJ's jurisdiction. It is effective because the parties concerned have a desire for the ICJ to resolve the dispute, and are thus more likely to comply with the ICJ's judgment. Parties will usually define the nature of the dispute between them and the legal questions on which they wish the ICJ to rule¹¹².

For example, a special agreement was concluded between Hungary and Slovakia on 7 April 1993, by which they submitted to the ICJ, the dispute concerning the Gabčíkovo Nagymaros Project¹¹³.

3.1.2 Compromissory Clause

The ICJ is conferred with a jurisdiction in contentious cases where the dispute is specifically provided for in treaties and conventions in force¹¹⁴. Many treaties contain clauses (known as jurisdictional clauses) by which a State party undertakes in advance to accept jurisdiction of the ICJ should a dispute in interpretation or application of the treaty arise in the future with another State party¹¹⁵.

All of these treaties provide that if a dispute arises under the treaty, the ICJ will have jurisdiction¹¹⁶. Some of the Treaties that confers jurisdiction on the ICJ include, the Convention for the Suppression of Unlawful Acts against the safety of Civil

¹¹¹ Article 36(1) of the Statute of the International Court of Justice 1945.

¹¹² United Nations Conference on Trade and Development (UNCTAD), International Court of Justice: Dispute Settlement (New York, United Nations Publisher, 2003) 12 <<http://www.unctad.org>> accessed on 7 July 2014.

¹¹³ The dispute concerned the construction and operation of the Gabčíkovo-Nagymaros Barrage system. See Gabčíkovo-Nagymaros Project (*Hungary v. Slovakia*), ICJ Reports, 1997, 7 <<http://www.icj-cij.org/docket/index.php?sum=483&p1=3&p2=3&case=92&p3=5>> accessed on 15 July 2014.

¹¹⁴ Article 36(1) of the Statute of the International Court of Justice 1945.

¹¹⁵ Posner E. A., 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics 24.

¹¹⁶ *Ibid.*

Aviation¹¹⁷, the International Convention against the taking of Hostages¹¹⁸, The United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment¹¹⁹, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances¹²⁰, the United Nations Framework Convention on Climate Change, Convention on Biological Diversity¹²¹, Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and their Destruction¹²².

However, cases founded on compromissory clauses have not been as effective as cases founded on special agreement, since a State may have no interest in having the matter examined by the ICJ and may refuse to comply with any judgment in this regard¹²³. Since the 1970s the use of such compromissory clauses has declined¹²⁴. For example, during the Iran hostage crisis¹²⁵, Iran did

¹¹⁷ The Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation was signed on 23 September 1971 in Montreal, Canada and became effective from 26 January 1973.

¹¹⁸ The International Convention against the taking of Hostages was signed on 18 December 1979 in New York and became effective on 3 June 1983.

¹¹⁹ The United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment was signed on 10 December 1984 in New York and became effective on 26 June 1987.

¹²⁰ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances was in Vienna on 20 December 1988 and became effective on 11 November 1990.

¹²¹ The United Nations Framework Convention on Climate Change, Convention on Biological Diversity was signed in New York on 9 May 1992 and became effective on 21 March 1994.

¹²² The Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and their Destruction was signed on 13 January 1993 in Paris and became effective on 29 April 1997.

¹²³ Contentious Jurisdiction of the International Court of Justice, <http://www.en.wikipedia.org/wiki/international_Court_of_Justice> accessed on 14 July 2014.

¹²⁴ Ibid.

¹²⁵ The Iran hostage crisis was a diplomatic crisis between Iran and the United States between 4 November 1979 and 20 January 1981 in which 52 American diplomats and citizens were held hostage for 444 days after a group of Iranian students belonging to Muslim Student Followers of the

not participate in a case brought by the United States based on a compromissory clause contained in the Vienna Convention on Diplomatic Relations¹²⁶, nor did it comply with the judgment¹²⁷.

3.1.3 Compulsory Jurisdiction

In the strict sense, the ICJ does not have a compulsory jurisdiction. However, the States parties to the Statute of the ICJ may opt to make a unilateral declaration recognizing the jurisdiction of the ICJ as compulsory in relation to any other State accepting the same obligation¹²⁸.

This is also known as the optional clause system which has led to the creation of a group of States who mutually have conferred jurisdiction on the ICJ to decide dispute that may arise between them in the future¹²⁹. Consequently, each State belonging to this group has in principle the right to bring any one or more States belonging to the group before the ICJ by filing an application instituting proceedings with the ICJ and conversely it has undertaken to appear before the ICJ should proceedings be instituted against it by one or more such other State¹³⁰.

Imam's line who were supporting the Iranian Revolution took over the United States embassy in Tehran.

¹²⁶ The Vienna Convention on Diplomatic Relations of 1961 is an international treaty that defines a framework for diplomatic relations between independent countries. It specifies the privileges of a diplomatic mission that enable diplomats to perform their function without fear of coercion or harassment by the host country. This forms the legal basis for diplomatic immunity. Its articles are considered a cornerstone of modern international relations. As of April 2014, it has been ratified by 190 states.

¹²⁷ Case Concerning United States Diplomatic and Consular Staff in Tehran (*USA Vs. Iran*) 1979 ICJ Reports 7 <<http://www.icj-cij.org/docket/index.php?sum=334&p1=3&p2=3&case=642&p3=5>> accessed on 15 July 2014.

¹²⁸ Article 36(2) of the Statute of the International Court of Justice 1945.

¹²⁹ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 27 <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹³⁰ The International Court of Justice, Declarations recognizing the Jurisdiction of the Court as Compulsory <<http://www.icj->

The jurisdiction of the ICJ in this respect is however limited to certain legal dispute including the interpretation of a treaty¹³¹, any question of international law¹³², the existence of any fact which if established, would constitute a breach of an international obligation¹³³, the nature or extent of the reparation to be made for the breach of an international obligation¹³⁴.

The declaration recognizing the compulsory jurisdiction of the ICJ can be made by a State unconditionally or on condition of reciprocity on the part of several or certain States or for a certain time¹³⁵. Such declaration shall be further deposited with the Secretary-General of the United Nations who shall transmit copies thereof to the parties to the Statute and to Registrar of the ICJ¹³⁶.

With the exception of the United Kingdom, no permanent member of the Security Council is subject to compulsory jurisdiction of the ICJ¹³⁷. Many States have however, through reservations, consented to compulsory jurisdiction only for a narrow range of cases¹³⁸. Some of these States are Australia, Austria, Belgium, Botswana, Canada, Cote d'Ivoire, India, Japan

[cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3](http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3)> accessed on 13 July 2014.

¹³¹ Article 36(2) (a) of the Statute of the International Court of Justice 1945.

¹³² Article 36(2) (b) of the Statute of the International Court of Justice 1945.

¹³³ Article 36(2) (c) of the Statute of the International Court of Justice 1945.

¹³⁴ Article 36(2) (d) of the Statute of the International Court of Justice 1945.

¹³⁵ Article 36(3) of the Statute of the International Court of Justice 1945.

¹³⁶ Article 36(4) of the Statute of the International Court of Justice 1945.

¹³⁷ Posner E. A., 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics 23. The United States withdrew its earlier acceptance of the compulsory jurisdiction of the ICJ, France, China and Russia have never submitted any declaration in this regard, see <<http://www.chartsbin.com/view/1645>> accessed on 15 July 2014.

¹³⁸ A total of 70 States have deposited declaration recognizing the compulsory jurisdiction of the ICJ with the Secretary-General of the United Nations, see The International Court of Justice, Declarations recognizing the Jurisdiction of the Court as Compulsory <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>> accessed on 7 July 2014.

Nigeria and so on¹³⁹. On 30 April 1998, Nigeria deposited a declaration recognizing the compulsory jurisdiction of the ICJ on condition of reciprocity¹⁴⁰. The declaration was signed by Chief Tom Ikimi¹⁴¹ on 29 April 1998.

In exercise of its jurisdiction in contentious cases, the ICJ has to decide in accordance with international law disputes of a legal nature that are submitted to it by States. An international dispute can be defined as a disagreement on question of law or fact, a conflict, a clash of legal views of interests¹⁴².

A State may challenge the jurisdiction of the ICJ by way of preliminary objection and contend that the treaty or declaration upon which the Applicant State has founded its application is null and void or no longer in force¹⁴³. The State may also contend that the essential provisions of the Statute or of the Rules have not been complied with or that the dispute does not exist or is not of a legal nature or local remedies have not been exhausted or that the State party lacks capacity to bring the proceedings¹⁴⁴.

In order to enable the ICJ to determine its jurisdiction at the preliminary stage of the proceedings, the ICJ, whenever necessary, may request the parties to argue all questions of law and fact, and to adduce all evidence, which bear on the issue¹⁴⁵. After hearing the parties, the ICJ shall give its decision in the form of a

¹³⁹ The International Court of Justice, Declarations recognizing the Jurisdiction of the Court as Compulsory <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>> accessed on 13 July 2014

¹⁴⁰ See <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3&code=NG>> accessed on 13 July 2014.

¹⁴¹ The then Hon. Minister of Foreign Affairs, Federal Republic of Nigeria.

¹⁴² The International Court of Justice, Declarations recognizing the Jurisdiction of the Court as Compulsory <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1>> accessed on 13 July 2014.

¹⁴³ Article 79(1-7) of the Rules of the International Court of Justice, Adopted on 14 April 1978 and entered into force on 1 July 1978.

¹⁴⁴ United Nations Report on the International Court of Justice, 'The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations' 10th Ed. (New York, United Nations Publisher, 2000) 42 <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁴⁵ Article 79(8) of the Rules of the International Court of Justice, Adopted on 14 April 1978 and entered into force on 1 July 1978.

judgment, by which it shall uphold the objection, reject it, or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character¹⁴⁶.

3.2 Jurisdiction to Provide Advisory Opinion

Generally, as seen above, only States can be party to proceedings before the ICJ while individuals, corporations and organizations cannot be a party before the ICJ. However, the ICJ have jurisdiction to provide advisory opinions to certain public international organizations and as such, these public international organization can request an advisory opinion from the ICJ on a legal question¹⁴⁷.

In accordance with the Article 96(1) of the Charter of the United Nations, the General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question while Article 96(2) of the Charter provides that other organs of the United Nations¹⁴⁸ and specialized agencies¹⁴⁹, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the ICJ on legal questions arising within the scope of their activities.

¹⁴⁶ Article 79(1-7) of the Rules of the International Court of Justice, Adopted on 14 April 1978 and entered into force on 1 July 1978.

¹⁴⁷ Article 65(1) of the Statute of the International Court of Justice 1945.

¹⁴⁸ United Nations Organs are, the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly, See <<http://www.un.org/en/aboutun/structure/>> accessed on 17 July 2014.

¹⁴⁹ Specialized Agencies of the United Nations include the International Labour Organization (ILO), Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), International Development Association (IDA), International Monetary Fund (IMF), International Civil Aviation Organization (ICAO), International Telecommunication Union (ITU), International Fund for Agricultural Development (IFAD), World Meteorological Organization (WMO), International Maritime Organization (IMO), World Intellectual Property Organization (WIPO), United Nations Industrial Development Organization (UNIDO) and the World Bank Group, See <<http://www.un.org/en/aboutun/structure/>> accessed on 17 July 2014.

An Advisory Opinion is “any legal question” submitted to the ICJ and in the exercise of its advisory jurisdiction; the ICJ has to remain faithful to the requirements of its judicial character and cannot depart from the essential rules that guide its jurisdictional activity¹⁵⁰. In order to acknowledge the question, the public international organizations may furnish relevant information and the ICJ may call upon specific public international organizations, when it considers these organizations may have relevant information to the legal question¹⁵¹.

It should be noted that a State cannot request for an advisory opinion of the ICJ. Such request can only be submitted by an international public organization even if the request is sometimes the result of an initiative by a State or groups of States members of that organization¹⁵². Before acceding to a request, the ICJ has to decide that it has jurisdiction and, if it has, it would then decide whether it should exercise its discretion to give an Advisory Opinion¹⁵³.

Upon the receipt of a request for an Advisory Opinion, the ICJ will draw up a list of those States and Organizations that may be able to furnish relevant information. It then organizes written and oral proceedings. The ICJ does not hold a preliminary stage (as it will often do in contentious proceedings) after which the ICJ would decide whether it has jurisdiction and, if so, whether it should exercise its discretion to give, or refuse to give, an Advisory Opinion. Instead, the ICJ holds simultaneous hearings of views on whether the opinion should be given¹⁵⁴. After this, the

¹⁵⁰ The Model United Nations Official Team of the Faculty of Law at Universidad Nacional Autonoma de Mexico (IUSMUN)'s Handbook on the International Court of Justice 2011, p. 16.

¹⁵¹ Article 65(2) of the Statute of the International Court of Justice 1945, *Ibid*, p. 16.

¹⁵² United Nations Report on the International Court of Justice, ‘The International Court of Justice: Questions and Answers about the Principal Organ of the United Nations’ 10th Ed. (New York, United Nations Publisher, 2000) 42, <<http://www.icj.cij.org>> accessed on 7 July 2014.

¹⁵³ Aust Anthony ‘Advisory Opinions’ (2010) 1(1) *Journal of International Dispute Settlement* 130.

¹⁵⁴ *Ibid*, p. 132.

ICJ must then decide whether it has jurisdiction to give an Advisory Opinion or not. It is for the ICJ to satisfy itself that the request comes from a United Nations organ or a United Nations specialized agency that is competent to make it.

The ICJ has only once in its history declined to accept a request on the ground that it did not have jurisdiction in respect of an advisory opinion submitted by the World Health Organization (WHO)¹⁵⁵. The Advisory Opinion submitted by the WHO on the Legality of the use Nuclear Weapons by a State in an Armed Conflict¹⁵⁶ read thus:

In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?¹⁵⁷

The ICJ observed that, in view of Article 65(1) of its Statute, and Article 96(2) of the United Nations Charter, three conditions have to be satisfied in order to trigger the jurisdiction of the ICJ when a request for an Advisory Opinion is submitted to it by a specialized agency to wit:

- a. Under the Charter, the agency requesting the Opinion must be duly authorized to request it from the ICJ¹⁵⁸;
- b. The Opinion requested must be on a legal question¹⁵⁹, and
- c. The question must be one arising within the scope of the activities of the requesting agency¹⁶⁰.

¹⁵⁵ Ibid, p. 132.

¹⁵⁶ An advisory opinion on this issue was originally requested by the World Health Organization (WHO) on 3 September 1993, See, ICJ Press releases on the Legality of the Use by a State of Nuclear Weapons in an Armed Conflict <<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&case=93&code=anw&p3=6>> accessed on 12 July 2014.

¹⁵⁷ Ibid.

¹⁵⁸ Article 96 (1) & (2) of the Charter of the United Nations 1945 and Article 66(1) of the Statute of the International Court of Justice.

¹⁵⁹ Article 66(1) of the Statute of the International Court of Justice.

The ICJ held that while the first two conditions were met, the third condition, the ICJ found that, under its Constitution, the WHO was authorized to deal with the effects on health of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in¹⁶¹. The ICJ concluded that the responsibilities of the WHO are necessarily restricted to the sphere of public health and cannot encroach on the responsibilities of other parts of the UN system. The request of the WHO for an Advisory Opinion thus did not relate to a question which arose ‘within the scope of the activities’ of that Organization¹⁶².

Even though Advisory proceedings are governed by the Statute and the Rules of the ICJ and are similar to contentious proceedings, the procedure in advisory proceedings has distinctive features resulting from the special nature and purpose of the advisory function.¹⁶³. It is worthy to take note that unlike judgments handed down in contentious proceedings, the ICJ’s Advisory Opinions are not legally binding. However, the authority of the ICJ as the principal judicial organ of the United Nations attaches to them¹⁶⁴.

It is quite clear from the above that the ICJ acts as a world court and as such, its jurisdiction covers a wide range of international legal issues including but not limited national boundaries, maritime, rights to natural resources and international human rights. In addition, the ICJ also has jurisdiction to give advisory opinions on questions of international law submitted to it

¹⁶⁰ Article 96 (2) of the Charter of the United Nations 1945.

¹⁶¹ Aust A., ‘Advisory Opinions’ 2010) 1(1) *Journal of International Dispute Settlement* 133.

¹⁶² *Ibid.*

¹⁶³ Although the Advisory Procedure has distinctive feature resulting from special nature and object of the ICJ advisory functions, it is based on the rules applicable to the contentious proceedings.

¹⁶⁴ Aust Anthony ‘Advisory Opinions’ 2010) 1(1) *Journal of International Dispute Settlement*.

by public international organizations. The ICJ has handled, to date, 26 advisory opinions¹⁶⁵ and 134 contentious cases¹⁶⁶.

4.0 Criticisms of the International Court of Justice

As seen from the above, the ICJ was expected to become the principal judicial organ for the settlement of disputes among sovereign nations. However, the ICJ has been criticized for its limited effectiveness and the many failures it has experienced¹⁶⁷. Many of the provisions of its Statute have also been criticized for favoring the power blocs of the world¹⁶⁸. Accordingly, the ICJ has not lived up to the hopes of many of its early supporters. Some of the criticisms against the ICJ are as follows:

- i. The ICJ is being abandoned by the major powers in the world. Some Countries that are currently part of the ten largest economies in the world like China, Japan, and Russia have never brought a proceeding, and never been a respondent beyond the filing stage.
- ii. Article 36 (1) of Statute of the ICJ states that court has jurisdiction in matters specially provided in convention or treaties. The implication of this is that the voluntary clause paves the way for parties to not participate in proceedings and abide by decision of court in a particular matter¹⁶⁹.

¹⁶⁵ See <<http://www.icj-cij.org/docket/index.php?p1=3&P2=4>> accessed on 15 July 2014.

¹⁶⁶ See <<http://www.icj-cij.org/docket/index.php?p1=3&P2=3>> accessed on 15 July 2014.

¹⁶⁷ Bingbin, L. U., 'Reform of the International Court of Justice – A Jurisdictional Perspective', Vol. 5 No. 2 (2004) Perspectives, p. 6.

¹⁶⁸ Arora M., 'Criticism of International Court of Justice' <<http://www.omabc.com/united-nations/icj/criticism-international-court-justice>> accessed on 20 July 2014.

¹⁶⁹ For example Iran refused to participate in case of Iran hostage crisis brought by United States which was based on voluntary clause of Vienna Convention on Diplomatic Relations and did not complied with the order of the ICJ.

- iii. Further to the above, the Compulsory Jurisdiction in Article 36 (2) of the ICJ Statute states that States parties can declare at any time to accept compulsory jurisdiction of ICJ in matters related to conventions or international law. However, as at 7 July 2014, only 70 States out of 193 States that are members of the United Nations have deposited declaration recognizing the compulsory jurisdiction of the ICJ with the Secretary-General of the United Nations¹⁷⁰. The meaning of this is that a larger percentage of the members of the United Nations do not accept the compulsory jurisdiction of the ICJ and therefore, unless they give their consent to be a party in a case before the ICJ, the ICJ will have no jurisdiction. This limits the jurisdiction of ICJ significantly. It should be noted that out of 5 permanent members of the Security Council, it is only the United Kingdom that have recognized the compulsory jurisdiction ICJ¹⁷¹.
- iv. The Security Council has more power than the ICJ especially when there is conflict between them¹⁷². It is the Security Council that enforces any judgment of the ICJ. Thus, the Security Council can modify or reverse the judgment of the ICJ.

¹⁷⁰ See, The International Court of Justice, Declarations recognizing the Jurisdiction of the Court as Compulsory <<http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>> accessed on 7 July 2014

¹⁷¹ Posner Eric, 'The Decline of the International Court of Justice' (Working Paper, no. 23, 2004) 2 John M. Olin Law & Economics 25.

¹⁷² For example, in the case brought by Nicaragua before the ICJ against the United States, the ICJ's judgment delivered in 1984 was in favour of Nicaragua and the judgment called upon the United States to cease and refrain from using unlawful force against government of Nicaragua. However, the United States refused to comply with this judgment and withdrew its acceptance from compulsory jurisdiction. Nicaragua brought case of non-compliance of the United States with ICJ judgment before the Security Council. The United States used its veto power and the resolution that may have been reached by the Security Council was vetoed. See <<http://www.icj-cij.org/docket/index.php?sum=367&p1=3&p2=3&case=70&p3=5>> accessed on 17 July 2014.

- v. Many studies or reports show that judges favour their home State¹⁷³. Further, bias voting is common in non-party judges as well because they mostly vote in favour of States similar to their States on dimensions of wealth, culture or political regime.
- vi. The Organizations not authorized by United Nations or private enterprises cannot approach the court for any kind of dispute. Even the organization like International Criminal Court (ICC)¹⁷⁴ is out of jurisdiction of court. This means that potential victims of crimes against humanity, such as minor ethnic groups or indigenous peoples cannot approach the ICJ to seek redress.
- vii. Unlike the International Criminal Court (ICC), the ICJ does not enjoy a full separation of powers, with permanent members of the Security Council being able to veto enforcement of cases, even to which they consented to be bound¹⁷⁵.

5.0 Conclusion/Recommendation

The need to settle disputes among sovereign nations amicably without unnecessary resort to war is fundamental to international peace and harmony. Therefore, the establishment of the ICJ was a remarkable step for the enforcement of international laws and is in no doubt a significant development in the settlement of international disputes among sovereign nations. Its establishment strengthens the role of international law in

¹⁷³ Arora M., 'Criticism of International Court of Justice' <<http://www.omabc.com/united-nations/icj/criticism-international-court-justice>> accessed on 20 July 2014.

¹⁷⁴ The International Criminal Court (ICC) is a permanent international tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression and it was created by the Rome Statute which came into force on 1 July 2012, see <<http://www.icc-cpi.int>> accessed on 18 July 2014.

¹⁷⁵ By virtue of Article 92, the ICJ is an organ of the United Nations and its Statute annexed to the Charter of the United Nations. On the other hand, the Rome Statute which created the ICC is independent of the United Nations' Charter.

international relations and contributed to the development of international law.

The ICJ has jurisdiction to entertain contentious cases instituted before it by States while it also has jurisdiction to give advisory opinion in cases instituted by specialized agencies recognized by the United Nations. However, the jurisdiction of the ICJ is not automatic as a State either has to give its consent, recognize the jurisdiction of the ICJ under a particular treaty or recognize the compulsory jurisdiction of the ICJ before the ICJ can be conferred with jurisdiction.

Although the ICJ and its Statute are not perfect and have some weaknesses, as will any international organization. However, in spite of its unique features as well as its flaws, the establishment of the ICJ as well as its Statute marked an indisputable advance in international law and relations. It is only hoped that more countries will recognize the compulsory jurisdiction of the ICJ including the remaining permanent members of the Security Council who have not yet recognize its compulsory jurisdiction in the nearest future so as to strengthen the prosecutorial profile and authority of the ICJ.

In order to enhance the operations of the ICJ, it is recommended as follows:

- There is need to increase the credibility of the ICJ in comparison to the Security Council;
- The enforcement of judgment of the ICJ should be within the exclusive powers of the ICJ or decided by voting in the General Assembly of United Nations especially in cases especially if a member of the Security Council is found guilty;
- The decision to reverse or modify judgment of the ICJ should be taken by the General Assembly of the United Nations rather than the Security Council;
- Judges of the ICJ should as much as possible maintain their independence and should resist all forms of interference and political pressures from their home countries;

- The number of judges should be increased from the current 15 as the number of members of the of the United Nations had increased presently to 193 members from 50 members in 1945;
- Access to contentious proceedings and jurisdiction of the ICJ should be extended to parties other than States, that is, non-governmental organizations, individuals and corporations.