THE JURIDICAL ANALYSIS OF STATE SOVEREIGNTY PRINCIPLE IN THE INTERNATIONAL COURT OF JUSTICE PROCEDURE

THESIS

Nur Elfira Nirmala Pohan
04140149

LAW FACULTY
ANDALAS UNIVERSITY
PADANG 2008

THE JURIDICAL ANALYSIS OF STATE SOVEREIGNTY PRINCIPLE IN THE INTERNATIONAL COURT OF JUSTICE PROCEDURE (CASE STUDY CERTAIN QUESTION OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN DJIBOUTI AND FRANCE, 2006)

(Nur Elfira Nirmala Pohan 04140149, Law Faculty Andalas University, P. 60, 2008)

ABSTRACT

ICJ as the one of the international institutions only approves state as the parties. The party has made a Special Agreement according to be bound to the Court's Jurisdiction before the legal proceeding. This action is based on state sovereignty principle. The ICJ procedure has only access by the consent of the parties. This Consent is based on free will by the state. This requirement has stated that ICJ holds high state sovereignty to be bound based on free will. Furthermore, this admission has also seen in the legal binding of the Court's decision. The decision is only binding the parties brought the case before the Court and it has also limited on that case. In the Certain Question on Mutual Assistance in Criminal Matters between Djibouti and France, the ICJ has done the implementation of state sovereignty principle. The ICJ stated that it will not approve the suit if both states do not make the consent to be bound. In this case, the application of Djibouti is based on article 38(5) Rules of Court. The provision allowed the Djibouti and the Court's jurisdiction to settle the dispute until France has stated its consent. This matter known as the *forum prorogatum*. This thesis would be analyzing the status of state sovereignty principle in the ICJ procedure whether the status is absolute or restriction and the implementation of state sovereignty principle in the dispute between Djibouti and France. This thesis has used Normative-Juridical research, used primarily data and secondary data. And the secondary data is using as the mainly source supporting and strengthening the primarily data. Moreover, the status of state sovereignty principle in the ICJ is not absolute but restriction as the consequence of the consent to be bound to the Court's jurisdiction by the parties meaning state has waived its sovereignty. Moreover, state has a duty to compliance rules of the Court and the Court's decision, irrespective the party is a power state.

TINJAUAN YURIDIS PRINSIP KEDAULATAN NEGARA DALAM MAHKAMAH INTERNASIONAL
(STUDI KASUS SENGKETA DJIBOUTI DAN PRANCIS MENGENAI KEPASTIAN KERJASAMA DI BIDANG KRIMINAL, 2006)
(Nur Elfira Nirmala Pohan 04140149, Fakultas Hukum Universitas Andalas, Hal. 60, 2008)

ABSTRAK

Sebagai salah satu institusi hukum internasional, MI hanya menerima negara sebagai pihak yang dapat beracara di dalamnya. *Special Agreement* atau perjanjian khusus tentang penundukan kepada jurisdiksi MI, harus terlebih dahulu dibuat oleh para pihak sebelum beracara. Penundukan ini didasarkan pada prinsip kedaulatan Negara. Proses beracara di MI hanya dapat dilakukan dengan adanya *consent* dari para pihak yang akan beracara. *Consent* ini didasarkan atas asas konsensualisme atau *free will* dari negara yang terkait. Dari syarat ini dapatlah dilihat bahwa MI menjunjung tinggi kedaulatan sebuah negara untuk tunduk atas dasar *free will*. Lebih jauh lagi, pengakuan MI akan kedaulatan negara ini juga dapat dilihat dari kekuatan mengikat dari keputusan MI. Keputusan yang dikeluarkan oleh MI hanya mempunyai kekuatan mengikat bagi para pihak yang bersengketa dan terbatas pada kasus yang diajukan. Dalam kasus Kepastian Kerjasama di Bidang Kriminal antara Djibouti dan Prancis dapat dilihat penerapan dari prinsip kedaulatan negara. MI menyatakan tidak akan menerima perkara tersebut jika tidak ada kesepakatan oleh kedua belah pihak. Dalam kasus ini, Djibouti mendasarkan penuntutannya terhadap Prancis pada pasal 38(5) Peraturan MI. Ketentuan tersebut membenarkan tindakan Djibouti dan kewenangan MI sampai Prancis menyatakan kesepakatannya. Hal ini dikenal dengan ketentuan *forom prorogatum.* Lebih jauh penulisan ini ingin mengetahui kedududukan dari prinsip kedaulatan negara dalam prosedur MI apakah kedudukannya absolut atau terbatas serta penerapan prinsip kedaulatan negara pada kasus antara Djibouti dan Prancis. Selanjutnya, metode penelitian yang digunakan untuk mendukung penulisan ini adalah metode penelitian yuridis normatif, dengan menggunakan data primer dan data skunder, dengan menggunakan data skunder sebagai data yang utama untuk mendudung dan memperkuat data primer. Kedudukan prinsip kedaulatan negara dalam MI adalah tidak absolut akibat kesepakatan dari para pihak untuk tunduk pada jurisdiksi MI yang secara otomatis menyebabkan negara tersebut telah mengenyampingkan kedaulatannya dan memiliki kewajiban untuk mematuhi peraturan MI serta keputusan MI tanpa memperhatikan kedudukan pihak yang berperkara adalah negara adikuasa.

ACKNOWLEDGEMENT

Alhamdulillahirrabbil'alamiin, I rise to Allah SWT for giving me a wonderful life and a great time to finishing this paper as one of the requirement of the comprehensive examination in 2008 at Law Faculty, Andalas University in Padang. And then, I rise to Nabi Muhammad SAW, opened the way for us to find out the science which is important for our life.

From the dictates of my conscience, I dedicate this thesis to my beloved papa, Bahrum Pohan, succeeded to be the great father, taught me about the sense of life and supported all my aspirations. It is also to my beloved mama, Bunga Ria, the greatest mother that I have, pregnant me for nine months, given birth to me and took care of me with loving. And also to my brother, Irfan Ramadhan Pohan, with my sister, Malahayati Pohan, given me a spirit to finishing this thesis.

I want to take this golden opportunity to give thanks to the people as follows:

1. Mr. Prof. DR. Elwi Danil SH. MH as the Dean at the Law Faculty, Andalas University,
2. Mr. Najmi SH. MH as the Vice Dean I, Mr. Ilhamdi Taufik SH the Vice Dean II and Mr. Rembrandt SH, MPd as the Vice Dean III at the Law Faculty, Andalas University,
3. Mr. Narsyief, SH. MH, as my Supervisor I, the lecture of International Law Program at the Law Faculty, Andalas University, led and shared his science to me,

4. Mr. Prof. Firman Hasan SH. LL.M as the Head of International Law Program at the Law Faculty, Andalas University,
4. Mrs. Delfiyanti, SH. MH as the Secretary of International Law Program at the Law Faculty, Andalas University and also my Supervisor II, led and shared her science to me patiently,
5. All lectures and staffs at the Law Faculty, Andalas University,
6. My best friends as follows, Raissa, Yuli, and Novy, helped me more in all thing, Adik, Ami, Corri, Dina, Puput, being my amazing friends that I have, my beloved sisters at kost pink, my greatest friends at MootCourt team and all of my friend in this Red Campus, that I can't mention one by one.

The Last but not the least, I would like to apologize for all the weaknesses and mistakes found in this paper because perfection is Allah's only. I am looking forward to hearing ideas, advices and suggestions from the readers. I hope this paper would be useful for the people, needed it, Amin.

Padang, August 2008

The Writer

TABLE OF CONTENTS

CHAPTER I

INTRODUCTION

A. The Background

In international society, the relationship among states are reciprocity and fortunately to each other. However, the differences of international interest by states that came from a variety of grounds such as politic, economic, territory and ideology can arise non-justifiable to another state.[1] In addition, it can make a dispute between states or more states. Dispute is a natural matter happened in this community. In Public International Law, dispute can be defined as a specific disagreement concerning a matter of fact, law, or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another.[2]

In International Law, dispute shared into two categories. They are legal and political dispute. The legal disputes are the differences of material according to positive law. The political disputes are the differences on point of view according to how the state interest can be protected.[3]

At this period, International Law has prepared the settlement of disputes by peaceful means. It needed to maintain international peace and security.[4] The settlement of disputes by peaceful means fall into two categories. They are diplomatic

---

[1] Oppenheim Edited by Lauterpacht, 1952, *International Law A Treatise: dispute, War, and Neutrality,* Vol.II, 7th Ed., Green and Co. Ltd., Longmans, p.3.
[2] J.G. Merrils, 1998, *International Dispute Settlement,* 3rd Ed., Cambridge University Press, New York, p.1.
[3] komar Kantaatmadja, 1999, "*Penyelesaian Sengketa International*", Dalam Jean Elvardi, *"Penyelesaian Sengketa International antara Indonesia dan Malaysia tentang Pulau Sipadan dan Ligitan"*, PPS-UNAIR, Surabaya.
[4] Article 2(3) Charter of The United Nations, "*All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endanger*".

and adjudication procedure. Diplomatic procedure involves negotiation, inquiry, mediation and conciliation. Adjudication procedure involves the determination either by arbitration or by the decision of judicial organs.[5]It also endorses by Article 33(1) Charter of The United Nations (UN). It has stated the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement resort to regional agencies or arrangements or other peaceful means of their own choice.

In international society, one of the judicial organs of settlement disputes by peaceful means is International Court of Justice (ICJ). ICJ is primary means to settle dispute between states in the world. Martin Dixon also said that the ICJ has often thought of as the primary means for the resolution of disputes between states.[6]

Since 1946, the ICJ has settled 115 cases brought before the Court by state. In respect to settlement of disputes by peaceful means, on 4 January 2006, the Republic of Djibouti registrar to the Court concerning the refusal by the France governmental and judicial authorities to execute an international letter rogatory.[7]By 1998, Indonesia-Malaysia has ever brought their case before the ICJ according to sovereignty over Sipadan and Ligitan Islands.[8]

On 9 January 2006, the Republic of Djibouti filed in the registry of the ICJ an application. In its application, Djibouti indicated that it sought to found the

---

[5] Ian Brownlie, 2003, *Principle of Public International Law,* 6th Ed., Oxford, New York, p.18.
[6] Martin Dixon, 1990, *Textbook on International Law,* Blackstone Press Limited, London, p.256.
[7] www.icj-cij.org., Access on 4 January 2008, at 10.06 am.
[8] Kompas, Wednesday 18 December 2002, p.11.

jurisdiction of the ICJ on Article 38(5) of the Rules of Court and was confident that the France Republic will agree to submit to the jurisdiction of the ICJ to settle the present dispute.[9]

International Law has regulated the Universal Principle as the basis of international settlement of disputes by peaceful means procedure. Declaration on Principle of International Law Concerning friendly Relations and Co-operation among States in accordance with the Charter of the UN and Declaration Manila on 15 November 1982 (A/RES/37/10) about The Settlement of Disputes has emphasized the principle, such as:[10]

1. Principle of state shall not use of force or threats against territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.
2. Principle of non-intervention in matters, those are essentially within the domestic jurisdiction or non-domestic jurisdiction of any state.
3. Friendly relations among nations based on the principle of equal rights and self-determination.
4. Principle based on the sovereign equality of state.
5. International law principle based on independence, sovereignty and territorial integrity of any state.
6. Principle based on good faith in international community.
7. Principle based on justice and international law.

---

[9] www.icj-cij.org., Access on 4 January 2008, at 11.00 am.
[10] Boer Mauna, 2000, *Hukum Internasional: Pengertian, Peranan Dan Fungsi Dalam Era Dinamika Sosial,* Alumni, Bandung, p.187.

In accordance to those principles, ICJ as a part of international settlement body of disputes by peaceful means have to respect its. In the sense, state as the parties of the disputes in the ICJ, the vested right of state namely sovereignty that stated before as one of the Universal Principles is the most important thing in the settlement of disputes by ICJ. Because the general principle of international law has stated that no state can be compelled to litigate against its will.[11] In this special matter, ICJ can not settle any dispute brought without approval by the states. In the case between Djibouti and French, the case is brought before the ICJ based on the unilateral application by Djibouti. Based on the background, the writer is very interested and curiously wants to know the status of state sovereignty principle in the ICJ and wants to describe the implementation of state sovereignty principle in the ICJ based on *Certain Question of Mutual Assistance in Criminal Matters Case between Djibouti and France, 2006*. Hence the writer would like to find out more about it in a thesis with title: **THE JURIDICAL ANALYSIS OF STATE SOVEREIGNTY PRINCIPLE IN INTERNATIONAL COURT OF JUSTICE PROCEDURE (CASE STUDY CERTAIN QUESTION OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN DJIBOUTI AND FRANCE, 2006).**

[11] Oppenheim, Op. Cit., p.57.

B. The Statement of The Problem

Related to the facts above, the writer has pointed out the problem of this thesis, which are:

1. How is the status of state sovereignty principle in the International Court of Justice procedure?
2. How is the implementation of state sovereignty principle in International Court of Justice on *Certain Question of Mutual Assistance in Criminal Matters Case* (Djibouti and France, 2006)?

C. The Writing Benefits

Related to the statement of the problem, the writing benefits are:

1. To know the status of state sovereignty principle stated in the International Court of Justice procedure.
2. To know the implementation of state sovereignty principle has done on *Certain Question of Mutual Assistance in Criminal Matters Case* (Djibouti and France, 2006)?

D. The Objectives

The objectives of writing are:

1. Practical objectives

   This writing will hopefully be useful for writer, organs related to this subject and for the development of knowledge.

2. Theoretical objectives

This writing will give information to the readers about the implementation of state sovereignty principle in the International Court of Justice procedure and comparative between Law in Book and Law in Use.

E. The Methodology

In order to obtain data about the problem, the writer uses the following methods:

1. Type of research

   The writer will conduct a Normative-Juridical research, searching definitely about the procedure in the International Court of Justice concern with the implementation of state sovereignty principle by Descriptive-Analytic[12], analyzed based on the sample that is the case in the International Court of Justice procedure.

2. Type of data

   The data are primarily data and secondary data. It was got by analyzing relevant materials from library study, used the secondary data as the mainly source. The secondary data is supporter material to strengthening the primary data. These are three types of secondary data, which will be useful for the writer:

   a. Primary material of law in this writing are;

      1. Charter of The United Nations, 1945
      2. Statute of The International Court of Justice, 1948

---

[12] Bambang Sunggono, 2003, *Metodologi Penelitian Hukum,* PT Raja Grafindo Persada, Jakarta, p. 37-38.

3. Vienna Convention on The Law of Treatise, 1969

b. Secondary material of law, in this writing is books and journals that relevant to the topic.

c. Tertiary material of law, which are the data obtained from the internet and dictionary.

3. Data-collecting method

The writer will collect the data needed by conducting library research and searching as much as possible books, journals, newspapers and magazines, articles, internet data and other related sources.

To get these sources and information, the writer will conduct a literature review by searching the materials on these libraries:

a. The Region Library of West Sumatra, Padang,

b. The Library of Andalas University, Padang,

c. The Library of Law Faculty, Andalas University,

d. The Library of Law Faculty, University of Indonesia, Depok.

4. Data-analyzing technique

The writer used analyzed qualitatively, analyze the materials and not used the statistic technique, based on the rules of law, opinion from the expert and compared by the law commonly practiced.

F. The Organization of The Study

Chapter I This chapter is the introduction chapter consist of the problems backgrounds, which explains about the reasons of the paper title. Chapter I also contains the problems identifications including the questions appeared in this writing. Writing benefits states the aims of this writing. Writing objectives explain the objectives that could be gained from this writing. Last, this chapter mentions the system of this writing.

Chapter II This chapter mentions the literature review about International Court of Justice and state sovereignty principle.

Chapter III This chapter elaborates the result of the research, which contains the straightening of the International Court of Justice procedure related to state sovereignty principle.

Chapter IV This is the closing chapter, contains of summaries of the problems and the suggestions concerning the problem, which could be useful in the future.

CHAPTER II

LITERATURE REVIEW

A. The General Observation of State Sovereignty Principle

1. The Definition of State Sovereignty Principle

The outstanding characteristic of a state is its independence, or sovereignty. This defined in the Draft Declaration on The Right and Duties of States prepared in 1949 by the International Law Commission as the capacity of a state to provide for its own well-being and development free from the domination of other states, providing it does not impair or violate their legitimate rights.[13]

Sovereignty is translation letter from *souvereite* (France) or *sovranus* (Italy). These words came from the Latin letter "*Superanus*", which is have mean as the supreme or the highest. Sovereignty, it means freedom from other powers on this world.[14] Based on Black Law Dictionary, sovereignty is a supreme dominion, authority or rule. And then state sovereignty is the right of a state to self government or the supreme authority exercised by each state.

Jean Bodin as the first person created the science sense on state sovereignty principle said that sovereignty is main characteristic from each unitary state, called state. George Jellinek said that law does not create by God or King but it creates buy state. Law has being exist by the existences of state. Jellinek also said that the desire

---

[13] Malcomn N. Shaw, 2003, *International Law,* 5th Ed., Cambridge, New York, p. 177.
[14] M. Solly Lubis, 1990, *Ilmu Negara,* Mandar Maju, Bandung, p. 5.

of state created law.[15] When sovereignty is losing, state does not exist. Therefore, sovereignty is a fundamental power and eternal from state.[16]

Furthermore, state sovereignty has two aspects. Firstly, internal aspect that is a supreme power regulated the entire problem on state border. Secondly, external aspect that is a supreme power made a relationship to other international societies or organized entire problem on the outer of state border as long as related to state interest.[17]

2. The Sovereignty and Equality of State

Article 1 Convention Montevideo on Rights and duties of States had stated the forth characteristic of state is capacity to enter into relations with other states. However, the aspect of the development of international relations among states has changed the capacity meaning into sovereignty as the forth characteristic of state.[18]

Sovereignty has two negatives sense in international relations. They are sovereignty mean no one states be bent in submission to the rules of international law which has the higher authority and no one states be bent in submission to any authority without approval by state.[19]

However the development of international organizations, especially supranational has changed the absolutism of state sovereignty. Furthermore, the relationship among states has based on sovereign equality as the basis of state co-operation. The sovereign equality means equality of states on legal rights and duties.

---

[15] Soehino, 1980, *Ilmu Negara,* Liberty, Yogyakarta, p. 155.
[16] Abu Daud Busroh, 2001, *Ilmu Negara,* Bumi Aksara, Jakarta, p. 71.
[17] I Wayan Parthiana, 1990, *Pengantar Hukum International,* Mandar Maju, Bandung, p. 294-295.
[18] J.G. Starke, translated by Bambang Iriana Djajaatmadja, 2004, *Pengantar Hukum International 1,* Sinar Grafika, Jakarta, p. 320.
[19] Boer Mauna, *Loc. Cit.* P. 25.

Traditional international law was based on a set of rules protecting the state sovereignty and establishing their formal equality in law. States, irrespective of size or power have the same juridical capacity and function and are likewise entitled to one vote in the UN General Assembly (GA). The principle of the legal equality of states is an umbrella category for it include within its scope the recognized rights and obligations which fall upon states.[20]

The sovereignty and equality of state represent the basic constitutional principle of the law of nations, which governs a community consisting primarily of states having a uniform legal personality. If international law exists, then the dynamics of state sovereignty can be expressed in terms of law, and, as states are equal and have legal personality, sovereignty is in a major aspect a relation to other states defined by law.[21]

By 1945, while drafting Charter of the UN, the 'founding fathers' proclaim this principle of sovereign equality of states in Article 2(1) stated that the organization is based on the principle of the sovereign equality of all its members.

The legal consequences of sovereign equality are each state has a prima facie exclusive jurisdiction over a territory and the permanent population living there, states have a duty of non-intervention in the area of exclusive jurisdiction of other states, membership of international organization is not obligatory, but as regards states which are members of such organizations and jurisdiction of international tribunals depends on the consent of the parties. Based on jurisdiction of international

---

[20] Malcom N. Shaw, *Loc. Cit.*, p. 192.
[21] Ian Brownlie, *Loc. Cit.*, p. 287.

tribunals, the Permanent Court of Justice (PCIJ) stated that it is well established in international law that no state can, without its consent be compelled to submit its disputes with other states either to mediation or to arbitration, or to any other kind of pacific settlement.[22]

3. State Sovereignty Principle In International Relations and Co-operation

State sovereignty is not unfettered. Many international rules restrict it. In addition to treaty rules, which of course vary from state to state, limitations are imposed upon state sovereignty by customary rules. They are the natural legal consequence of the obligation to respect the sovereignty of others states.[23]

International relations among states by the UN or other international organizations do not mean restraint or restriction to sovereignty. On 14 June 1946, in *Atomic Energy Commission* representative of Uni Soviet stated that state sovereignty principle is one of the cornerstones on which the UN structure is built.[24]

In the beginning of twentieth century, state sovereignty is based on law. Example, the member of the UN is still a sovereign state but those states bound by the Charter.[25]The PCIJ also emphasized in the *Lotus Case* that the restrictions upon the independence of states cannot therefore be presumed. A similar point in different circumstances was made by the ICJ in the *Nicaragua Case,* where it was stated that international law there are no rules, other than such rules as may be accepted by the state concerned, by treaty or otherwise, whereby by the level of armaments of a

---

[22] Alina Kaczorowska, 2005, *Text Book Public International Law,* 3rd Ed., Old Bailey Press, London, p. 96.
[23] Antonio Cassese, 2001, *International Law,* Oxford University Press, New York, p.91.
[24] Teuku May Rudi, 1993, *Administrasi dan Organisasi International,* P.T. Eresco, Bandung, p.29.
[25] Sumaryo Suryokusumo, 2007, *Studi Kasus Hukum International,* Tatanusa, Jakarta, p. 59.

sovereign state can be limited and this principle is valid for all states without exception.[26]

B. The General Observation of The International Court of Justice

1. The Foundation of The International Court of Justice

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

The modern history of international arbitration is, however, generally recognized as dating from the so-called Jay Treaty of 1794 between the United States of America and Great Britain. This Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of American and British nationals in equal numbers, whose task it would be to settle a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation. It is true that these mixed commissions were not strictly speaking organs of third-party adjudication. They were intended to function to some extent as tribunals. They reawakened interest in the process of arbitration. Throughout the nineteenth century, the United States and the United Kingdom had recourse to them, as did other States in Europe and the Americas.[27]

The Alabama Claims arbitration in 1872 between the United Kingdom and the United States marked the start of a second, and still more decisive, phase. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed to

---

[26] Malcom N. Shaw, *Loc. Cit.*, p. 190.
[27] J.G. Starke, *Loc.Cit,* p. 647-648

submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The two countries stated certain rules governing the duties of neutral governments that were to be applied by the tribunal, which they agreed should consist of five members, to be appointed respectively by the Heads of State of the United States, the United Kingdom, Brazil, Italy and Switzerland, the last three States not being parties to the case. The arbitral tribunal's award ordered the United Kingdom to pay compensation and it was duly complied with. The proceedings served as a demonstration of the effectiveness of arbitration in the settlement of a major dispute and it led during the latter years of the nineteenth century to developments in various directions, namely:[28]

1. Sharp growth in the practice of inserting in treaties clauses providing for recourse to arbitration in the event of a dispute between the parties;
2. The conclusion of general treaties of arbitration for the settlement of specified classes of inter-State disputes;
3. Efforts to construct a general law of arbitration, so that countries wishing to have recourse to this means of settling disputes would not be obliged to agree each time on the procedure to be adopted, the composition of the tribunal, the rules to be followed and the factors to be taken into consideration in making the award;

[28] www.icj-cij.org, Acces on 3 March 2008 at 20.10 pm.

4. Proposals for the creation of a permanent international arbitral tribunal in order to obviate the need to set up a special *ad hoc* tribunal to decide each arbitral dispute.

The Hague Peace Conference of 1899, convened at the initiative of the Russian Czar Nicholas II, marked the beginning of a third phase in the modern history of international arbitration. The chief object of the Conference, in which, a remarkable innovation for the time, the smaller States of Europe, some Asian States and Mexico also participated, was to discuss peace and disarmament. It ended by adopting a Convention on the Pacific Settlement of International Disputes, which dealt not only with arbitration but also with other methods of pacific settlement, such as good offices and mediation.[29]

With respect to arbitration, the 1899 Convention made provision for the creation of permanent machinery which would enable arbitral tribunals to be set up as desired and would facilitate their work. This institution, known as the Permanent Court of Arbitration, consisted in essence of a panel of jurists designated by each country acceding to the Convention, each such country being entitled to designate up to four, from among whom the members of each arbitral tribunal might be chosen. The Convention further created a permanent Bureau, located at The Hague, with functions corresponding to those of a court registry or a secretariat, and it laid down a set of rules of procedure to govern the conduct of arbitrations. It will be seen that the name Permanent Court of Arbitration (PMA) is not a wholly accurate description of

[29] Ibid, access on 3 March 2008 at 20.15 pm.

the machinery set up by the Convention, which represented only a method or device for facilitating the creation of arbitral tribunals as and when necessary. Nevertheless, the system so established was permanent and the Convention as it were institutionalized the law and practice of arbitration, placing it on a more definite and more generally accepted footing. The Permanent Court of Arbitration was established in 1900 and began operating in 1902.[30] Among the classic cases that have been decided through recourse to its machinery, mention may be made of the *Carthage* and *Manouba* cases (1913) concerning the seizure of vessels, and of the *Timor Frontiers* (1914) and *Sovereignty over the Island of Palmas* (1928) cases.[31]

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

---

[30] Rebecca M. M. Wallace, Translated Bambang Arumanadi, 1993, *Hukum International,* IKIP Semarang Press, Semarang, p. 279.
[31] Ibid, p. 279.

2001, "Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment".[32]

The work of the two Hague Peace Conferences and the ideas they inspired in statesmen and jurists had some influence on the creation of the Central American Court of Justice, which operated from 1908 to 1918, as well as on the various plans and proposals submitted between 1911 and 1919 both by national and international bodies and by governments for the establishment of an international judicial tribunal, which culminated in the creation of the PCIJ within the framework of the new international system set up after the end of the First World War.[33]

Article 14 of the Covenant of the League of Nations gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice (PCIJ), such a court to be competent not only to hear and determine any dispute of an international character submitted to it by the parties to the dispute, but also to give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly. It remained for the League Council to take the necessary action to give effect to Article 14. At its second session early in 1920, the Council appointed an Advisory Committee of Jurists to submit a report on the establishment of the PCIJ. On 1 September 1921, it entered into force having obtained 22 ratifications. The PCIJ holds its opening ceremony on 15 February 1922 at its seat at the Peace Palace in The Hague. The PCIJ holds its last public sitting on 4

---

[32] J.G. Merrills, *Loc Cit,* p. 93.
[33] Rebeccca M. M., *Loc Cit,* p. 280-281.

December 1939 when it dealt with the request for interim measures in the *Electricity Company of Sofa Case* 1939 PCIJ Rep Ser A/B No. 79. Before the German invasion of the Netherlands, in early May 1940, the PCIJ moved from The Hague to Geneva. All judge of the PCIJ resigned on 30 January 1946, on the same day the ICJ was inaugurated.[34]

During World War II, the need for an ICJ was never challenged. However, the idea of reorganization of the international judicial system was present in many places, including the following:[35]

1. Washington: the announcement concerning the willingness of the US to established, such a court after the war was made by US Secretary of State Hull in July 1942.
2. South America: the foreign ministers of the South American Republics requested in January 1942 the Inter-American Judicial Committee to prepare recommendations in this respect.
3. Moscow: the proposal of Krylev.
4. London: the invitation of the British government addressed to the government of the US in October 1941 to discuss the future of the PCIJ.

The British offer was declined but this initiative was resumed in 1943 when representatives of ten governments in exile in the UK met in London to discuss the

---

[34] Mark W. Janis, 1992, *"The International Court"*, In Mark W. Janis, *"International Courts For the Twentieth-First Century"*, Martinus Nijhoff Publishers, London, p. 17-18.
[35] Alina Kaczorowska, *Op. Cit.*, p. 377.

matter and subsequently set up the Informal Inter-Allied Committee of experts chaired by Sir Wiliam Malkin, Which in 1944 presented a report on the future of the International Court. The report made three recommendations:[36]

1. The Statute of PCIJ was considered to be highly appropriate for any future court
2. Political matter should be excluded from the jurisdiction of the future court
3. The advisory opinion should be retained by a future court

The matter whether or not the PCIJ should be reactivated was not examined. The report served as a source of discussion at the Dumbarton Oaks Conference in August-September 1944 when the establishment of the UN was at issue. The conference decided to link the new court with the UN and retain the Statute of the PCIJ, but the most controversial matters-such as whether or not a new court should be established, its compulsory jurisdiction and the number of judge-were left to the examination of a newly set up Committee of Jurist. The Washington Committee of Jurist, which was made up of representatives of 44 nations invited by the US government to meet in April in Washington, prepared its recommendations relating to the Statute of the Court but still could not resolved the main issue. The San Fransisco

[36] Ibid

Conference, which took place in April-June 1945, charged of preparing the Charter of the UN, decided to establish a new court as a competent part of the UN.[37]

The ICJ is a principal organ of the UN. Chapter XIV of the UN Charter deals with the new court, the ICJ, to which the Statute of the Court is annexed.[38]On 26 June 1945, the Charter of the UN was adopted together with the Statute of the ICJ by 51 states, entered into force on 24 October 1945.[39]

2. The Organization of The International Court of Justice.

2.1. Membership

The International Court of Justice is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and the Security Council (SC). These organs vote simultaneously but separately. In order to be elected, a candidate must receive an absolute majority of the votes in both bodies. This sometimes makes it necessary for a number of rounds of voting to be carried out.[40]

In order to ensure a measure of continuity, one third of the Court is elected every three years[41]. Judges are eligible for re-election. Should a judge die or resign

---

[37] Oppenheim, *Op. Cit.* p. 46-47.
[38] Article 92 Statute of the ICJ, "*The International Court of Justice shall be the principal judicial 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*".
[39] Alina Kaczorowska, *Op. Cit.*, p. 378.
[40] J.G. Merills, *Op. Cit.*, p. 147.
[41] Article 13 (1) Statute of the ICJ, "*The members of the Court shall be elected for nine years and may be re-elected; pprovided, however, that of the judges elected at the first election, the terms of five*

during his or her term of office, a special election is held as soon as possible to choose a judge to fill the unexpired part of the term.[42]

Elections are held in New York (United States of America) on the occasion of the annual autumn session of the General Assembly. The judges elected at a triennial election enter upon their term of office on 6 February of the following year, after which the Court proceeds to elect by secret ballot a President and a Vice-President to hold office for three years.[43]

All States parties to the Statute of the Court have the right to propose candidates. These proposals are made not by the government of the State concerned, but by a group consisting of the members of the Permanent Court of Arbitration designated by that State, like by the four jurists who can be called upon to serve as members of an arbitral tribunal under the Hague Conventions of 1899 and 1907. In the case of countries not represented on the Permanent Court of Arbitration, nominations are made by a group constituted in the same way. Each group can propose up to four candidates, not more than two of whom may be of its own nationality, whilst the others may be from any country whatsoever, whether a party to the Statute or not and whether or not it has declared that it accepts the compulsory

---

'judge shall be expire at the end of three years and the terms of five more judges shall expire at the end of six years".

[42] Boer Mauna, *Op. Cit.*, p. 243.

[43] www.icj-cij.org, access on 3 July 2008 at 20.12 pm.

jurisdiction of the ICJ. The names of candidates must be communicated to the Secretary-General of the United Nations within a time-limit laid down by him/her.[44]

Judges must be elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.[45] Furthermore, the Court may not include more than one national of the same State. Moreover, the Court as a whole must represent the main forms of civilization and the principal legal systems of the world.[46]

In practice this principle has found expression in the distribution of membership of the Court among the principal regions of the globe.[47] Today this distribution is as follows; Africa 3, Latin America and the Caribbean 2, Asia 3, Western Europe and other States 5, Eastern Europe 2, which corresponds to that of membership of the Security Council. Although there is no entitlement to membership on the part of any country, the Court has always included judges of the nationality of

---

[44] Rebecca M. M. Wallace, *Op. Cit.*, p. 282.

[45] Article 2 Statute of the ICJ, "*The Court shall be composed of a body of independent judge...from among persons of high moral character who posses the qualifications required in their respective countries for appointment to the highest judicial offices, or are juriconsults of recognized competence in international law*".

[46] Article 3 Statute of the ICJ, "*The Court shall be consisting of fifteen members, no two of whom may be nationals of the same state*".

[47] Article 9 Statute of the ICJ, "*At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured*".

the permanent members of the Security Council.[48] As of March 2007, the composition of the Court is as follows:[49]

Name	Country	Position	Elected	Term End
Dame Rosalyn Higgins	United Kingdom	President	1995, 2000	2009
Awn Marie Ghanime	Jordan	Vice-President	2000	2009
Raymond Ranjeva	Madagascar	Member	1991, 2000	2009
Shi Jiuyong	China	Member	1994, 2003	2012
Abdul G. Koroma	Sierra Leone	Member	1994, 2003	2012
Gonzalo Parra Aranguren	Venezuela	Member	1996, 2000	2009
Thomas Buergenthal	United States	Member	2000, 2006	2015
Hisashi Owada	Japan	Member	2003	2012
Bruno Simma	Germany	Member	2003	2012
Peter Tomka	Slovakia	Member	2003	2012

[48] www.icj-cij.org, access on 3 July 2008 at 20.18 pm.
[49] www.wikipedia.com, access on 26 July 2008 at 16.10 pm.

Ronny Abraham	France	Member	2005	2014
Sir Kenneth Keith	New Zealand	Member	2006	2015
Bernardo Sepúlveda Amor	Mexico	Member	2006	2015
Mohamed Bennouna	Morocco	Member	2006	2015
Leonid Skotnikov	Russia	Member	2006	2015

The member of the Court, elected, is a delegate neither of the government of his own country nor of that of any other State. Unlike most other organs of international organizations, the Court is not composed of representatives of governments. Members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously. In order to guarantee his or her independence, no Member of the Court can be dismissed unless, in the unanimous opinion of the other Members, he/she no longer fulfils the required conditions. This has in fact never happened.[50]

According to Article 16 and 17 Statute of the ICJ, the Member of the Court may no engage in any other occupation during their term. They are not allowed to exercise any political or administrative function, nor to act as agent, counsel or

[50] Boer Mauna, *Op. Cit.*, p. 243.

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

Article 19 Statute of the ICJ stated that a Member of the Court, when engaged on the business of the Court, enjoys privileges and immunities comparable with those of the head of a diplomatic mission. In The Hague, the President takes precedence over the doyen of the diplomatic corps, after which precedence alternates between judges and ambassadors. Each Member of the Court receives an annual salary of US$170,080, with a special supplementary allowance of US$15,000 for the President, and, on leaving the Court; they receive annual pensions which, after a nine-year term of office, amount to US$80,000.[51]

2.2. Chambers

The Court generally discharges its duties as a full Court (a quorum of nine judges, excluding judges *ad hoc*, being sufficient).[52] But it may also form permanent or temporary chambers. The Court has three types of chamber:

1. The Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required by Article 29 of the Statute to form annually with a view to the speedy dispatch of business;

---

[51] www.icj-cij.org, access on 3 July 2008 at 20.18 pm.
[52] Anthony Aust, 2005, *Handbook of International Law,* Cambridge University Press, New York, p. 450.

2. Any chamber, comprising at least three judges, that the Court may form pursuant to Article 26 (1), of the Statute to deal with certain categories of cases, such as labor or communications;
3. Any chamber that the Court may form pursuant to Article 26 (2), of the Statute to deal with a particular case, after formally consulting the parties regarding the number of its members and informally regarding their name, who will then sit in all phases of the case until its final conclusion, even if in the meantime they cease to be Members of the Court.

With respect to the formation of a Chamber pursuant to Article 26 (1), of the Statute, it should be noted that, in 1993, the Court created a Chamber for Environmental Matters, which was periodically reconstituted until 2006. In the Chamber's 13 years of existence, however, no State ever requested that a case be dealt with by it. The Court consequently decided in 2006 not to hold elections for a Bench for the said Chamber.[53]

The provisions of the Rules concerning chambers of the Court are likely to be of interest to States that are required to submit a dispute to the Court or have special reasons for doing so but prefer, for reasons of urgency or other reasons, to deal with a smaller body than the full Court. Despite the advantages that chambers can offer in certain cases, under the terms of the Statute their use remains exceptional. Their formation requires the consent of the parties.

---

[53] Martin Dixon, *Op Cit.*, p. 271.

The current composition of this Chamber which, at the request of the parties, may hear and determine cases by summary procedure is as follows:[54]

Members:	President	Rosalyn Higgins
	Vice-President	Awn Shawkat Al-Khasawneh
	Judges	Gonzalo Parra-Aranguren
		Thomas Buergenthal
		Leonid Skotnikov
Substitute members:	Judges	Abdul G. Koroma
		Ronny Abraham

The first *ad hoc* chamber was formed in 1982 in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* between Canada and the United States, and the second in 1985 in the case concerning the *Frontier Dispute* between Burkina Faso and the Republic of Mali. The third was set up in March 1987 in the case concerning *Elettronica Sicula S.p.A. (ELSI)* between the United States of America and Italy and the fourth was formed in May 1987 in the case concerning the *Land, Island and Maritime Frontier Dispute* between El Salvador and Honduras. The year 2002 saw the formation of the fifth, to deal with the *Frontier Dispute (Benin/Niger)* case, and the sixth, to hear the *Application for Revision of the*

[54] www.icj-cij.org, accsess on 3 July 2008 at 20.20 pm.

Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador* v. *Honduras)*.[55]

Every Chamber has comprised five members. The Chamber which sat in the *Gulf of Maine* case comprised four Members of the Court (one of them possessing the nationality of one of the parties) and one judge *ad hoc* chosen by the other party. The Chamber formed in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case comprised three Members of the Court and two judges *ad hoc* chosen by the parties. The Chamber formed in the *Elettronica Sicula S.p.A. (ELSI)* case comprised five Members of the Court (two of them each possessing the nationality of one of the parties). The Chamber which sat in the case concerning the *Land, Island and Maritime Frontier Dispute* comprised three Members of the Court and two judges *ad hoc* chosen by the parties, and the two Chambers formed in 2002 were similarly composed.[56]

3. The Legal Procedure of The International Court of Justice

3.1. The Legal Basis

The procedure followed by the Court in contentious cases is defined in Charter of the United Nations, Statute of the International Court of Justice, the Rules of Court adopted under the Statute, Practice Directions I – IX and Resolution Concerning the Internal Judicial Practice of the Court adopted on 12 April 1976 from

---

[55] Anthony Aust, *Op. Cit.*, p. 451. see also J.G. Merrills, *Op. Cit.*, p. 151.
[56] J.G. Merrills, *Op. Cit.* p. 151-155.

Article 19 the Rules of Court. The Rules date from 1978 and certain provisions have since been amended. And the latest amendment entered into force on 29 September 2005.

The Charter of the UN has stated 5 Articles according to International Court of Justice on Chapter XIV, such as Articles 92-96. While, Statute of the ICJ has stated the legal proceeding on Chapter III, regulated the Procedure and Chapter IV, regulated the Advisory Opinion. There are 26 Articles on Chapter III, such as Article 39-64 and 4 Articles on Chapter IV, such as Article 65-68.

The Rules of the Court is consisting by 108 Articles. And Practice Directions I-IX is the basis to legal proceeding in the ICJ. Generally, this provision regulated the written pleadings. The last provision of the legal proceeding in the ICJ is the Resolution Concerning the Internal Judicial Practice of the Court. This Resolution is consisting by 10 provisions, adopted on 12 April 1976. It has substituted for the same Resolution on Internal Judicial Practice raised on 5 July 1968.

3.2. The Jurisdiction

In the exercise of its jurisdiction in contentious cases, the International Court of Justice has to decide, in accordance with international law, disputes of a legal nature that are submitted to it by States. Only States may apply to and appear before the International Court of Justice.[57] International organizations, other collectivizes and private persons are not entitled to institute proceedings before the Court. The

[57] Article 34 Statute of the ICJ, "*Only States May be Parties in cases before the Court*".

Security Council determined the conditions for access to the ICJ for such states in 1946. The Security Council stated that:[58]

> *"The International Court of Justice shall be open to a state which is not a party to the Statute of the International Court of Justice upon the following conditions, namely, that such state shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court and to accept all the obligations a member of United Nations under Article 94 of the Charter."*

Article 35 of the Statute defines the conditions of access for States to the Court. While paragraph 1 of that Article opens it to the State parties to the Statute, paragraph 2 is intended to regulate access to the Court by States which are not parties to the Statute. The conditions of access of such States are, subject to the special provisions contained in treaties in force at the date of the entry into force of the Statute, to be determined by the Security Council, with the provision that in no case shall such conditions place the parties in a position of inequality before the Court.

The Court can only deal with a dispute when the States concerned have recognized its jurisdiction. The form in which this consent is expressed determines the manner in which a case may be brought before the Court, such as:[59]

1. Special Agreement

   Article 36 (1), of the Statute provides that the jurisdiction of the Court comprises all cases which the parties refer to it. Such cases normally come

---

[58] Alina Kaczorowska, *Op. Cit.*, p. 383.
[59] www.jurnalhukum.blog.com, access on 5 January 2008 at 9.20 am.

before the Court by notification to the Registry of an agreement known as a *special agreement* and concluded by the parties especially for this purpose. The subject of the dispute and the parties must be indicated, stated on Article 40 (1) Statute of the ICJ and Article 39 Rules of the Court.

2. Treaties and Conventions

Article 36 (1), of the Statute provides also that the jurisdiction of the Court comprises all matters specially provided for in treaties and conventions in force. In such cases a matter is normally brought before the Court by means of a written application instituting proceedings; this is a unilateral document which must indicate the subject of the dispute and the parties, stated on Article 40 (1), as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court, stated on Article 38 Rules of the Court.

3. Compulsory Jurisdiction

The Statute provides that a State may recognize as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in legal disputes. These cases are brought before the Court by means of written applications. The conditions on which such compulsory jurisdiction may be recognized are stated in Article 36(2-5) of the Statute, which read as follows:

"2. The States parties to the present 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 concerning:
a. The interpretation of a treaty;
b. Any question of international law;
c. The existence of any fact which, if established, would constitute a breach of an international obligation;
d. The nature or extent of the reparation to be made for the breach of an international obligation.
3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.
4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms."

4. Forum Prorogatum

If a State has not recognized the jurisdiction of the Court at the time when an application instituting proceedings is filed against it, that State has the possibility of accepting such jurisdiction subsequently to enable the Court to entertain the case: the Court thus has jurisdiction as of the date of acceptance in virtue of the rule of *forum prorogatum.*

The acceptances of many states to the ICJ's general compulsory jurisdiction are sadled with reservation. A well-known example of such a reservation to Article 36(2) was the so-called Connally Amandement whereby the US excepted from the

Court's compulsory jurisdiction, stated disputes with regard to matters which are essentially within the domestic jurisdiction of the US as determined by the US.[60]

3.3. The Legal Proceeding

Proceedings may be instituted in one of two ways:

1. Through the notification of a special agreement: this document, which is of a bilateral nature, can be lodged with the Court by either of the States parties to the proceedings or by both of them. A special agreement must indicate the subject of the dispute and the parties thereto. Since there is neither an applicant State nor a respondent State, in the Court's publications their names are separated by an oblique stroke at the end of the official title of the case, like Malaysia-Indonesia[61];
2. By means of an application: the application, which is of a unilateral nature, is submitted by an applicant State against a respondent State. It is intended for communication to the latter State and the Rules of Court contain stricter requirements with respect to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis, a treaty or a declaration of acceptance of compulsory jurisdiction, it claims the Court has jurisdiction, and must succinctly state the facts and grounds on which it bases its claim. At the end of the official

[60] Mark. W. Janis, *Op.Cit.* p. 23.
[61] Sovereignty over Sipadan and Ligitan Case between Malaysia-Indonesia, 1996.

title of the case the names of the two parties are separated by the abbreviation *"v."* (for the Latin *versus*), like United States v. Iran[62].

The date of the institution of proceedings, which is that of the receipt by the Registrar of the special agreement or application, marks the opening of proceedings before the Court. Contentious proceedings include a written phase, in which the parties file and exchange pleadings containing a detailed statement of the points of fact and of law on which each party relies, and an oral phase consisting of public hearings at which agents and counsel address the Court. As the Court has two official languages (English and French), everything written or said in one language is translated into the other. The written pleadings are not made available to the press and public until the opening of the oral proceedings, and then only if the parties have no objection.[63]

The procedure described above is the normal procedure. Certain matters can however affect the proceedings. The most common case is that of preliminary objections rose in order to prevent the Court from delivering judgment on the merits of the case. The respondent State may contend, for example, that the Court lacks jurisdiction or that the application is inadmissible.[64] The matter is one for the Court itself to decide. Then, there are provisional measures, which can be requested as interim measures by the applicant State if the latter considers that the rights which form the subject of its application are in immediate danger. It may further occur that a

---

[62] United States Diplomatic and Consular Staff in Teherab Case between United States v. Iran, 1980.
[63] Anthony Aust, *Op. Cit.*, p. 461-462.
[64] Richard K. Gardiner, 2003, *International Law,* Pearson Education Limited, England., p. 492.

State seeks to intervene in a dispute involving other States because it considers that it has an interest of a legal nature which may be affected by the decision to be taken in the dispute between those States.[65] An then Article 81(2) of the Rules of the Court requires the third state to specify the interest, the precise object of the intervention, and any basis of jurisdiction that is claimed to exist between the third state and the parties, even thought this stipulation is not required by Article 62.

The Statute also makes provision for cases where the respondent State does not appear before the Court, either because it totally rejects the Court's jurisdiction or for any other reason. Hence failure by one party to appear does not prevent proceedings in a case from taking their course. But in such a case the Court must first satisfy itself that it has jurisdiction.[66] Finally, should the Court find that parties to separate proceedings are submitting the same arguments and submissions against a common opponent in relation to the same issue; it may order joinder of the proceedings.[67]

4. The Judgment of The International Court of Justice

After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. Article 60 Statute of the ICJ provides that a judgment of the Court is final and without appeal on the parties to the case and only respect of that case. That is the reason that the principle of stare decisis is not used by the Court.

---

[65] Article 62 Statute of the ICJ, "*Should a state consider that it has an interest of a legal nature which may be affected by decision in the case, it may submit a request to the Court to be permitted to intervene*".
[66] Collier and Lowe, 1999, *Settlement of Dispute in International Law,* Oxford, London, p. 180.
[67] Handbook of the ICJ, 5th Ed., 2004, p. 65.

However, the Court often relies on its previous decisions and tries to ensure consistency in its decision.[68]

The judgment of the Court may affect the interests and rights of a third state. This occurs especially in respect of disputes involving the interpretation and application of multilateral treaties since other contracting parties will, to some extent, be effected by such a judgment. Furthermore, when a case involves the interpretation of a multilateral treaty the Registrar of the Court is required to notify all contracting parties to such treaty of the proceedings brought before the Court. Whether contracting states have been notified or not by the Registrar they may always submit a declaration of intervention and thus the Court would take into consideration their legal interests while deciding the case.[69]

Article 38 Statute of the ICJ provides that the Court decides in accordance with international treaties and conventions in force, international custom, and the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists. If there is a dispute between the parties to its meaning, either can ask the Court to construe it, but it will only do so in respect of questions decided in the judgment. It will revise the judgment only if there is a new fact that was not discoverable at the time of the case, and is of such a nature as to be a decisive factor that would mean revision of at least part of the judgment.[70]

---

[68] Oppenheim, *Op. Cit.*, p. 69-70.
[69] Martin Dixon, *Op. Cit.*, p. 286.
[70] Anthony Aust, *op. Cit.*, p. 462.

The member of the UN is obliged to comply with a judgment of the Court in any case in which it is a party. If it fails to comply, the other party may ask the Security Council to take action. And the Council can adopt a binding measure under Chapter VII, if the non-compliance is a threat to international peace and security.[71]

[71]Ibid.

CHAPTER III

ANALYSIS OF THE RESEARCH

A. State Sovereignty Principle In The International Court Of Justice

In the same manner as national rules, the settlement of disputes by adjudication procedure is the last resort, chosen by the parties. However international law requires consent by the parties to settle the dispute by adjudication. Its condition is different in domestic rules. It means the jurisdiction of the ICJ does not *Ipso Facto* to member of the UN. State can choose a priori way by a declaration of compulsory jurisdiction of the ICJ, submitted at any time or a posteriori way by an agreement submitted after the appearance of dispute.[72]

ICJ as the one of the adjudication settlement body only approve state as the parties brought the case before the Court.[73]At the first time before the legal proceeding, the parties have made special agreement concerning to consent to be bound for the Court jurisdiction.[74] This submission is based on state sovereignty principle, Judge Oda in his judgment has stated:[75]

> *"When considering the jurisdiction of the International Court of Justice in contentious cases, I take as my point of departure the conviction that the Court's jurisdiction must rest upon the free will of sovereign state, clearly and categorically expressed, to grant the Court the competence to settle the dispute in question"*

---

[72] Hasan Wirajuda, 2003, *"Kasus Sipadan Ligitan: Masalah Pengisisan Konsep Negara"*, Di Muat Di Buku Sengketa Sipadan-Ligitan Mengapa Kita Kalah Oleh O.C. Kaligis & Associates, Jakarta, p. 38.
[73] Article 34 (1) Statute of the ICJ, *"Only States may be parties in cases before the Court"*.
[74] Article 40 (1) Statute of the ICJ, *"Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application....."*
[75] Judge Oda: Nicaragua v. Honduras, *Jurisdiction and Admissibility*, 1988, ICJ Rep. 69, hal 109

The legal proceeding in the ICJ can be accessed only by the consent from the parties. This consent is based on free will by that state. This qualification has showed that ICJ holds high a state sovereignty principle submitted based on free will. Furthermore, the respect to state sovereignty principle by the ICJ can be seen by the enforcement of ICJ's decision. The decision is only binding to the parties, disputed, and limited to the case brought before the Court.[76]

The consent by the parties can be done by a special agreement. The jurisdiction of the Court is defined within the agreement itself and the court becomes seized of the case by the mere notification of the agreement to its registrar. In *Maritime Delimitation and Territorial Questions between Qatar and Bahrein (Jurisdiction and Admissibility)*1995 ICJ Rep 6 the ICJ had to decide whether a unilateral application by a single state was valid if there was an incomplete agreement to submit to the jurisdiction of the Court. In the circumstance the ICJ had jurisdiction after the minutes of the meeting of December 1990 amounted an agreement on which the Court found jurisdiction. The ICJ also stated that the minutes did not merely give an account of discussion and summaries points of agreement and disagreement. They enumerate the commitments to which the parties have consented. They thus create rights and obligations in international law for the parties.

The facts in this consent were as follows. A tri-party committee was established among Saudi Arabia, Qatar, and Bahrein to prepare a document to be submitted to the ICJ to settle a number of complex matters on sovereignty and the

---

[76] Article 59, Statute of the ICJ, *"The decision of the Court has no binding force except between the parties and in respect of that particular case"*

maritime delimitation between Qatar and Bahrein. A dispute arose as to the drafting of the terms of reference. Bahrein wished to submit all dispute matters to the Court for adjudication, while Qatar wanted to submit only a number of selected issues. Nevertheless, the parties did agree on five areas of territory which were the subject of dispute. Ultimately, however, no completed submission was agreed.

At a later meeting of the committee in December 1990, the parties agreed to a further period of the offices of Saudi Arabia and decided that if these discussions did not produce a settlement by the end of May 1991, then it would be possible to bring the matter before the ICJ. Minutes of this meeting were signed by the foreign ministers of both Qatar and Bahrein. And then no settlement was reached in the stipulated period and Qatar unilaterally applied to the Court to the Court for the settlement of a selected number of issues.

The consent to jurisdiction of the ICJ is also envisaged in treatise and conventions in force which confer jurisdiction on the Court over disputes arising from them. This second basis of jurisdiction is stated in Article 36(1) Statute of the ICJ. It has become a general practice to insert into an international agreement. In the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide between Bosnia and Herzegovina v. Yugoslavia* 1996 ICJ Rep 1 the ICJ founded jurisdiction on Article IX of the Genoside Convention 1948. In the *US Diplomatic and Consular Staff in Teheran Case between US v. Iran* 1980 ICJ Rep 3 it founded its jurisdiction on Article 1 of the 1961 Optional Protocol to the Vienna Convention on Diplomatic Relations 1961.

In special matter, the state sovereignty principle in the ICJ procedure can be seen in the consent to jurisdiction of the ICJ by compulsory jurisdiction of the ICJ based on Article 36(2) and (3) Statute of the ICJ. This so-called optional clause is a compromise between the advocates and the opponents of compulsory jurisdiction. The important aspect of the optional clause is that the principle of reciprocity applies to the relations between states that have accepted the compulsory jurisdiction of the ICJ. By virtue of Article 36(2) of Statute of the ICJ a state accepting the jurisdiction of the Court does so only in relation to any other state accepting the same obligation. If a state A has accepted the optional clause and state B has not, State A cannot be used before the Court by state B. If state A makes a declaration subject to reservation Y and state B makes a declaration subject to reservation Z, the ICJ has jurisdiction to hear disputes between states A and B only in so far as they are not within reservation Y and Z. Therefore, a state cannot compel another state to enjoy the benefits of the optional clause unless it is also prepared to accept the obligations deriving from it.

It is a general principle of international law that a state cannot be compelled to undertake the settlement of dispute, least of all by submission to a third party. As far as the ICJ is concerned, this means that its jurisdiction in contentious case depends on the consent of states. As it has described before, such consent is not given merely by a state becoming a party to the statute of the Court, for this merely regulates the question of access, not of jurisdiction, including an optional system whereby consent is given in advance of any dispute arising.

In theory at least, the requirement of consent is a strict one, as judge Oda indicates above. Moreover, the recommendation by the Security Council would not

have created a compulsory jurisdiction exercisable by the Security Council at will without the consent of the parties. The ICJ has stated this point in the *Corfu Channel Case between United Kingdom (UK) v. Albania* 1946. The Separate Opinions of seven judges rejecting the UK argument that the ICJ has its jurisdiction based on the Security Council Resolution recommended the parties submit their dispute to the ICJ. Their view was that the Security Council could make only recommendation and they affirmed that the basic principle of jurisdiction was that it was fundamentally consensual.

According to the compulsory jurisdiction, the ICJ has prepared preliminary objection that state may use it to reject this provision to maintenance its sovereignty. Generally, it would be happened when a state made a reservation. According to Article 2 (7) Charter of the UN which provides that nothing in the Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state. This provision is relating to the reservations within the domestic jurisdiction of a state. In 1946 the US made such a reservation which becomes known as the Connoly reservation. This provided that the declaration accepting the jurisdiction of the Court would not apply to the dispute that the matters are essentially within the domestic jurisdiction of the US.

The validity and application of such reservations came up for consideration in the *Norwegian Loans Case between France v. Norway* 1957. France brought a claim against Norway under optional clause on behalf of French holders of Norwegian bonds. The French Declaration accepting the compulsory jurisdiction of the Court contained the following reservation that the Declaration does not apply to differences

relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic. Norway which did not make any such Declaration challenged the Court's jurisdiction by relying on the French Declaration. Norway considered that the dispute was within the domestic jurisdiction within the meaning of the French Declaration. And the ICJ agreed with Norway based on the reservation of French.

In the *Interhandel Case between Switzerland v. USA* 1959, Judge Lauterpacht together with other members of the Court returned to consider the matter of the automatic reservation. In this case Lauterpacht in his dissenting opinion, reiterated arguments he advanced in the *Norwegian Loans Case* that automatic reservation were invalid as contrary to the fundamental principle of national and international jurisprudence according to which it is within the inherent competence of the Court to determine its owns jurisdiction. Consequently, an instrument in which a party is allowed to determine the existence of its obligation is not a valid and enforceable legal document of which the Court should take the cognizance. Furthermore, Lauterpacht contended that any Declaration under Article 36(2) which included an automatic reservation would itself be void. It would be insufficient to establish the jurisdiction of the Court.

In the *Nicaragua Case* 1984, judge Schwebel in his dissenting opinion agreed that the effect of the automatic reservation would be to invalidate the entire Declaration. Futhermore, In the *Fisheries Jurisdiction Case between Spain v. Canada* 1998 the Court said that the reservation is not only an integral part of a declaration of the current declaration but also an essential component of it, and hence of the

acceptance by Canada of the Court's compulsory jurisdiction. The Institute of International Law in 1959 expressed their criticism on automatic reservation, called upon governments which had inserted such reservations in their declarations to withdraw them.

The next reservation is based on the multilateral treaty reservations. This matter arose in the *Nicaragua Case* 1984. The US included in its Declaration under Article 36(2) of the Statute a reservation known as the Vandenberg Reservation. The issues before the Court involved, inter alia, the interpretation of the UN Charter, particularly Articles 2(4) and 51. The US argued that as Costa Rica and El Salvador, parties to the UN Charter and the Charter of the Organization of American States, involved in the dispute, were not before the Court, the Court lacked jurisdiction to hear the dispute under the terms of the US Declaration. The ICJ accepted that Vanderberg Reservation. More over the ICJ emphasized this reservation in the *Case Concerning the Aerial Incident of 10 August between Pakistan v. India* 2000. The Court said that it is clear from the *Nicaragua Case* that the multilateral treaty reservation will not preclude the Court from hearing the case if a dispute is not based exclusively on the violation of the multilateral convention but is also based on customary law.

In all this, it should be remembered that the Court exists and operates only with the agreement and approval of states. It was intended to play a limited role in the system of international law, and then only at the clear behest of states. Should the Court attempt to usurp or disregard the sovereign will of states by an over-zealous assertion of jurisdiction, it will lose their respect and cease to be significant force in

the development of international law and in the peaceful settlement of disputes. It is better that the Court remains true the principle of jurisdiction based on consent and decide only few cases a year, than seek to expand its jurisdiction and decide none. At the same time, it must not allow states to escape the consent they have given simply because they now object to the Court having power over their dispute.

Furthermore, the implication of state sovereignty principle is the legal equality of states. It means all state has the same legal rights and duties. In the ICJ procedure, it occurs in the next preceding until the decision of the Court. This matter related to the implementation of state sovereignty principle in international relations and co-operation.

In the composition of the judge, both parties have the same right to choose the ad hoc judge in special matter. In the *Nicaragua Case* 1984, Nicaragua had chosen the ad hoc judge from France. The Nicaragua act is caused by the US has judge from its nationality. In 1960, Nicaragua and Honduras also choose the ad hoc judge in their case because did not have a judge on the composition of the judge. Meanwhile, in the *Preah Vihear Case between Thailand v. Cambodia* 1959, both states did not choose the ad hoc judge.

In the non-appearance of one party, the provisional measures, the intervention and the enforcement of the Court's decision, the parties brought their case before the court has the same legal duties. The consent by the parties is the legal basis to the Court compelled the state to execute the provision from that rules. Event thought one of the parties is non-appearance before the Court; the Court has a right to make a decision. This matter had occurred in the *Corfu Channel Case* 1946 that Albania is

non-appearance but the Court still made the decision on 15 December 1949. Meanwhile, the provisional measures ordered by the Court have always been poor. If a state fails to implement an order of the Court for provisional measures of protection, no sanction can be imposed by the Court. The Court merely has power to reiterate the terms of its earlier order through a subsequent order. In the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide between Bosnia and Herzegovina v. Yugoslavia* 1993, where Yugoslavia had effectively ignored the Court's first order, the Court could only order Yugoslavia to give immediate and effective implementation to the earlier order.

On 3 April 1998, Paraguay brought a case against the USA asserting that the USA had a Paraguayan national of his right to assistance by the Consular Relations by failing to advise a Paraguayan national of his right to assistance by the consular officers of Paraguay before he was tried and sentenced to death by a US court. On 9 April 1998, the Court indicated provisional measures calling on the US to take measures to prevent the execution of the Paraguayan national, pending a final decision by the Court. It should be noted, however, that it was only in a similar case one year later that the ICJ determined that its indications of provisional measures are binding. There the Court acted even more swiftly in indicating provisional measures. The orders on provisional measures under Article 41 Statute of the ICJ have binding effect.

Essentially the Court may permit an intervention by a third party even though it is opposed by one or both of the parties to the case. The purpose of such intervention is carefully circumscribed and closely defined in terms of the protection

of a state's interest of a legal nature which may be affected by a decision in an existing case, and accordingly intervention cannot be used as a substitute for contentious proceedings, which are based upon consent. Thus the intervener does not as such become a party to the case. The Court appeared to have set a fairly high threshold of permitted intervention. In the *Nuclear Test Case* 1974, Fiji sought to intervene in the dispute between France on the one hand and New Zealand and Australia on the other. Malta sought to intervene in the *Continental Shelf Case between Tunisia and Libya* 1982, in the light of its shelf delimitation dispute with Libya in order to submit its views to the Court. The Court felt that the real purpose of Malta's intervention was unclear and did not relate to any legal interest of its own directly in issue as between Tunisia and Libya in the proceedings or as between itself and either one of those countries. While Malta did have an interest similar to other states in the area in the case in question, the Court said that in order to intervene under article 62 Statute of the ICJ it had to have an interest of a legal nature which might be affected by the Court's decision in the instant case.

Judgment of the Court are final and without appeal. Provided both parties are willing litigants and this is an important qualification. The resulting decision will usually be all that is required to end the dispute. In the judgment of *Minquiers and ecrehos case* 1953, where France and the UK went to the Court on an issue of territorial sovereignty, there was never any doubt that the decision would be implemented. However, at the request of either party the Court may interpret its judgment when there is a disagreement between the parties as to its exact meaning and scope. In some cases the Court has refused to interpret its judgment, like in the

Request for Interpretation of the Judgment of 20 November 1950 in the *Asylum Case between Columbia v. Peru* 1950. In others it has accepted such a request like the application for revision and interpretation of the judgment of 24 February 1982 in the *Case Concerning the Continental Shelf between Tunisia v. Libyan Arab Jamahiriya* 1985.

The Court has also jurisdiction to revise its judgment. Article 61 Statute of the ICJ sets out the condition for revision. The application for revision and interpretation of the judgment of 24 February 1982 in the *Case Concerning the Continental Shelf between Tunisia v. Libyan Arab Jamahiriya* was rejected by the Court. The application filed by Yugoslavia on 24 April 2001 requesting the revision of the judgment of 11 July 1996 by which the ICJ declared that it had jurisdiction in the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide between Bosnia and Herzegovina v. Yugoslavia*, was rejected by the ICJ on 3 February 2003.

In article 94 (2) of the charter which lays down that if any party (i.e. whether a member of a united nation or not) to a case fails to perform the obligations incumbent upon it under a judgment rendered by the court, the other party (whether a member of a united nation or not) may have a recourse to the security council, which may, if it deems necessary, make recommendations or decide upon measure to be taken to give effect to the judgment. This provision may be interpreted as the meaning that the charter merely authorises-that it does not oblige-the Security Council to act. Any decision of the Council in the matter is binding by virtue of Article 25 of the Charter in which the members of the United Nations agree to accept and to carry out the

decision of the Security Council. Moreover, there is nothing to prevent the Security Council from considering a refusal to comply with a recommendation of this kind as constituting a threat to international peace, even if the matter is not otherwise of such seriousness and dimensions as to call for enforcement action under the Charter VII of the Charter.

The principle that judgment of tribunal administering international law are binding upon the parties is an accepted principle of international law.[77] The court was designed to deter states from resorting to force to settle their disputes. If a party failed to comply with the Courts judgments or interim measures, the Security Council was empowered to take appropriate measures to ensure compliance. Consequently, the ICJ follows upon the decline and the revival of the UN although the Court faced to crisis of its own, one in the 1950's in respect a controversial handling of the *South West Africa Cases* and the other in 1984 when the US refused to participate in the case brought by Nicaragua and withdrew its acceptance of the Court's jurisdiction on the eve of the filing of the *Nicaragua Case.*

In the Nicaragua Case the US's veto of the Nicaraguan application to the Security Council for the enforcement of the judgment in conformity with Article 94(2) of the Charter of the UN did not enhance the Court's popularity.

The decision of international tribunals, it has been said reflect the strong inducement to supplement and remedy the deficiencies and inconsistencies of an imperfect system law, but also the requirement of caution and restraint called for by

---

[77] Oppenheim, *Op. Cit.*, p. 75

the sovereignty of state.[78] In another word, if a state has accepted a jurisdiction of the ICJ whether it is done by a special agreement, a jurisdictional clause in a treaty or an optional clause, it means the ICJ has a jurisdiction to settle the suit whether it likes or not. It is caused by the meaning of the consent by the states waived their sovereignty. Furthermore, the parties based on good faith principle have the obligation to enforce the ICJ's decision. It is related to the *Pacta Sunt Servanda* regulated on the Vienna Convention on The Law of Treaties. According to this condition, it would be described that the ICJ holds high state sovereignty principle but the status of state sovereignty principle by the state in the ICJ has limited by the consent to be bound of the party to the Court.

B. The Implementation of State Sovereignty Principle *(Case Study on Certain Question of Mutual Assistance in Criminal Matters between Djibouti v. France, 2006)*

In special matter, a state may make an application against another state which has not accepted the Court's jurisdiction in advance, hoping that the prospective respondent may take up the invitation. It is possible that the Court may be invested with jurisdiction subsequent to the initiation of proceedings by one of the parties. This may occur if, while the Court is considering the unilateral application of one state, the other expressly or impliedly signifies its consent to the jurisdiction. In such circumstances, jurisdiction is by *forum prorogatum.* This is a perfectly acceptable doctrine if it is applied only in those cases where it is certain that consent has been given. In this sense, it is no more than a particular example of the general principle

[78] J.G. Merrills, *Op. Cit.,* p. 160.

considered above that no particular form of consent is required. Generally, however, the Court should be slow to infer consent simply by reason of some communication between the Court and the respondent state.

It is sometimes asserted that the first case before the ICJ, *Corfu Channel Case between UK v. Albania* 1946, was instance of *forum prorogatum.* The ICJ pronouncement that its jurisdiction was evident from a letter which Albania had sent. It was preceded by an announcement by the UK and Albania that they had agreed to submit the case.

In *Certain Question of Mutual Assistance in Criminal Matters between Djibouti v. France 2006,* the evident of the jurisdiction of the ICJ also based on *forum prorogatum.* The Court found its jurisdiction which falls under Article 38 (5) the Rules of the Court 1978.

On 9 January 2006, the Republic of Djibouti filed in the Registry of the Court an Application, dated 4 January 2006, against the French Republic in respect of a dispute concerning to the refusal by the French governmental and judicial authorities to execute an international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investigation in the Case against X for the murder of Bernard Borrel, in violation of the Convention on Mutual Assistance in Criminal Matters between the Djiboutian Government and the French Government, of 27 September 1986, and in breach of other international obligations borne by France to Djibouti. In respect of that refusal to execute an international letter rogatory, the Application also alleged the violation of the Treaty of Friendship and Co-operation concluded between France and Djibouti on 27 June 1977.

The Application further referred to the issuing, by the French judicial authorities, of witness summonses to the Djiboutian Head of State and senior Djiboutian officials, allegedly in breach of the provisions of the said Treaty of Friendship and Co-operation, the principles and rules governing the diplomatic privileges and immunities laid down by the Vienna Convention on Diplomatic Relations of 18 April 1961 and the principles established under customary international law relating to international immunities, as reflected in particular by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973.

In its Application, Djibouti indicated that it sought to found the jurisdiction of the Court on Article 38 (5) Rules of the Court and was confident that the French Republic will agree to submit to the jurisdiction of the Court to settle the present dispute. Furthermore, the Registrar, in accordance with Article 38 (5) Rules of the Court, immediately transmitted a copy of the Application to the Government of France and informed both States that, in accordance with that provision, the Application would not be entered in the General List of the Court, nor would any action be taken in the proceedings, unless and until the State against which the Application was made consented to the Court's jurisdiction for the purposes of the case By a letter dated on 25 July 2006 and received in the Registry on 9 August 2006, the French Minister for Foreign Affairs informed the Court that France consents to the Court's jurisdiction to entertain the Application pursuant to, and solely on the basis of Article 38 (5) Rules of the Court, while specifying that this consent was

valid only for the purposes of the case, within the meaning of Article 38 (5) Rules of the Court, in respect of the dispute forming the subject of the Application and strictly within the limits of the claims formulated therein by Djibouti. The case was entered in the General List of the Court under the date of 9 August 2006.

By letters dated on 17 October 2006, the Registrar informed both Parties that the Member of the Court of French nationality had notified the Court of his intention not to take part in the decision of the case, taking into account the provisions of Article 17 (2) Statute of the ICJ. Pursuant to Article 31 Statute of the ICJ and Article 37 (1) Rules of the Court, France chose Mr. Gilbert Guillaume to sit as judge ad hoc in the case. Since the Court included upon the Bench no judge of Djiboutian nationality, Djibouti proceeded to exercise its right conferred by Article 31 Statute of the ICJ to choose a judge ad hoc to sit in the case: it chose Mr. Abdulqawi Ahmed Yusuf.

By an Order dated on 15 November 2006, the Court fixed on 15 March 2007 and 13 July 2007, respectively, as the time-limits for the filing of the Memorial of Djibouti and the Counter-Memorial of France, those pleadings were duly filed within the time-limits so prescribed. The Parties not having deemed it necessary to file a Reply and a Rejoinder, and the Court likewise having seen no need for these, the case was therefore ready for hearing. Public hearings were held between 21 and 29 January 2008.

Djibouti and France is the member of the UN. Djibouti comes to be a member of the UN on 20 September 1977 and France comes to be a member of the UN on 24 October 1945. It means Djibouti and France is ipso facto to the Statute of the ICJ. But the ICJ does not have jurisdiction to settle their dispute without their free will to submit to the jurisdiction of the ICJ. After their free will be based on *forum prorogatum,* the ICJ has its jurisdiction to settle their dispute. Furthermore, the application to the registrar of the ICJ by Djibouti can not be rejected caused France also deal to resolve their case before the ICJ.

CHAPTER IV

CLOSING REMARKS

A. Conclusion

1. At this period, the state sovereignty principle in international community is unfettered. This theory is also implemented in the ICJ. ICJ as one of the international institutional law and the dispute settlement body has a duty to respect the state sovereignty principle. In practice, this principle has worked when state as the party brought its case before the Court. Fundamentally, ICJ can not settle it case without the consent by the parties. It cause no state can be compelled to litigate against its will. State may use special agreement, treaty, *forum prorogatum,* or optional clause as the legal basis to get the Court's jurisdiction. According to the implementation of state sovereignty principle in the ICJ, the Court may also respect to the legal equality of the party. In practice, this matter worked when one of the parties has no judge and the other have a judge from its nationality. The state may choose an ad hoc judge to represent it's before the Court. However, the consent by the state automatically has waived its sovereignty. State has a duty to apply rules of the Court. Beside that, state also has a duty to enforcement the Court's decision. Based on its, state sovereignty in the ICJ is not absolute but restriction. If state does not execute the Court decision, based on Chapter VII the Security Council may take a special measure to enforcement the party to complied its.

2. The implementation of state sovereignty principle in the ICJ in the *Certain Question of Mutual Assistance in Criminal Matters between Djibouti and*

France 2006 has showed when ICJ accepted the application by Djibouti under Article 38(5) Rules of the Court. However, this provision stated that it shall not be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case. Therefore on 25 July 2006, the French Minister for Foreign Affairs informed the Court that France consents to the Court's jurisdiction to entertain the Application pursuant to, and solely on the basis of Article 38 (5) Rules of the Court. Furthermore, the case was entered in the General List of the Court under the date of 9 August 2006. This matter has called *forum prorogatum.*

B. Suggestion

1. State as the party of consent to be bound to the Court's jurisdiction shall waive its sovereignty to give the Court full right to settle the dispute.

2. State as the party of consent to be bound to the Court's jurisdiction under treaty or optional clause shall comply their consent to settle their dispute before the Court. It is important to maintain the friendly relationship between the states.

3. State as the party of consent to be bound to the Court's jurisdiction shall comply the Court's decision as the state responsibility to respect with the Court as one of the judicial organs, regulated international law.

4. Veto by the Security Council shall not interference the execution of the Court's decision to maintain the Court's power in the international community.

REFERENCE

Aust, Anthony, 2005, *Handbook of International Law,* Cambridge University Press, New York.

Busroh, Abu Daud, 2001, *Ilmu Negara,* Bumi Aksara, Jakarta.

Brownlie, Ian, 2003, *Principle of Public International Law,* 6th Ed., Oxford, New York.

Cassese, Antonio, 2001, *International Law,* Oxford University Press, New York.

Collier and Lowe, 1999, Settlement of Dispute in International Law, Oxford, London.

Dixon, Martin, 1990, *Textbook on International Law,* Blackstone Press Limited, London.

Gardiner, Richard K., 2003, *International Law,* Pearson Education Limited, England.

Garner, Bryan A., 2005, *Black's Law Dictionary,* 8th Ed., Thomson West, United State of America.

Janis, Mark W., 1992, *International Courts For the Twentieth-First Century,*Martinus Nijhoff Publishers, London.

Kaczorowska, Alina, 2005, *Text Book Public International Law,* 3rd Ed., Old Bailey Press, London.

Lubis, M. Solly, 1990, *Ilmu Negara,* Mandar Maju, Bandung.

Mauna, Boer, 2000, *Hukum Internasional: Pengertian, Peranan Dan Fungsi Dalam Era Dinamika Sosial,* Alumni, Bandung.

Merrils, J.G., 1998, *International Dispute Settlement,* 3rd Ed., Cambridge University Press, New York.

Oppenheim, 1952, *International Law A Treatise: dispute, War, and Neutrality,* Vol.II, 7th Ed., Green and Co. Ltd., Longmans.

Parthiana, I Wayan, 1990, *Pengantar Hukum International,* Mandar Maju, Bandung.

Rudi, Teuku May, 1993, *Administrasi dan Organisasi International,* P.T. Eresco, Bandung.

Suryokusumo, Sumaryo, 2007, *Studi Kasus Hukum International,* Tatanusa, Jakarta.

Shadily, Hasan, 1996, *Kamus Inggris Indonesia,* Gramedia, Jakarta.

----------, 2004, *Kamus Indonesia Inggris,* Gramedia, Jakarta.

Shaw, Malcomn N., 2003, *International Law,* 5th Ed., Cambridge, New York.

Soehino, 1980, *Ilmu Negara,* Liberty, Yogyakarta.

Starke, J.G., 2004, *Pengantar Hukum International 1aw,* Sinar Grafika, Jakarta.

Sunggono, Bambang, 2003, *Metodologi Penelitian Hukum,* PT Raja Grafindo Persada, Jakarta.

Wallace, Rebecca M. M., 1993, *Hukum International,* IKIP Semarang Press, Semarang.

Charter of the United Nations 1945

Statute of the International Court of Justice 1948

Vienna Convention on the Law of Treaties 1969

Rules of the International Court of Justice 1970

Hasan Wirajuda, Kasus Sipadan Ligitan: Masalah Pengisisan Konsep Negara, 2003.

Komar Kantaatmadja, Penyelesaian Sengketa International, 1999.

Kompas, Wednesday 18 December

www.icj-cij.org

www.jurnalhukum.blog.com

www.wikipedia.com.

Cases Instituted by Special Agreement

Case	Parties	Date of Special Agreement	Date of notification (filing in the Registry)
Asylum	Colombia Peru	31 August 1949	15 October 1949
Minquiers and Ecrehos	France United Kingdom	29 December 1950	6 December 1951
Sovereignty over Certain Frontier Land	Belgium Netherlands	7 March 1957	27 November 1957
North Sea Continental Shelf	Federal Republic of Germany Denmark	2 February 1967	20 February 1967
North Sea Continental Shelf	Federal Republic of Germany Netherlands	2 February 1967	20 February 1967
Continental Shelf (Tunisia Libyan Arab Jamahiriya)	Tunisia Libyan Arab Jamahiriya	10 June 1977	1 December 1978 and 19 February 1979[1]
Delimitation of the Maritime Boundary in the Gulf of Maine Area	Canada United States of America	29 March 1979	25 November 1981
Continental Shelf (Libyan Arab Jamahiriya Malta)	Libyan Arab Jamahiriya Malta	23 May 1976	26 July 1982
Frontier Dispute	Burkina Faso Republic of Mali	16 September 1983	14 October 1983

Land, Island and Maritime Frontier Dispute	El Salvador Honduras	24 May 1986	11 December 1986
Territorial Dispute	Libyan Arab Jamahiriya Chad	31 August 1989	31 August 1990 and 3 September 1990 [2]
Gabčikovo-Nagymaros Project	Hungary Slovakia	7 April 1993	2 July 1993
Kasikili Sedudu Island	Botswana Namibia	15 February 1996	29 May 1996
Sovereignty over Pulau Ligitan and Pulau Sipadan	Indonesia Malaysia	31 May 1997	2 November 1998
Frontier Dispute	Benin Niger	15 June 2001	3 May 2002
Sovereignty over Pedra Branca Pulau Batu Puteh, Middle Rocks and South Ledge	Malaysia Singapore	6 February 2003	24 July 2003

[1] The first date relates to the notification by Tunisia and the second to the notification by the Libyan Arab Jamahiriya.

[2] The first date relates to the notification by the Libyan Arab Jamahiriya and the second to the filing by Chad of an application instituting proceedings against the Libyan Arab Jamahiriya. The parties subsequently agreed that the proceedings in the case had in effect been instituted by two successive notifications of the Special Agreement.

Examples of treaties or conventions conferring jurisdiction on the ICJ

American treaty on pacific settlement	Bogotá	30 April 1948
Convention on the prevention and punishment of the crime of genocide	Paris	9 December 1948
Revised act for the pacific settlement of international disputes	Lake Success	28 April 1949
Convention relating to the status of refugees	Geneva	28 July 1951
Treaty of peace with Japan	San Francisco	8 September 1951
Treaty of friendship (India Philippines)	Manila	11 July 1952
Universal copyright convention	Geneva	6 September 1952
European convention for the peaceful settlement of disputes	Strasbourg	29 April 1957
Single convention on narcotic drugs	New York	30 March 1961
Optional protocol to the Vienna convention on diplomatic relations, concerning the compulsory settlement of disputes	Vienna	18 April 1961
International convention on the elimination of all forms of racial discrimination	New York	7 March 1966
Convention on the law of treaties	Vienna	23 May 1969
Convention on the suppression of the unlawful seizure of aircraft	The Hague	16 December 1970
Treaty of commerce (Benelux USSR)	Brussels	14 July 1971
Convention for the suppression of unlawful acts against the safety of civil aviation	Montreal	23 September 1971
International convention against the taking of hostages	New York	17 December 1979
General peace treaty (Honduras El Salvador)	Lima	30 October 1980
Convention on treaties concluded between States and international organizations or between international organizations	Vienna	21 March 1986
United Nations convention against illicit traffic in narcotic drugs and psychotropic substances	Vienna	20 December 1988
United Nations framework convention on climate change	New York	9 May 1992
Convention on biological diversity	Rio de Janeiro	5 June 1992
Protocol to the 1979 convention on long range transboundary air pollution on further reduction of sulphur emissions	Oslo	14 June 1994

International convention for the suppression of the financing of terrorism	New York	9 December 1999
United Nations convention against transnational organized crime	New York Palermo	15 November 2000
Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations convention against transnational organized crime	New York	31 May 2001

....

States recognizing the compulsory jurisdiction of the Court (with or without reservations)

July 2004

Australia
Austria
Barbados
Belgium
Botswana
Bulgaria
Cambodia
Cameroon
Canada
Costa Rica
Côte d'Ivoire
Cyprus
Democratic Republic of the Congo
Denmark
Dominican Republic
Egypt
Estonia
Finland
Gambia
Georgia
Greece
Guinea
Guinea Bissau
Haiti
Honduras
Hungary
India
Japan
Kenya
Lesotho
Liberia
Liechtenstein
Luxembourg
Madagascar
Malawi
Malta
Mauritius
Mexico
Nauru
New Zealand
Netherlands
Nicaragua
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Senegal
Serbia and Montenegro
Slovakia
Somalia
Spain
Sudan
Suriname
Swaziland
Sweden
Switzerland
Togo
Uganda
United Kingdom of Great Britain and Northern Ireland
Uruguay

The fact that a treaty is or is not included in this section is without prejudice to its possible application by the Court in a particular case.

Year	Date	Place	Title and Clause	Contracting Parties
1933	12 May	Ottawa	Convention concerning the rights of nationals and commercial and shipping matters (Art. 20)	Canada/France
1939	17 December	Bogota	Treaty of non-aggression, conciliation and judicial settlement (Art. XXIV)	Colombia/Venezuela
1940	30 March	Caracas	Treaty for the pacific settlement of disputes	Brazil/Venezuela
1944	7 December	Chicago	International air services transit agreement (Art. II, Sec. 2)	Multilateral
	7 December	Chicago	International air transport agreement (Art. IV, Sec. 3)	Multilateral
1946	17 April	Luxembourg	Convention concerning the Luxembourg railways (Art. 12)	Luxembourg/Belgium/France
	4 November	Nanking	Treaty of friendship, commerce and navigation (Art. XXVIII)	China[1] /United States
	11 December	Lake Success	International convention relating to dangerous drugs, signed at Geneva, 19 Feb. 1925, as amended (Art. 32)	Multilateral
	11 December	Lake Success	International convention for	Multilateral

			limiting the manufacture and regulating the distribution of narcotic drugs, signed at Geneva on 13 July 1931, as amended (Art. 25)	
	11 December	Lake Success	International convention for the suppression of illicit traffic in dangerous drugs, signed at Geneva on 26 June 1936, as amended (Art. 17)	Multilateral
1947	18 April	Manila	Treaty of amity (Art. 2)	China1/Philippines
	9 July	Rome	Treaty of friendship and general Relations (Art. V)	Italy/Philippines
	17 October	London	Treaty regarding recognition of Burmese independence (Art. 14)	United Kingdom/Burma
	12 November[2]	Lake Success	Convention (concluded at Geneva on 12 Sep. 1923) for the suppression of the circulation of and traffic in obscene publications as amended (Art. 15)	Multilateral
	12 November[2]	Lake Success	Convention (concluded at Geneva on 11 Oct. 1933) for the suppression of traffic in women of full age, as amended (Art. 4)	Multilateral
1948	24 January	Paris	Agreement concerning monetary and financial relations (Art. 23)	France/Lebanon

2 February	Rome	Treaty of friendship, commerce and navigation (Art. XXVI)	United States/Italy
30 April	Bogota	American treaty on pacific settlement	Multilateral
21 May	New Delhi	Agreement relating to air services (Art. XI)	India/Sweden
23 June	Karachi	Agreement relating to air services (Art. XI)	Pakistan/India
28 June	Rome	Economic co-operation agreement (Art. X)	United States/Italy
28 June	Paris	Economic co-operation agreement (Art. X)	United States/France
29 June	Copenhagen	Economic co-operation agreement (Art. X)	United States/Denmark
2 July	Vienna	Economic co-operation agreement (Art. X)	United States/Austria
2 July	The Hague	Economic co-operation agreement (Art. X)	United States/Netherlands
2 July	Athens	Economic co-operation agreement (Art. X)	United States/Greece
2 July	Brussels	Economic co-operation agreement (Art. X)	United States/Belgium
3 July	Oslo	Economic co-operation agreement (Art. X)	United States/Norway
3 July	Reykjavik	Economic co-operation agreement (Art. X)	United States/Iceland
3 July	Nanking	Economic co-operation agreement (Art. X)	United States/China[1]
3 July	Luxembourg	Economic co-operation agreement (Art. X)	United States/Luxembourg
3 July	Stockholm	Economic co-operation agreement	United States/Sweden

			(Art. X)	
	4 July	Ankara	Economic co-operation agreement (Art. X)	United States/Turkey
	6 July	London	Economic co-operation agreement (Art. X)	United States/United Kingdom
	28 September	Lisbon	Economic co-operation agreement (Art. X)	United States/Portugal
	6 October	Beirut	Treaty concerning consular arrangements, navigation, civil and commercial rights and establishment (Art. 33)	Greece/Lebanon
	15/29 Nov	Washington	cf. 23 Nov. 1961	
	9 December	Paris (opened for signature)	Convention on the prevention and punishment of the crime of genocide (Art. IX)	Multilateral
1949	3 January	Karachi	Agreement relating to air services (Art. XI)	Pakistan/Ceylon
	28 April	Lake Success (opened for accession)	Revised general act for the pacific settlement of international disputes	Multilateral
	14 June	Washington	Treaty of friendship (Art. II)	Thailand/Philippines
	4 July	Berne	Convention concerning the construction and use of the Bâle-Mulhouse airport at Blotzheim (Art. 20)	France/Switzerland
	15 July	Lake Success (opened for accession)	Agreement for facilitating the international circulation of visual and auditory materials of an education, scientific and cultural character (Art. IX)	Multilateral

	30 August	Ottawa	Agreement relating to air services (Art. 9)	Canada/Belgium
	10 September	Guatemala City	Treaty of Peace, friendship and co-operation (Art. 7)	Guatemala/Italy
	19 September	Geneva	Convention of road traffic (Art. 33)	Multilateral
	20 September	Beirut	Air transport agreement (Art. IX)	Netherlands/Lebanon
	20 October	New Delhi	Agreement relating to air services (Art. XI)	India/Philippines
	31 October	Tehran	Agreement relating to air services (Art. 12)	Netherlands/Iran
1950	12 January	Canberra	Agreement relating to air services (Art. XII)	Australia/Ceylon
	21 January	Dublin	Treaty of friendship, commerce and navigation (Art. XXIII)	United States/Ireland
	27 January	Mexico City	Commercial agreement (Art. VII)	Netherlands/Mexico
	18 February	Tehran	Treaty of friendship (Art. IV)	Iran/Pakistan
	21 March	Lake Success (opened for signature)	Convention for suppression of traffic in persons and of exploitation of prostitution of others (Art. 22)	Multilateral
	24 March	Rome	Treaty of friendship, conciliation and judicial settlement (Arts. 18-24)	Turkey/Italy
	6 August	Cairo	Agreement relating to air transport services (Art. XVI)	Egypt/France
	16 August	Wellington	Agreement relating to air services (Art. X)	New Zealand/Canada
	28 August	Manila	Treaty of friendship, consular services and establishment (Art. II)	Greece/Philippines
	16 September	Brussels	Commercial agreement (Art. 7)	Belgo-Luxembourg Economic Union/ Mexico

	15 December	London	Trade agreement (Art. 8)	United Kingdom/Norway
1951	2 February	Paris	Treaty of cession of the territory of the Free Town of Chandernagore (Art. XI)	India/France
	22 February	Oslo	Consular convention (Art. 34)	United Kingdom/Norway
	8 May	London	Agreement for air services (Art. 10)	Belgium/United Kingdom
	24 May	Dew Delhi	Agreement relating to air services (Art. XI)	India/Netherlands
	18 June	Tehran	Agreement relating to air services (Art. 12)	Denmark/Iran
	28 July	Geneva (opened for signature)	Convention relating to the status of refugees (Art. 38)	Multilateral
	3 August	Athens	Treaty of friendship, commerce and navigation (Art. XXVI)	Greece/United States
	23 August	Washington	Treaty of friendship, commerce and navigation (Art. XXIV)	Israel/United States
	7 September	Addis Ababa	Treaty of amity and economic relations (Art. XVII)	United States/Ethiopia
	8 September	San Francisco	Treaty of peace with Japan (Art. 22)	Multilateral
	25 September	Canberra	Agreement relating to air services (Art. VIII)	Netherlands/Australia
	1 October	Copenhagen	Treaty of friendship, commerce and navigation (Art. XXIV)	United States/Denmark
	31 December	Paris	Consular convention (Art. 49)	France/United Kingdom
1952	14 March	Stockholm	Consular convention (Art. 34)	Sweden/United Kingdom
	9 May	Tel Aviv	Agreement for	United States/Israel

			economic assistance (Art. VIII)	
	14 June	Cairo	Agreement relating to air services (Art. XIV)	Australia/Egypt
	11 July	Manila	Treaty of friendship (Art. II)	India/Philippines
	17 July	Karachi	Agreement relating to air services (Art. XI)	Pakistan/Netherlands
	29 August	Cairo	Agreement relating to air services (Art. XI)	Ethiopia/Pakistan
	6 September	Geneva	Universal copyright convention (Art. XV)	Multilateral
1953	9 January		Treaty of permanent friendship (Art. VI)	Costa Rica/Spain
	31 March	New York (opened for signature)	Convention on the political rights of women (Art. XI)	Multilateral
	31 March	New York (opened for signature)	Convention on the international right of correction (Art. V)	Multilateral
	2 April	Tokyo	Treaty of friendship, commerce and navigation (Art. XXIV)	United States/Japan
	17 April	Athens	Consular convention (Art. 35)	Greece/United Kingdom
	27 April	Bangkok	Agreement relating to air services (Art. 35)	Thailand/Philippines
	23 June	New York (opened for signature)	Protocol for limiting and regulating cultivation of poppy plant, production of, international and wholesale trade in, and use of opium (Art. 15)	Multilateral
	1 July	Paris (opened for signature)	Convention for the establishment of a European Organization for Nuclear Research (Art. XI)	Multilateral
	14 September	Colombo	Agreement relating to air services (Art. 11)	Netherlands/Ceylon

	24 September	Helsinki	Agreement concerning a supplement to the convention of 30 January 1926 for the pacific settlement of disputes	Finland/Denmark
	26 September	Madrid	Economic aids agreement (Art. IX)	Spain/United States
	19 October	Venice	Constitution of the Intergovernmental Committee for European Migration (Art. 30)	Multilateral
	7 December [3]	New York	Slavery convention signed at Geneva on 25 Sep. 1926, as amended (Art. 8)	Multilateral
	24 December	Beirut A	Agreement for air services (Art. 10)	Belgium/Lebanon
1954	16 February	Paris	Convention on conditions of residence and navigation (Art. 13)	Sweden/France
	3 March	Bangkok	Treaty of friendship (Art. VI)	Thailand/Indonesia
	20 March	Mexico City	Consular convention (Art. 36)	United Kingdom/Mexico
	17 April	Beirut	Agreement relating to air services (Art. XIII)	Yugoslavia/Lebanon
	12 May	London (opened for signature)	International convention for the prevention of pollution of the sea by oil (Art. XIII)	Multilateral
	1 June	Rome	Consular convention (Art. 37)	United Kingdom/Italy
	28 September	New York	Convention relating to the status of stateless persons (Art. 34)	Multilateral
	13 October	Paris (opened for signature)	International convention on the standardization of methods of analysing	Multilateral

			and appreciating wines (Art. 6)	
	23 October [4]	Paris	Treaty for collaboration in economic, social and cultural matters and for collective self-defence signed at Brussels on 17 March 1948, as amended (Art. X)	Belgium, France, Luxembourg, Netherlands, United Kingdom, Fed. Rep. of Germany, Italy
	29 October	Washington	Treaty of friendship, commerce and navigation (Art. XXVII)	United States/ Fed. Rep. of Germany
	5 November	Rangoon	Treaty of peace (Art. IX)	Burma/Japan
	24 November	Rio de Janeiro	Agreement concerning conciliation and judicial settlement (Arts. 16-22)	Italy/Brazil
	1 December[5]	Paris	Agreement concerning the International Institute of Refrigeration, replacing the convention of 21 June 1920 (Art. XXXIII)	Multilateral
	14 December	Quito	Air transport agreement (Art. VIII)	Multilateral
1955	31 January	Manila	Agreement for air services (Art. 11)	Philippines/United Kingdom
	5 March	Paris	Consular convention (Art. 44)	Sweden/France
	10 August	Tripoli	Treaty of friendship and good neighbourliness (Art. 8)	France/Libya
	15 August	Tehran	Treaty of amity, economic relations and consular rights (Art. XXI)	United States/Iran
	17	Lugano	Convention	Italy/Switzerland

	September		concerning the regulation of Lake Lugano (Art. XI)	
	20 October	Berne	Additional protocol to the convention concerning the constitution of "Eurofima" (Art. 14)	Multilateral
	21 October	Beirut	Air transport agreement (Art. 11)	Denmark/Lebanon
	13 December	Paris	European convention on establishment (Art. 31)	Multilateral
1956	27 March	The Hague	Treaty of friendship, commerce and navigation (Art. XXV)	Netherlands/United States
	30 April	Paris	Agreement on commercial rights of no-scheduled air services in Europe (Art. 4)	Multilateral
	19 May	Geneva (opened for signature)	Convention on the contract for the international carriage of goods by road (Art. 47)	Multilateral
	20 June	New York (opened for signature)	Convention on the recovery abroad of maintenance (Art. 16)	Multilateral
	30 July	Bonn	Consular convention (Art. 41)	United Kingdom/Fed. Rep. of Germany
	30 August	Manila	Treaty of friendship (Art. 2)	Philippines/Switzerland
	7 September	Geneva	Supplementary convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery (Art. 10)	Multilateral
	28 November	Seoul	Treaty of friendship, commerce and navigation (Art. XXIV)	United States/Rep. of Korea

	11 December	Athens	Convention on judicial settlement	Greece/Sweden
1957	20 February	New York (opened for signature)	Convention on the nationality of married women (Art. 10)	Multilateral
	28 February	Tokyo	Treaty of commerce and navigation (Art. XVIII, para. 2)	Norway/Japan
	24 April	Cairo	Declaration on the Suez Canal and the arrangements for its operation (para. 9)	Egypt[6]
	29 April	Strasbourg (opened for signature)	European convention on the peaceful settlement of disputes	Multilateral
	23 June	Kabul	Agreement relating to air services (Art. XI)	Pakistan/Afghanistan
	23 November	The Hague	Agreement relating to refugee seamen (Art. 14)	Multilateral
1958	20 January	Djakarta	Treaty of peace (Art. 6)	Japan/Indonesia
	3 February	The Hague	Treaty instituting the Benelux Economic Union (Art. 50)	Belgium, Luxembourg, Netherlands
	5 March	Stockholm	Agreement relating to air services (Art. XI)	Norway/Pakistan
	6 March	Stockholm	Agreement relating to air services (Art. XI)	Sweden/Pakistan
	10 April	Copenhagen	Agreement relating to air services (Art. XI)	Denmark/Pakistan
	14 April	Tehran	Agreement concerning air transport (Art. 13)	Belgium/Iran
	29 April	Geneva (opened for signature)	Optional protocol of signature concerning the compulsory settlement of disputes [7]	Multilateral
	7 June	Karachi	Agreement relating to air services (Art. XI)	Pakistan/Portugal
	4 July	Karachi	Agreement relating to	Austria/Afghanistan

			air services (Art. XI)	
	21 July	Vienna	Agreement relating to air services (Art. XI)	Austria/Afghanistan
	28 November	Monrovia	Agreement for the establishment and operation of air services (Art. 9)	Liberia/Netherlands
1959	30 January	Tegucigalpa	Agreement on commerce (Art. XII)	Belgium, Luxembourg, Netherlands/Honduras
	16 July	Rome	Agreement relating to air services (Art. XI)	India/Italy
	12 November	Washington	Treaty of friendship and commerce (Art. XXIII)	United States/Pakistan
	19 November	Rome	Convention placing the International Poplar Commission within the framework of FAO (Art. XV)	Multilateral
	25 November	Paris	Convention of establishment (Art. XVI)	United States/France
	25 November	Bonn	Treaty for the promotion and protection of investments (Art. 11)	Pakistan/Fed. Rep. of Germany
	1 December	Washington	Antarctic treaty (Art. XI)	Multilateral
	9 December	Monrovia	Agreement relating to air services (Art. VIII)	Sweden/Liberia
1960	13 February[2]	Beirut	Agreement for air transport of 24 Jan. 1949 as amended (Art. 9)	Italy/Lebanon
	9 March	Conakry	Air transport agreement (Art. 9)	Netherlands/Guinea
	15 March	Geneva	Convention relating to the unification of certain rules concerning collisions in inland navigation (Art. 14)	Multilateral

	24 March	Berne	Agreement concerning air services (Art. 9)	Belgium/Switzerland
	8 April	The Hague	Treaty concerning arrangements for co-operation in the Ems estuary (Art. 46)	Netherlands/Fed. Rep. of Germany
	8 April	The Hague	Agreement to accept the compulsory jurisdiction of the International Court of Justice in disputes concerning the interpretation or application of the revised convention on Rhine navigation, 1868	Netherlands/Fed. Rep. of Germany
	24 June	Vienna	Consular convention (Art. 45)	United Kingdom/Austria
	19 October	Amman	Agreement relating to air services (Art. 9)	Belgium/Jordan
	9 December	Tokyo	Treaty of Amity, Commerce and Navigation (Art. VIII, para. 2)	Japan/Philippines
	14 December	Paris	Convention against discrimination in education (Art. 8)	Multilateral
	14 December [8]	New Delhi	Agreement of 11 July 1949 relating to air services as amended (Art. X)	India/Australia
	18 December	Tokyo	Treaty of friendship and commerce (Art. XIII)	Pakistan/Japan
1961	21 February	Brussels	Treaty of friendship, establishment and navigation (Art. 19)	Belgium/United States
	8 March	Brussels	Consular convention (Art. 43)	Belgium/United Kingdom
	11 March	Reykjavik	Exchange of notes constituting an agreement settling the fisheries dispute	Iceland/United Kingdom

		(para. 4)	
30 March	New York	Single convention on narcotic drugs (Art. 48)	Multilateral
3 April	Saigon	Treaty of amity and economic relations (Art. XIV)	United States/Republic of Viet Nam
18 April	Vienna	Optional protocol to the Vienna convention on diplomatic relations concerning the compulsory settlement of disputes	Multilateral
30 May	Madrid	Consular convention (Art. 53)	United Kingdom/Spain
17 June	Conakry	Air transport agreement (Art. 9)	Sweden/Guinea
19 July	Reykjavik	Exchange of notes constituting an agreement concerning the fishery zone round Iceland (para. 5)	Iceland/Fed. Rep. of Germany
27 July	Beirut	Agreement for the establishment and operation of air services (Art. XII)	Lebanon/Liberia
24 August	Amman	Agreement relating to air services (Art. 9)	Netherlands/Jordan
30 August	New York	Convention on the reduction of statelessness (Art. 14)	Multilateral
31 August	Monrovia	Agreement relating to air services (Art. XII)	Switzerland/Liberia
26 October	Rome	International convention for the protection of performers, producers of phonograms and broadcasting organizations (Art. 30)	Multilateral
23 November [9]	Rome	Constitution of the International Rice Commission, adopted at Washington 15/29 Nov. 1948	Multilateral

			as amended (Art. XI)	
	23 November [9]	Rome	Agreement for the establishment of Indo-Pacific Fisheries Council, adopted at Washington 15/29 Nov. 1948 as amended (Art. III)	Multilateral
1962	23 February	Luxembourg	Treaty of friendship, establishment and navigation (Art. XVII)	United States/Luxembourg
	19 March	Evian	cf. 1962, 3 July	
	21 June	Paris	Air transport agreement (Art. 9)	Norway/Guinea
	27 June	Copenhagen	Consular convention (Art. 36)	United Kingdom/Denmark
	29 June	Bonn	Agreement relating to air services (Art. VIII)	Norway/Liberia
	3 July [10]	Paris and Rocher-Noir	Exchange of letters and declarations adopted on 19 March 1962 at the close of the Evian talks, constituting an agreement (declaration of principles relating to the settlement of disputes)	France/Algeria
	14 November	London	Treaty of commerce, establishment and navigation (Art. 31)	United Kingdom/Japan
	10 December	New York (opened for signature)	Convention on consent to marriage, minimum age for marriage and registration of marriages (Art. 8)	Multilateral
1963	8 January	Seoul	Consular convention (Art. 16)	United States/Republic of Korea
	24 April	Vienna	Optional protocol to the Vienna convention on consular relations	Multilateral

			concerning the compulsory settlement of disputes	
	13 August	Asuncion	Agreement on trade and navigation (Art. XVI)	Belgium, Luxembourg, Netherlands/Paraguay
	14 September	Tokyo	Convention on offences and certain other acts committed on board aircraft (Art. 24)	Multilateral
	26 October	Niamey	Act regarding navigation and economic co-operation between the States of the Niger Basin (Art. 7)	Multilateral
	31 October	Paris (opened for signature)	Protocol on privileges and immunities of the European Space Research Organization (Art. 29)	Multilateral
	3 December	Rome	Agreement for the establishment of a General Fisheries Council for the Mediterranean, drawn up at Rome on 24 Sep. 1949 as amended (Art. XIII)	Multilateral
	3 December	Rome	Agreement for the establishment of a Commission for Controlling the Desert Locust in the Eastern Region of Its Distribution Area in South-West Asia (Art. XVII)	Multilateral
1964	4 February	Karachi	Agreement relating to scheduled air services (Art. XII, para. B, ii)	Pakistan/Lebanon
	4 May	Tokyo	Consular convention (Art. 39)	United Kingdom/Japan
	19 September	Beirut	Agreement relating to	India/Lebanon

			air services (Art. XI)	
1965	25 January	Geneva	Convention on the registration of inland navigation vessels (Art. 20)	Multilateral
	18 March	Washington (opened for signature)	Convention on the settlement of investment disputes between States and nationals of other States (Art. 64)	Multilateral
	21 April	Belgrade	Consular convention (Art. 45)	United Kingdom/Yugoslavia
	2 July	Rome	Agreement for establishment of a commission for controlling the desert locust in the Near East (Art. XVI)	Multilateral
	7 July	London	Treaty for conciliation, judicial settlement and arbitration (Art. 14)	United Kingdom/Switzerland
1966	8 February	Lomé	Treaty of amity and economic relations (Art. XIV)	United States/Togo
	15 February	Geneva	Convention on the measurement of inland navigation vessels (Art. 14)	Multilateral
	7 March	New York (opened for signature)	International convention of the elimination of all forms of racial discrimination (Art. 22)	Multilateral
1967	31 January	New York	Protocol relating to the status of refugees (Art. IV)	Multilateral
	14 February	Mexico City	Treaty for the ~~prohibition of nuclear~~ weapons in Latin	Multilateral

			America (Art. 24)	
	14 March	Manila	Trade agreement (Art. IX)	Belgium, Luxembourg, Netherlands/Philippines
	24 May	Kabul	Agreement relating to air services (Art. IX)	Denmark/Afghanistan
	1 June	London	Convention on conduct of fishing operations in the North Atlantic (Art. 13)	Multilateral
	10 July	Paris	International agreement on the procedure for the establishment of tariffs for scheduled air services (Art. 4)	Multilateral
	14 July	Stockholm	Convention for the protection of industrial property signed at Paris on 20 March 1883 as revised (Art. 28)	Multilateral
1968	23 February	Brussels	Protocol amending the international convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25 August 1925 (Art. 8)	Multilateral
	8 November	Vienna	Convention on road traffic (Art. 52)	Multilateral
	8 November	Vienna	Convention on road signs and signals (Art. 44)	Multilateral
1969	13 February	Geneva	Agreement establishing the European Molecular Biology Conference (Art. VIII)	Multilateral
	23 May	Vienna	Convention on the law of treaties (Art. 66)	Multilateral

	25 July	Boston	International health regulations (Art. 106)	Multilateral
	2 September	Washington	Consular convention (Art. 46)	Belgium/United States
	8 September	Mexico City	Convention on the privileges and immunities of the Agency for the Prohibition of Nuclear Weapons in Latin America (Art. 7)	Multilateral
	30 December	Belgrade	Consular convention (Art. 46)	Belgium/Yugoslavia
1970	23 April	Brussels	International convention on travel contracts (Art. 32, para. 2)	International convention on travel contracts (Art. 32, para. 2)
	19 June	Washington	Treaty on patent co-operation (Art. 59)	Multilateral
	1 December	Rome	Agreement for the establishment of a commission for controlling the desert locust in North-West Africa (Art. XVI)	Multilateral
	16 December	The Hague	Convention on the suppression of the unlawful seizure of aircraft (Art. 12, para. 1)	Multilateral
1971	21 February	Vienna	Convention on psychotropic substances (Art. 31)	Multilateral
	14 July	Brussels	Treaty of commerce (Art. 11)	Belgium, Luxembourg, Netherlands/USSR
	17 July	Accra	Agreement for the provision of a special loan to the Government of the Republic of Ghana to facilitate the payment of medium term commercial debts (Art. VII)	United Kingdom/Ghana

	24 July	Paris	Universal copyright convention, signed at Geneva on 6 September 1952, as revised (Art. XV)	Multilateral
	24 July	Paris	Convention for the Protection of Literacy and Artistic Works signed at Berne on 9 September 1886, as revised (Art. 33)	Multilateral
	23 September	Montreal	Convention for the suppression of unlawful acts against the safety of civil aviation (Art. 14)	Multilateral
	6 October	Paris	Convention on the establishment of the International Institute for the Management of Technology (Art. 7)	Multilateral
1972	28 April	Ankara	Consular convention (Art. 58)	Belgium/Turkey
	16 May	Basle	European convention on State immunity (Art. 34)	Multilateral
1973	10 May	Geneva	Agreement establishing the European Molecular Biology Laboratory (Art. XII)	Multilateral
	12 June	The Hague	Protocol relating to refugee seamen (Art. II)	Multilateral
	22 June	Rome	Agreement for the establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific (Art. XX)	Multilateral
	5 October	Munich	Convention on the grant of European	Multilateral

			patents (Art. 173)	
	19 November	Montevideo	Treaty of the La Plata River and its maritime limits (Art. 87)	Uruguay/Argentina
	30 November	New York	International convention on the suppression and punishment of the crime of *apartheid* (Art. XII)	Multilateral
	14 December	New York	Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (Art. 13)	Multilateral
1974	19 February	Madrid	Agreement on the delimitation of the continental shelf (Art. 3, para. 2)	Italy/Spain
	22 March	Helsinki	Convention on the protection of the marine environment of the Baltic Sea area (Art. 18, para. 2)	Multilateral
	16 May	Khartoum	Agreement relating to the joint exploitation of the natural resources of the sea-bed and subsoil of the Red Sea in the common zone (Art. XVI)	Sudan/Saudi Arabia
1975	26 February	Salto	Treaty concerning the status of the river Uruguay (Art. 60)	Uruguay/Argentina
	8 August	New York	Single convention on narcotic drugs, 1961, as amended (Art. 48)	Multilateral
1977	24 May	Athens	Agreement on the delimitation of the respective continental	Greece/Italy

			shelves of the two States (Art. IV)	
1978	5 July	Geneva	Protocol to the convention on the contract for the international carriage of goods by road (CMR) (Art. 8)	Multilateral
1979	30 March	Geneva	International agreement on olive oil (Art. 14, para. 2)	Multilateral
	8 April	Vienna	Constitution of the United Nations Industrial Development Organization (UNIDO) (Art. 22, para. 1*(b)*)	Multilateral
	10 May	Manila	Treaty of amity, commerce and navigation (Art. XV, para. 2)	Japan/Philippines
	17 December	New York	International convention against the taking of hostages (Art. 16, para. 1)	Multilateral
	18 December	New York	Convention on the elimination of all forms of discrimination against women (Art. 29)	Multilateral
1980	20 May	Canberra	Convention on the conservation of Antarctic marine living resources	Multilateral
	30 October	Lima	General peace treaty (Arts. 31-36 and 39)	El Salvador/Honduras
1981	23 January	Cotonou	Agreement concerning technical co-operation (Art. XI)	Switzerland/Benin

1984	10 December	New York	Convention against torture and other cruel, inhuman or degrading treatment or punishment (Art. 30, para. 1)	Multilateral
1985	22 March	Vienna	Vienna convention for the protection of the ozone layer (Art. 11)	Multilateral
	10 December	New York	International convention against *apartheid* in sports (Art. 19)	Multilateral
1986	21 March	Vienna	Vienna convention on the law of treaties between States and international organizations or between international organizations (Art. 66, para. 2)	Multilateral
1988	10 March	Rome	Convention for the suppression of unlawful acts against the safety of maritime navigation (Art. 18, para. 1)	Multilateral
	20 December	Vienna	United Nations convention against illicit traffic in narcotic drugs and psychotropic substances (Art. 32)	Multilateral
	19 October	Berne	Treaty of extradition (Art.17, para 2)	Philippines/Switzerland
1989	4 December	New York	International convention against the recruitment, use, financing and training of mercenaries (Art. 17, para. 1)	Multilateral

1991	25 February	Espoo	Convention on environmental impact assessment in a trans boundary context (Art. 15, para. 2)	Multilateral
	1 March	Montreal	Convention on the marking of plastic explosives for the purpose of detection (Art. XI, para. 1)	Multilateral
	25 November	Berne	Treaty of mutual assistance in criminal matters (Art.21, para.3)	Australia/Switzerland
1992	17 March	Helsinki	Convention on the protection and use of trans boundary watercourses and international lakes (Art. 22, para. 1)	Multilateral
	9 May	New York	United Nations framework convention on climate change (Art.14, para.2)	Multilateral
	5 June	Rio de Janeiro	Convention on biological diversity (Art. 27, para. 3)	Multilateral
1993	13 January	Paris	Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (Art. XIV, para. 2)	Multilateral
	10 May	Camberra	Convention for the conservation of Southern Bluefin Tuna (Art.16, para. 2)	Multilateral
	14 October	Dakar	Agreement of Managment and Co-operation (Art.9)	Senegal/Guinea-Bissau
1994	14 June	Oslo	Protocol to the 1979	Multilateral

			Convention on long-range trans boundary air pollution on further reduction of sulphur emissions (Art. 9)	
1996	10-sept	New York	Comprehensive nuclear test ban Treaty (art. 6, paras. 2 and 3)	Multilateral
	28-oct	New York	Agreement on the establishment of the International Vaccine Institute (art. 7, paras. 2 and 3)	Multilateral
1997	15-déc	New York	International convention for the suppression of terrorist bombings (art. 20, par. 1)	Multilateral
1998	18-juin	Tampere	Convention on the provision of telecommunication resources for disaster mitigation and relief operations (Art. 11, para.3 (b))	Multilateral
	24-juin	Aarhus	Protocol to the 1979 convention on long-range transboundary air pollution on persistent organic pollutants (Art. 12, para. 2 (a))	Multilateral
	24-juin	Aarhus	Protocol to the 1979 convention on long-range transboundary air pollution on heavy metals (Art. 11 para. 2 (a))	Multilateral
	25-juin	Aarhus	Convention on access to information, public participation in	Multilateral

			decision-making and access to justice in environmental matters (Art. 16, para. 2 (a))	
	17 juillet	Rome	Statute of the International Criminal Court (Art. 199, para. 2)	Multilateral
	10-sept	Rotterdam	Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade (Art. 20, para. 2 (b))	Multilatéral
1999	17-juin	London	Protocol on water and health to the 1992 convention on the protection and use of transboundary watercourses and international lakes (Art. 20, para. 2 (b))	Multilateral
	30-nov	Göteborg	Protocol to the 1979 Convention on long-range tranboundary air pollution to abate acidification, eutrophication and ground-level ozone (Art. 11, paras. 2 et 4)	Multilateral
	09-déc	New York	International convention for the suppression of the financing of terrorism (Art. 24, para. 1)	Multilateral
2000	12-déc	Palermo	Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations convention against transnational organized crime (Art.	Multilateral

			20, para. 2)	
	12-déc	Palermo	Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime (Art. 15, para. 2)	Multilateral
	12-déc	Palermo	United Nations convention against transnational organized crime (Art. 35, para. 2)	Multilateral
2001	22-mai	Stockholm	Convention on persistent organic pollutants (Art. 16, para. 2)	Multilateral
	31-mai	New York	Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations convention against transnational organized crime (Art. 16, para. 2)	Multilateral
2002	09-sept	The Hague	Agreement on the privileges and immunities of the International Criminal Court (Art. 32, par. 3)	Multilateral
2003	21-mai	Kiev	Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents	Multilateral

			on transboundary waters to the 1992 convention on the protection and use of transboundary watercourses and international lakes and to the 1992 convention on the transboundary effects of industrial accidents (Art. 26)	
	21-mai	Kiev	Protocol on pollutant release and transfer registers to the convention on access to information, public participation in decision-making and access to justice in environmental matters (Art. 23)	Multilateral
	31-oct	Merida	United Nations convention against corruption (Art. 66, par. 2)	Multilateral

1. All entries recorded throughout this Section in respect of China refer to actions taken by the authorities representing China in the United Nations at the time of those actions, and are to be understood in the light of General Assembly resolution 2758 (XXVI) of 25 October 1971.

2. The date and place given here are those of the signature of the amending protocol.

3. The dates and the places given here are those at which the amending protocol was opened for signature.

4. The date and the place given here are those of the signature of the protocol modifying and completing the Treaty, by which Article VIII of the Treaty became Article X.

5. The date and place given here are those of the signature of the revised Convention.

6. See the declaration of Egypt.

7. This Protocol relates to disputes concerning the Geneva Conventions on the Law of the Sea of 29 April 1958.

8. The date given here is that of the exchange of notes which modified the Agreement and by which Article XI became Article X.

9. The date and the place given here are those on which the Conference of the Food and Agriculture Organization of the United Nations approved the amendments to the instrument.

10. The date and the places given here are those of the exchange of letters.