
3. Reform of the International Court of Justice – A Jurisdictional Perspective

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Abstract: The International Court of Justice (“ICJ” or the “Court”) has been criticized for its limited effectiveness and the many failures it has experienced. In order to understand and discuss the operation and problems of the ICJ, jurisdiction is the key issue. The jurisdiction of the ICJ falls into two distinct parts: contentious jurisdiction and advisory jurisdiction. This note first provides a brief introduction to the Court and an overview of the ICJ’s jurisdiction by way of some case studies. It then explores reform of the ICJ from a jurisdictional perspective, and discusses the theory and history of the ICJ’s jurisdiction. To reform the ICJ will not be easy. It can be achieved through a step-by-step process. This note does not advocate that the ICJ should adopt compulsory jurisdiction. It suggests instead that the Court take a broad interpretational approach towards jurisdictional disputes. This is the most the Court can do under the current ICJ statute.

I. Introduction

The ICJ, which is located in The Hague, Netherlands, is commonly called the “World Court”. Founded in 1946 to replace the Permanent Court of International Justice (PCIJ), which had functioned since 1922 and was dissolved after the Second World War, the ICJ is by virtue of Article 92 of the United Nations Charter “the principal judicial organ of the United Nations.” It is also, as Judge Lachs put it, “the guardian of legality for the international community as a whole, both within and without the United Nations”¹. Although the ICJ is not the legal successor to the PCIJ, the ICJ is in essence a continuation of the PCIJ, with virtually the same statute and jurisdiction. There is also continuity of caselaw, as no distinction is made in ICJ jurisprudence between decisions rendered by the PCIJ and those rendered by the ICJ.²

The Court is composed of fifteen judges of different nationalities, who are elected by the General Assembly and the Security Council.³ The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies. Accordingly, the jurisdiction of the Court falls into two distinct parts, namely, contentious jurisdiction and advisory jurisdiction. The ICJ is often thought of as the primary means for the resolution of disputes between States, and in fact the Court is well-recognized for its significant contribution to the development of international law.⁴ However, the Court has not operated at full capacity. Only four or five cases are referred to the Court for judicial settlement every year. There are a number

¹ See *Lockerbie (Libya v. U.S.)*, 1998 I.C.J. 115 (Preliminary Objections of Feb. 27); *Lockerbie (Libya v. UK)*, 1998 I.C.J. 9 (Preliminary Objections of Feb. 27).

² See, e.g., M. SHAHABUDDIN, *PRECEDENT IN THE WORLD COURT* 22 (1996); M. N. SHAW, *INTERNATIONAL LAW* 746 (4th ed., Cambridge 1997).

³ The current President of the ICJ is the Chinese Judge Shi Jiu Yong.

⁴ See Keith Highet, *Recent Developments in the International Court of Justice*, in *TRILATERAL PERSPECTIVES ON INTERNATIONAL LEGAL ISSUES: RELEVANCE OF DOMESTIC LAW AND POLICY* 337-39 (Michael Young & Yuji Iwasawa eds., 1996) (discussing effect of ICJ’s practice on development of international law). The Court’s actual use of precedent sends the message to outside parties that this is consistent with the accepted interpretation of past treaties and this consistent interpretation is thereafter applied by those outside parties, creating a multi-national practice which leads to new international law. See, e.g., *The Fisheries Case (Gr. Brit. and N. Ir. v. Nor.)*, 1951 I.C.J. 116 (Dec. 18) (illustrating ICJ’s use of precedent which established world community practice).

of reasons for this. Foremost among these is the character of the Court itself. In the author's view, the limited nature of the Court's jurisdiction is the essential cause of its ineffectiveness.⁵

Currently, there are a proliferation of judicial organs at the international and regional level, such as the International Criminal Court, the International Tribunal for the Law of the Sea, the European Court of Human Rights, and the European Court of Justice, to name a few. It is unclear what effect these other judicial organs have on the work of the ICJ. However, many of the other tribunals govern disputes between individuals and States rather than inter-State disputes, with the International Tribunal on the Law of the Sea as a notable exception. In addition, some of these dispute resolution fora focus on a special field. The ICJ still plays the most important role in the international judicial system for matters falling outside the jurisdiction of specialized tribunals.

II. The Jurisdiction of the International Court of Justice

1. Only States May be Parties to Cases before the Court

As provided in Article 34, paragraph 1, of the Statute of the International Court of Justice (the "Statute"), only States may be parties in cases before the Court. This is of far reaching importance since it prohibits recourse before the Court by individuals or international organizations. It reflects the traditional theory that an inter-State dispute resolution forum can be open to States only.⁶

Even for States, access to the Court is not automatic. There are several ways for a State to gain access to the Court. First, by Article 93 of the UN Charter, all members of the UN are *ipso-facto* members of the Statute. Second, States that are not members may become parties, on conditions to be determined in each case by the UN General Assembly, based on the recommendations of the Security Council. Therefore countries such as Switzerland and San Marino, though not members of the UN, may become parties to the Statute of the Court. Third, any other State that is neither a member of the UN nor a party to the Statute of the ICJ may become a party before the ICJ by depositing a declaration with the Registry of the ICJ. The declaration must state that such State accepts the jurisdiction of the Court and undertakes to comply in good faith with the Court's decisions in respect of all or a particular class or classes of disputes. Many States have found themselves in the third scenario before becoming members of the United Nations. Today, the Court is open to practically every State in the world. As of May 2004, there were 191 States who were party to the ICJ Statute, exactly the same number as there are members of the UN. However, becoming a party to the ICJ Statute is entirely different from accepting the Court's jurisdiction. It is merely the first step towards submitting to the Court's jurisdiction.

2. Contentious Jurisdiction & Advisory Jurisdiction

⁵ Part III of this paper will further discuss the ineffectiveness of the Court.

⁶ Some later-established inter-State dispute resolution fora offer more expansive jurisdiction. For example, Non-State entities such as the International Sea Bed Authority and the enterprise and the deep-sea-bed mining companies are admitted to the Sea Bed Disputes Chamber of the International Tribunal for the Law of the Sea. See United Nations Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, U.N. Sales No. E.83.V.5 (1983), part XI and art. 285. Also, the Rome Statute of the International Criminal Court ("ICC") was created to facilitate the prosecution of individuals responsible for the most serious crimes of global concern, such as genocide, war crimes, and crimes against humanity. See UNITED NATIONS, SETTING THE RECORD STRAIGHT: THE INTERNATIONAL CRIMINAL COURT 1, U.N. Doc. DPI/2012 (1998).

As mentioned above, the jurisdiction of the ICJ falls into two distinct parts: its capacity to decide disputes between States, and its capacity to give advisory opinions when requested so to do by particular qualified entities.

3. Contentious Jurisdiction

(1). Special agreements (*Compromis*)

Article 36, paragraph 1, of the Statute⁷ provides that the jurisdiction of the Court comprises all cases that the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a special agreement (*Compromis*) and concluded by the parties especially for this purpose. This method was used in The Corfu Channel Case,⁸ and in a number of others. In some cases, one or more of the involved parties refuse to accept the jurisdiction of the Court, thus resulting in the Court being ineffective⁹.

(2). Jurisdiction provided for in treaties and conventions

Article 36, paragraph 1, of the Statute provides that the jurisdiction of the Court also comprises all matters specially provided for in treaties and conventions in force.

The Lockerbie cases aid understanding of this type of jurisdiction.¹⁰ The Lockerbie cases were brought by Libya against the United Kingdom (the “UK”) and the United States (the “US”) under the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The defendants had claimed that there was no dispute between the parties concerning the interpretation or application of the Montreal Convention as demanded by Article 14,¹¹ but, if at all, only between the applicant and the Security Council on the effects of the Security Council resolutions 748 (1992) and 883 (1993) (the “SC Resolutions”). In the opinion of the Court, however, several disputes¹² existed between the parties concerning the Montreal Convention: first, on the Convention’s applicability to the present case (a jurisdiction which the Court calls “general”); second, on the alleged right of Libya itself to prosecute its nationals (Article 7); and

⁷ See Statute of the International Court of Justice, 1946 U.N.Y.B. 843 at 846, 3 T.I.A.S. 1179. art.36(1) (providing that the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force).

⁸ Corfu Channel (Merits) (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9).

⁹ In the following eight cases, the Court found that it could take no further steps upon an Application in which it was admitted that the opposing party did not accept its jurisdiction: Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. Hungary) (United States of America v. USSR); Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia); Antarctica (United Kingdom v. Argentina) (United Kingdom v. Chile); Aerial Incident of 7 October 1952 (United States of America v. USSR); Aerial Incident of 4 September 1954 (United States of America v. USSR); Aerial Incident of 7 November 1954 (United States of America v. USSR).

¹⁰ See Andreas L. Paulus, *Jurisprudence of the International Court of Justice, Lockerbie Cases: Preliminary Objections*, 9 E.J.I.L 550 (1998).

¹¹ See Convention for the Suppression of Acts Against the Safety of Civil Aviation (Sabotage), Sept. 23, 1971, 24 U.S.T. 565, art.14. (providing that any dispute between two or more Contracting States concerning the interpretation or application of the Convention which cannot be settled through negotiation, shall be submitted to arbitration; if within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the ICJ, in case that there is no reservation by any party to the dispute).

¹² According to ICJ jurisprudence, a dispute is defined as disagreement on a point of law or fact, a conflict of legal views or of interests between two parties. See Statute of the International Court of Justice, *supra* note 7, art. 36 (1).

third, on the alleged lack of assistance by the respondents to the Libyan prosecution (Article 11). On a vote of 13 votes to three, the Court upheld its jurisdiction. By maintaining ICJ jurisdiction, the judgment conceals rather than unfolds the disagreements within the Court on the impact of the SC Resolutions. According to a broad interpretation of the judgment, the relationship between the Montreal Convention and the subsequent SC Resolutions is a matter within the jurisdiction of the Court. Another narrower reading is provided by Judges Fleischhauer and Guillaume in their joint declaration: it states that ICJ jurisdiction extends only to the interpretation and application of the Montreal Convention and not to the SC Resolutions. The latter view seems more in line with the treaty-based jurisdiction of the Court in the present case; it would, however, considerably limit judicial review of resolutions of the Security Council by the Court. It has become apparent that there is no agreement within the Court as to whether its jurisdiction is limited to a pronouncement on the rights and duties of the parties pursuant to the Montreal Convention itself, or whether it also enables the Court to decide on the relationship between the Convention and subsequent Security Council resolutions. By a narrow margin, the Court seems to favor the second option.

(3). Declarations Accepting the Compulsory Jurisdiction of the Court (“Optional Clause” System)

A third means of consent to the Court’s jurisdiction is described in paragraphs 2 and 3 of Article 36 of the Statute. Paragraph 2 provides that

The States parties to the present Statute¹³ 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.

Paragraph 3 of Article 36 of the Statute provides that the declarations referred to in paragraph 2 above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.

A total of 63 States have recognized the compulsory jurisdiction of the Court (with or without reservations). Besides the limited number as compared with the number of the States that are parties to the Statute (187 in 1995), matters are further complicated by reservations to the acceptance of compulsory jurisdiction, which serve to limit their scope. Among those reservations, there are two that are most important. One relates to other methods of pacific settlement, and is found in 33 declarations. The other relates to matters of domestic jurisdiction, and is found in 23 declarations. These two reservations correspond to Article 95 and Article 2(7) of the United Nations Charter, respectively. The declarations are made for a specific period, generally for five years with tacit renewal — as a rule — and usually provide for the declarations to be terminated by simple notice, such notice to take effect after a specified time or immediately. For instance, in 1985, the United States withdrew its acceptance of the ICJ’s jurisdiction. A good illustration of jurisdiction by declaration is the Fisheries Jurisdiction Case.¹⁴ On December 4, 1998, the ICJ ruled 12-5 that it lacked jurisdiction to adjudicate the dispute brought by the Kingdom of Spain against Canada in 1995. To claim the Court’s jurisdiction, Spain relied

¹³ On 15 October 1946, the Security Council adopted Resolution 9 (1946), which resolved that: 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.

¹⁴ See Fisheries Jurisdiction (Spain v. Can.) 1998 I.C.J. 432 (Judgment of Dec. 4).

on the declarations made by the two parties in accepting the Court's compulsory jurisdiction under Article 36(2) of the ICJ Statute.

Canada challenged the Court's jurisdiction, invoking a reservation contained in its 1994 declaration excluding from jurisdiction "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area...."

The Court agreed with Canada that the words of an Optional Clause declaration, including a reservation contained in it, must be interpreted in a natural and reasonable way, having due regard to the intention of the State making the reservation at the time when it accepted the Court's compulsory jurisdiction. Such state's intention, in turn, may be deduced not only from the text of the relevant clause, but also from its context, the circumstances of its preparation, and the purposes intended to be served. The Court rejected Spain's argument that Canada's reservation should be interpreted in accordance with the legality under international law of the matters sought to be exempted from the Court's jurisdiction, which matters in Spain's view violated international law by involving the use of force on the high seas against a Spanish vessel. The Court explained that there is a fundamental distinction between a State's acceptance of the Court's jurisdiction, and the compatibility of particular acts with international law. The latter is a question that can be addressed only once the Court turns to the merits after having established its jurisdiction. In offering its interpretation of Canada's reservation, the Court held that the reservation's purpose was to prevent it from exercising jurisdiction over matters that might arise with regard to the international legality of Canadian legislation and its implementation. Unfortunately, the ICJ could not proceed to the merits of this case because it lacked jurisdiction.

4. Advisory Jurisdiction (Advisory Opinion)

The Court is authorized by Article 65 of the Statute to give advisory opinions on any legal questions at the request of whatever body may be authorized by the UN Charter to make such a request. According to U.N. Charter Article 96, the General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question.¹⁵ Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.¹⁶ In one case involving the request for an advisory opinion by the World Health Organization (WHO) on the legality of the use of nuclear weapons by a State during armed conflict (the WHO Opinion Case),¹⁷ the court held that three conditions must be satisfied in order to find that the Court has advisory jurisdiction: first, the agency requesting the opinion must be duly authorized under the Charter to request opinions from the Court; second, the opinion requested must be on a legal question; and third, this question must be one arising within the scope of the activities of the requesting agency. This three-prong test is a further explanation of the Article 96 of the UN Charter. In the view of the Court, none of WHO's functions, as provided for in Article 2 of the WHO Constitution, had a sufficient connection with the question before it for that question to be capable of being considered as arising "within the scope of the activities" of the WHO. The ICJ again lost an opportunity to explain or even develop international law.

III. A Reform Approach From the Jurisdictional Perspective

¹⁵ Charter of the United Nations (June 26, 1945), art. 96 (1).

¹⁶ *Id.*, art. 96 (2).

¹⁷ Legality of the Use by a State of Nuclear Weapons in Armed Conflict 1996 I.C.J. 66 (Advisory Opinion of July 8),.

1. Ineffectiveness of the Present ICJ

Even though the ICJ was expected to become the “principal judicial organ” for the settlement of disputes among States, this hope never materialized. The Court has been criticized for its limited effectiveness and the many failures it has experienced. The ICJ has not lived up to the hopes of many of its early supporters; that hope being the ICJ, along with the United Nations, would evolve into an international government. To begin with, only a total of 63 States have recognized the compulsory jurisdiction of the Court (with or without reservations) through the “optional clause” system. Less than 100 cases in more than 50 years is not a heavy caseload (though the ICJ’s docket has become more active recently).¹⁸ Moreover, many of the cases have not been of great international importance. In more than 20 contentious cases, the ICJ’s jurisdiction or the admissibility of an application (i.e., the complaint) was challenged, with the ICJ dismissing almost half of these cases.¹⁹ Although States have complied with the ICJ’s judgments in many of the cases, recalcitrant States have on occasion refused to comply.²⁰ The reasons for the ICJ’s limited influence vary. These include the limits on the ICJ’s jurisdiction, its relatively rigid procedure, and the enforceability of its decrees. But its jurisdiction is the biggest systematic problem.

2. A Compulsory Jurisdictional Principle or Not?

In principle, the jurisdiction of ICJ is not a compulsory one.²¹ A case can only be submitted to the Court with the consent of the States concerned. Accordingly, no sovereign State can be made a party in proceedings before the Court unless it has in some manner or other consented thereto. The character of the system itself, founded as it is upon some two hundred sovereign and independent States, is a vital reason that the Court adopted the non-compulsory jurisdictional or consent-based jurisdictional principle, not compulsory jurisdiction, which is the usual principle of jurisdiction in a developed society. In theory, the jurisprudence of the jurisdiction of the ICJ is the result of considering both the principles of State responsibility and the doctrines of state sovereignty and equality of states. The ICJ’s neutrality has been maintained as much as possible. International society is different from the domestic society. From a historical perspective, international society is still in the initial stages of development. Currently the ICJ, along with the UN, can act only in the role of a third party rather than as a superpower. In other words, the ICJ provides an option for States to settle their disputes peacefully through third party intervention. This has reduced the threat of open war.

¹⁸ See Edith B. Weiss, *Judicial Independence and Impartiality: A Preliminary Inquiry*, in THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 135-139 (L. Damrosch ed., 1987).

¹⁹ *Id.*

²⁰ For example, the ICJ’s first decision in a contentious case was against Albania for mining the Corfu Channel and damaging British warships. Although the ICJ ruled in 1949 that Albania should pay monetary damages, Albania has yet to do so. In 1980, Iran refused to comply with the ICJ’s judgment to release the U.S. hostages. Even the United States continued to support the Nicaraguan Contras in spite of the ICJ’s 1986 decision saying that this support violated international law. See BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 301 (1995).

²¹ Renata Szafarz recognizes two kinds of current ICJ jurisdiction as compulsory jurisdiction. See *Compulsory Jurisdiction of the ICJ Based on Treaty Provisions and Compulsory Jurisdiction of the ICJ Based on the Optional Clause* in THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE 42-78 and 79-165 (1993). In fact, these so-called compulsory forms of jurisdiction are very limited, and are still based on the consent of States involved with the case. As a general principle, ICJ jurisdiction is not compulsory and the parties to the ICJ Statute still have the discretion to accept or refuse ICJ jurisdiction. This is totally different from the absolute compulsory jurisdiction mandated by the WTO.

In exploring the reasons that the Court adopted this voluntary jurisdictional principle, taking a look into the historic development of the PCIJ/ICJ World Court system is helpful. As we already know, the ICJ is a continuation of the PCIJ. When they founded the PCIJ in 1920, the United Kingdom, France and Italy, which were the world's most powerful States after the First World War, rejected proposals for compulsory PCIJ jurisdiction. Then, at the 1945 San Francisco Conference, where the United Nations Charter was drafted, the jurisdiction of the Court was the subject of heated argument. The final decisions ending these arguments, and on the definitive form of the Statute, were against compulsory jurisdiction. This time, the USA and the former Soviet Union, the top two superpowers after the Second World War, blocked compulsory jurisdiction. Beyond the doctrines of state sovereignty and equality of states, we can see the role and impact of the most powerful states. Additionally, major issues of peace and security between the more powerful States have rarely been submitted to the ICJ, as most governments tend to consider the recognition of the jurisdiction of the court as infringing on their sovereignty. This is one cause of the limited effectiveness of the ICJ.

International society is still developing, as is the jurisdiction of international tribunals. From the very beginning, almost all the international tribunals have adopted non-compulsory jurisdiction, including the ICJ. However, more recently established international dispute settlement fora, such as the International Criminal Court, to some degree adopt compulsory jurisdiction. The most typical of these is the World Trade Organization (WTO) Dispute Settlement Mechanism. An examination of compulsory jurisdiction in WTO dispute settlement reveals some important implications for the ICJ.

In the WTO, complying with jurisdiction is an obligation entered into under the WTO agreement. This is obviously more powerful than the ICJ consent-based jurisdictional principle. The basic idea behind the jurisprudence of WTO jurisdiction is that: "The authors of these agreements are the member governments themselves — the agreements are the outcome of negotiations among members. Ultimate responsibility for settling disputes also lies with member governments, through the Dispute Settlement Body"²². This is totally different from the jurisprudence in the ICJ context. In the UN and ICJ system, the UN Charter and ICJ Statute were also the outcome of negotiations among member States. But why is there still a perceived need for consent as the basis of ICJ jurisdiction? One answer is globalization and the development of the international society, especially in the economic area. The WTO was established in late 20th Century, while PCIJ jurisdiction, which was the predecessor to ICJ jurisdiction, was conceived at the beginning of the 20th Century. A century has made quite a difference for the international society. A second answer is that the UN and ICJ's most important purpose is to maintain peace and security, while the WTO deals with trade between countries, which is more attuned to globalization trends and the interdependence of states. These are two different fields. Moreover, WTO Members have considerable economic incentive to choose to submit their disputes to the WTO dispute settlement body and comply with WTO judgments.²³ The incentives for States to assume responsibility and submit their consent to the jurisdiction of ICJ seem to be less. However, the jurisdictional theory of the WTO provides some enlightenment. It provides us opportunities to re-think about the jurisdiction of the ICJ - it is time to propose changes.

²² See, e.g., WTO Dispute Settlement Gateway, at: http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm, last visited May 16, 2004.

²³ See, e.g., James Bacchus, *Table Talk: Around the Table of the Appellate Body of the World Trade Organization*, 35 VAND. J. TRANSNAT'L L. 1021, 1026 (2002).

Some scholars advocate that, following the model of the replacement of “GATT 1947” by the WTO Agreement with compulsory jurisdiction and appellate review, the 1945 UN Charter may need to be supplemented among constitutional democracies by a new U.N. Constitution based on U.N. human rights covenants, “democratic peace,” and compulsory ICJ jurisdiction.²⁴ However, I cannot support the idea that the ICJ should adopt absolute compulsory jurisdiction as in the WTO framework. Worldwide compulsory adjudication by the UN system of international disputes among states is utopian. The Court’s jurisdiction was intentionally limited at its outset. This prevented the ICJ from being totally ineffectual (as the Military Staff Committee of the UN) or from becoming a tool of either or both superpowers and losing its neutrality. There would have been too many risks. The ICJ can take some measures to avoid such risks; for example, it could establish an appellate review procedure to review first level decisions, just as with the WTO dispute settlement mechanism. The appellate review procedure could also serve to limit the risk of compulsory jurisdiction. Some have suggested the WTO dispute settlement system as a good example for introducing compulsory adjudication and appellate review on a worldwide level through “constitutional reforms.”²⁵ However, I think it is not practical to rebuild a totally new ICJ structure under the UN system. Instead of focusing on substantial reforms to the ICJ, there is a different trend of reconstructing the international judicial system; namely, the proliferation of international Courts and Tribunals, especially the establishment of the International Tribunal for the Law of the Sea and the International Criminal Court. These specialized judicial organs may cure some systematic problems of the ICJ. It also seems more likely that, on balance, the availability of multiple fora will increase the chances that States could find a forum with a composition and procedure they like. I take a positive view of this trend. The reform of the world judicial framework could follow this general trend. Under this approach, rebuilding a World Court with compulsory jurisdiction is not necessary. Such a step might even produce some conflicts with other fora. As one expert has pointed out, the current ICJ jurisdictional design is “a necessary condition of the proper functioning of international courts.”²⁶ The ICJ’s absolute power to rule on the scope of its own jurisdiction may lead to “undesired” results.²⁷ Of course, some specific amendments could be considered for incorporation into the Statute of the ICJ. Some have argued that the power to request advisory opinions should be opened up to the U.N. Secretary-General and to State and national courts, so as to extend the advisory jurisdiction of the Court.²⁸ And, some commentators have also explored the possibility of permitting international organizations to become parties to contentious proceedings, as international organizations play a more and more important role in the international society.²⁹ All of these sound reasonable and would certainly improve the jurisdiction and effectiveness of the Court, but they all require amendments to the Statute of the ICJ.

3. Should the Court Limit or Extend its Jurisdiction?

²⁴ See, e.g., Ernst-Ulrich Petersmann, *Constitutionalism and International Organizations*, 17 NW. J. INT’L L. & BUS. 398 (1996); Ernst-Ulrich Petersmann, *How to Reform the UN System? Constitutionalism, International Law, and International Organizations*, 10 LEIDEN J. INT’L L. 421 (1997).

²⁵ See, Ernst-Ulrich Petersmann, *Constitutionalism and International Adjudication: How to Constitutionalize the UN Dispute Settlement System?* 31 N.Y.U. J. INT’L L. & POL. 753, 781-2 (1999).

²⁶ See Szafarz, *supra* note 22, at 15.

²⁷ See *Id.*

²⁸ See Schweble, *Preliminary Ruling by the International Court of Justice at the Instance of National Courts*, 28 VA. J. INT’L L. 495 (1988); and S.Rosenne, *Preliminary Rulings by the ICJ at the Instance of National Court: A reply*, 29 VA. J. INT’L L. 401 (1989).

²⁹ See, e.g., D.W.Bowett, et al., *The International Court of Justice: Efficiency of the Procedures and Working Methods*, I.C.L.Q., 524 (1996).

Now, we move to the last issue, that is, whether the ICJ should limit or extend its jurisdiction to include the capacity to interpret jurisdictional provisions? I will discuss this issue with the assistance of two cases. The first one is the Corfu Channel Case,³⁰ which involved the rejection, the Preliminary Objection submitted by Albania government on December 9, 1947. The Corfu Channel Case arose from incidents that occurred on October 22, 1946 in the Corfu Strait: two British destroyers struck mines in Albanian waters and suffered damage, including serious loss of life. The United Kingdom first went to the Security Council of the United Nations, which by a Resolution of April 9, 1947, recommended that the two Governments submit the dispute to the Court. The United Kingdom accordingly submitted an Application which, after an objection to its admissibility had been raised by Albania, was the subject of a Judgment, dated March 25, 1948, in which the Court declared that it possessed jurisdiction. On the same day the two Parties concluded a Special Agreement asking the Court to give judgment. In the Corfu Channel case, the unilateral application of the United Kingdom in conjunction with letters from Albania intimating acceptance of the Court's jurisdiction was deemed by the Court to constitute consent. We can see the same jurisprudence in the Lockerbie cases. But it is not always the practice of ICJ to extend its jurisdiction in every case. For instance, in the "WHO Opinion case,"³¹ the Court gave a relatively narrow interpretation. Some commentators argue that the Court's decision that the WHO had no competence to deal with the legality of nuclear weapons departs from the Court's previous jurisprudence. They argue that a broad, rather than a narrow, competence for international organizations is more consistent with principle and practice as well as with the Court's jurisprudence. The fact that a request relates to an abstract question, unrelated to any particular factual situation, ought not debar the Court from exercising its jurisdiction.³²

The ICJ has been criticized for its limited effectiveness and the many failures it has experienced. These circumstances have many reasons, such as the time consuming nature of ICJ proceedings, but the most important reason is the extent of the ICJ's jurisdiction. If we want to see a more efficient ICJ, some reform steps must be taken to solve the jurisdictional problem. But what can the Court do under the Statute as it is now in order to limit its shortcomings? Reforming a World Court is not an easy matter. The goal should be achieved step by step. In my opinion the ICJ can construe its jurisdiction broadly when there are differences as to what the scope of its jurisdiction is. Of course the relevant provisions or Optional Clause declaration must be interpreted in a natural and reasonable way, as in the Fisheries Jurisdiction Case.³³ To extend the construction of the ICJ's jurisdiction does not mean there should be a license to misuse it. I am sure the World Court can do a much better job of exercising its competence under the current ICJ Statute and in an environment of proliferating international courts and tribunals, if it chooses to interpret its jurisdiction broadly. So we can hope that the Peace Palace will heat up and the World Court will be in business again.

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³⁰ See Corfu Channel Case, *supra* note 8.

³¹ See WHO opinion case, *supra* note 17.

³² See Dapo Akande, *The Competence of International Organizations and the Advisory Jurisdiction of the International Court of Justice*, 9 E.J.I.L. 437 (1998).

³³ See Fisheries Jurisdiction Case, *supra* note 14.