WAIVING THE JURISDICTIONAL IMMUNITY OF STATES IN INTERNATIONAL LAW: A LEGAL ANALYSIS OF INDIAN STATE PRACTICE
(EMPHASIS ON INTERNATIONAL COURT OF JUSTICE)

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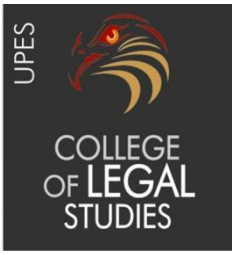

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CERTIFICATE

This is to certify that the research work titled **"Waiving the Jurisdictional Immunity of States in International Law: A Legal Analysis of Indian State Practice (Emphasis on International Court of Justice)"** is the work done by **Mr. Somesh Dutta** under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum & Energy Studies, Dehradun.

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DECLARATION

I declare that the dissertation titled **"Waiving the Jurisdictional Immunity of States in International Law: A Legal Analysis of Indian State Practice (Emphasis on International Court of Justice)"** is the outcome of my own work conducted under the supervision of **Dr. Ashish Verma**, at College of Legal Studies, University of Petroleum & Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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LIST OF ABBREVIATIONS

Journal	*Abbreviation*
American Journal of Comparative Law	AJCL
American Journal of International Law	AJIL
British Tax Review	BTR
Common Market Law Review	CML Rev
Current Law	CL
Cambridge Law Journal	CLJ
Current Legal Problems	CLP
Criminal Law Review	Crim LR
EC Bulletin	EC Bull
European Competition Law Review	ECLR
Estates Gazette	EG
European Intellectual Property Review	EIPR
European Industrial Relations Review	EIRR
European Law Review	ELR
Industrial Law Journal	ILJ
International and Comparative Law Quarterly	ICLQ
Journal of Business Law	JBL
Journal of Planning and Environmental Law	JPEL
Lloyd's Maritime & Commercial Law Quarterly	LMCLQ
Law Quarterly Review	LQR
Legal Studies	LS
Law Society Gazette	LS Gaz
Medical Law Reports	Med LR
Medical Law Review	Med L Rev
Modern Law Review	MLR
New Law Journal	NLJ
Official Journal of the EC	OJ
Oxford Journal of Legal Studies	OJLS
Public Law	PL
Solicitors' Journal	SJ

LIST OF CASES

- ***Verlinden B.V.*** **v.** ***Central Bank of Nigeria,*** **461 U.S. 480, 486 (1983)**
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- ***Royal Nepal Airline Corporation*** **v.** ***Manorama,*** **AIR 1966 Cal. 319**

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I. INTRODUCTION

Foreign State immunity is considered to be a principle of customary international law, providing absolute immunity to a sovereign state from being amenable to the jurisdiction of domestic courts of another sovereign state. To put it differently, a court of one sovereign State will declare itself incompetent to pass upon the merits of certain causes of action brought against a foreign sovereign, its representatives, or its property. This is also sometimes referred to as "jurisdictional immunity" or "immunity from jurisdiction. The principles/provisions of International law determine the general rules of whether or not a foreign state should be accorded immunity by the courts of the forum.

The current law of state immunity has developed primarily as a result of cases decided by national courts in legal proceedings against foreign states. Until the mid-20th Century, sovereign immunity from the jurisdiction of foreign courts was almost absolute. However, as governments and state enterprises became more and more participatory in commercial activities in the modem world, private entities engaging with foreign states attacked complete sovereign immunity as fundamentally unfair in eliminating judicial recourse and favoring state entities. In addition to domestic law, efforts were undertaken to develop multilateral treaties governing foreign sovereign immunity issues.

This work examines the paradigm shift in the attitude of national courts when dealing with the notion of sovereign immunity. It also highlights the efforts that are made at the international level within the UN framework to address the varying approach in this regard. Lastly, the Indian scenario, in the form of section 86 of the Code of Civil Procedure is well discussed along with the relevant case laws. On the whole, this work is an attempt to provide a holistic understanding about the whole concept of sovereign immunity through comparative analysis of the two principal legal systems of the world, i.e. U.S. and U.K.

II. SOVEREIGN IMMUNITY AS A PRINCIPLE OF INTERNATIONAL LAW

The notion of sovereign immunity is one of the vast subjects of international law. It also stands as a customary rule of law which is commonly based and justified on various universal principles of international law.[1]The doctrine of foreign sovereign immunity in common law systems has a long history, dating in some form back to the 12th century.[2] The same concentrates on the extent to which a foreign state is protected from being sued in the courts of other countries. The principle of foreign state immunity was born out of a variance between two pertinent international law norms— *sovereign equality*[3] (***par in parem non habet jurisdictionem***: one sovereign State is not subject to the jurisdiction of another State)[4] and *exclusive territorial jurisdiction*.[5]

This immunity prevents a foreign state being made a party to proceedings in the forum state and/or will protect its property from being apprehended for the purpose of enforcement of the judgment. Immunity can extend to legal proceedings against the foreign state itself, its organs and enterprises, and its agents. To put it differently, a court of one sovereign State will declare itself incompetent to pass upon the merits of certain causes of action brought against a foreign sovereign, its representatives, or its property.[6]

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[1] JURGEN BROHMER; STATE IMMUNITY AND THE VIOLATION OF HUMAN RIGHTS, THE HAGUE, 9 (1997).

[2] MELVYN R.DURCHSLAG, STATE SOVEREIGN IMMUNITY: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION 3 (2002).

[3] GEORG SCHWARZENBERGER & E. D. BROWN, A MANUAL OF INTERNATIONAL LAW 35 (6th ed.1976). Article 2(1) of the United Nations Charter enshrines the principle of sovereign equality, reflecting its fundamental character. Many believe that the principle prevents one sovereign from exercising jurisdiction over another. Thus, the sovereign equality of states is often cited as the boilerplate explanation for the doctrine of foreign state immunity. *See, e.g*., RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, ch. 5 Introductory Note, at 390-91 (1987) [hereinafter RESTATEMENT].

[4] *I Congreso del Partido*, [1983] 1 AC 244, 64 ILR 307; see also P. Mayer & V. Heuzé, Droit international privé (9th ed. 2007) § 324.

[5] MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 318-20 (4th ed. 2003).

[6] Bernard Fensterwald, "*Sovereign Immunity and Soviet State Trading"*, 63 HARV. L. REV. 614, 615-16 (1950).

Immunity is generally considered to be a procedural bar. Using the discretion, the defendant foreign state may waive its right to immunity and the case will then proceed. Such waivers can occur either in advance, such as in a contract, or after a dispute arises.[7] The principles/provisions of International law determine the general rules of whether or not a foreign state should be accorded immunity by the courts of the forum. However, municipal law and municipal courts interpret and apply those rules and there are significant variations between countries. To dispense with the international rule of immunity on domestic decisions is to deprive those decisions of their secure foundations *in law*, and also undermines the authority of the municipal Court in contributing to the development of the body of custom that constitutes international law.[8]

Immunity is rarely claimed or granted in actions incident to real estate (other than diplomatic or consular property) owned by a foreign sovereign, because there is a widespread feeling that local courts are the only ones really competent to handle such claims.[9] There is also general agreement that local courts should have jurisdiction over all actions arising out of the disposition of property upon the death of a domiciliary, whether or not the taker is a foreign sovereign.

The concept of state immunity hold ground from 18th and 19th century, and had been rationally enjoyed as a straightforward role of the sovereign and of government as the concept of absolute immunity, whereby the sovereign was completely immune from jurisdiction in all cases in spite of circumstances.[10] Thus, the law of foreign state immunity relates to the grant in consonance

[7] Immunity applies to the foreign state being made a defendant in a suit. Where foreign state entities are plaintiffs or claimants, they are generally treated like other litigants. Thus, a foreign state investor in a mutual fund would see its claims against the fund treated like those of other claimants. Moreover, where a foreign state brings suit, it generally acts as a waiver of its immunity with regard to related counterclaims.

[8] On this point, see Jurisdictional Immunities of the State (Germany v. Italy), Application Instituting Proceedings, Jurisdictional Immunities of the State (Germany v. Italy), Application Instituting Proceedings, at 4 (Dec. 23, 2008), *available at* http://www.icj-cij.org/docket/files/143/ 14923.pdf; Jurisdictional Immunities of the State (Germany v. Italy), Order (July 4, 2011), *available at* http://www.icj-cij.org/docket/files/143/16556.pdf.

[9] BADR GAMAL MOURSI, STATE IMMUNITY: AN ANALYTICAL AND PROGNOSTIC VIEW 9 (1st ed., Martinus Nijhoff Publishers, 1984).

[10] M.N. SHAW, INTERNATIONAL LAW, CAMBRIDGE UNIVERSITY PRESS 625 (5th ed. 2005).

with international law of immunities to states to enable them to perform their public functions effectively, efficiently and without undue impairment.[11]

Sovereign immunity is best understood not as an established norm of customary international law, but as a legally binding principle of international law. Apart from treaty obligations, states are free to define the scope and limitations of sovereign immunity within their legal systems as long as they observe the limitations set by other principles of international law. Observing the notion of sovereign immunity as a principle delivers for a much better explanation of the still diverse state practice than the currently prevailing notion that conceives immunity as a rule of customary international law and its denial as an exception to that rule. The distinction between principle and rule also has far-reaching practical consequences. Rather than asking whether state practice allows for a certain exception, the focal point of discussion must be on the limits that international law prescribes/provides. Sovereign states therefore enjoy much greater liberty to define the limits and scope of immunity, even though this liberty is restricted.

The doctrine or principle of sovereign immunity is primarily based on the Common Law principle borrowed from the British Jurisprudence that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and in furtherance of that, cannot be held responsible for the negligence or wrong-doing of his servants. Another aspect of this principle was that it was a trait of sovereignty that a State cannot be sued in its own courts without its consent.

A. SOVEREIGN IMMUNITY : COMITY *Vis-à-Vis* JUS COGENS

The International Law Commission (ILC) explained that the customary international law on foreign state immunity has grown "primarily and essentially out of the judicial practice of States on the issue, although in actual practice other branches of the government, namely, the executive and the legislature, have had their share in the progressive evolution of rules of international law."[12]Foreign state immunity is a principle firmly rooted in customary international law. Some

[11] HAZEL FOX, THE LAW OF STATE IMMUNITY, OXFORD UNIVERSITY PRESS 15 (2002).

[12] Special Rapporteur, *Preliminary Report on Jurisdictional Immunities of States and Their Property*, ¶ 23, U.N. Doc. A/CN.4/323, *reprinted in* 2 Y.B. INT'L L. COMM'N 231 (1979).

nations, particularly the United States, argue that the rule pertains essentially to international comity and does not constitute truly binding law.[13] In the celebrated judgment of ***Verlinden B.V. v. Central Bank of Nigeria***, the Court observed that the granting of immunity *is "a matter of grace and comity on the part of the United States*."[14]

However, the scenario substantially changed which affirmed that there could be no doubt concerning the 'existence of a customary norm of international law obliging States to abstain from exercising jurisdiction against foreign States'. The reliance on *jus cogens* to direct a change of practice with regard to sovereign immunity seems an admissible use of these norms. It is worth to note that all states accept foreign sovereign immunity as a concept of customary international law. Even the United States, while enacting the FSIA[15], believed that immunity reflected a principle of international law.[16] Foreign sovereign immunity as international custom is therefore characterized by agreement among states concerning the concept as such, and at the same time by substantial disagreement on detail and substance. It is, thus, binding on states, but only on a very high level of abstraction. Characterizing sovereign immunity not as a rule but as a (legally binding) principle of international law is the only way to reconcile these alleged inconsistencies.

B. WAIVER OF SOVEREIGN IMMUNITY

The very foundation of foreign sovereign immunity allows a state to waive its immunity and reveals at the same time that immunity must be understood as a rule–exception relationship.

[13] See Lee M. Caplan, *State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory*, 97 AM. J. INT'L L. 741, 751 (2003) (Discussing Justice Marshall's statement that all exceptions to the full and complete power of a nation within its own territories, must be traced to the consent of the nation itself).

[14] Verlinden B.V. v. Cent. Bank of Nigeria, 461 U.S. 480, 486 (1983). It should be noted that the phrase according to which sovereign immunity is a matter of "grace and comity" does not appear in the ground-breaking judgment *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812), but is the result of an inference that is by no means conclusive; *See Also* Food v. Patrickson, 538 U.S. 468, 479 (2003) (citing Verlinden, 461 U.S. at 486) (noting that a grant of immunity is "a gesture of comity").

[15] Foreign Sovereign Immunities Act, 1976.

[16] 'Sovereign Immunity is a principle of international law under which domestic courts, in appropriate cases, relinquish jurisdiction over a foreign state': HR Rep 94-1487, 1976 USCCAN 6604, at 6606, 15 ILM (1976) 1398, at 1402.

States are entitled to claim immunity as long as none of the exceptions apply or as long as the state has not consented to the jurisdiction of another country.[17] Waiver of immunity means the act of giving up the right against self discrimination and proceeding to testify.

To put it differently, waiver is a deliberate manifestation of will to accept specific legal consequences.[18] It may be express or implied. Waiver may occur in a treaty, diplomatic communication or by actual submission to the proceeding in the municipal Courts. In the settlement of international disputes, consent is and has always been the key principle. However, consent must be real and not fictitious. The UN Convention requires that consent must be "express."[19]

Courts have had particular difficulty with implied waivers, although they have rejected the argument that a country violating *jus cogens* norms implicitly waives immunity.[20] They generally interpret alleged waivers narrowly[21] and look for words or conduct that indicates a willingness to be sued.[22] In his opinion, ***Lord Goff*** of Chieveley highlighted one of the main concerns at issue with the theory of implied waiver: "there could well be international chaos as

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[17] § 1605(a) (1) FSIA, Arts 2 and 3 ECSI, Arts 7 and 8 UNCJIS.

[18] See BLACK'S LAW DICTIONARY 1580 (6th ed. 1990) (defining "waiver" to mean "[T]he intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right . . . .")

[19] In its official Commentary on Draft Article 7, the ILC stated that "[t]here is . . . no room for implying the consent of an unwilling State which has not expressed its consent in a clear and recognizable manner . . . ." Rep. of the Int'l Law Comm'n, 43d Sess., 29 Apr.–19 July, 1991, ¶ 8, U.N. Doc A/46/10, GAOR 46th Sess., Supp. No. 10 (1991), reprinted in [1991] 2 Y.B. Int'l L. Comm'n 1, 27, U.N. Doc. A/CN.4/SER.A/1991/Add.1.

[20] Princz v. Federal Republic of Germany, 26 F.3d 1166 (D.C. Cir. 1994).

[21] See, e.g. Creighton Ltd. v. Qatar, 181 F.3d 118, 122 (D.C. Cir. 1999); In re Tamimi, 176 F.3d 274, 278 (4th Cir. 1999); Cabiri v. Ghana, 165 F.3d 193, 201-03 (2d Cir. 1999); Pere v. Nuovo Pignone, Inc., 150 F.3d 477, 482 (5th Cir. 1998); Hilao v. Estate of Marcos, 94 F.3d 539, 546-48 (9th Cir. 1996); Corporacion Mexicana de Servicios Maritimos, SA v. M/T Respect, 89 F.3d 650, 655 (9th Cir. 1996); Drexel Burnham Lambert Group, Inc. v. Committee of Receivers, 12 F.3d 317, 325 (2d Cir. 1993); Rodriguez v. Transnave Inc., 8 F.3d 284 (5th Cir. 1993);See Transport Wiking Trader v. Navimpex Centrala, 989 F.2d 572, 577 (2d Cir. 1993); Foremost-McKesson, Inc. v. Islamic Republic of Iran, 905 F.2d 438, 444 (D.C. Cir. 1990); Frolova v. USSR, 761 F.2d 370, 377 (7th Cir. 1985).

[22] Ibid.

the courts of different state parties to a treaty reach different conclusions on the question whether a waiver of immunity was to be implied."[23]The United States Supreme Court has held that a purported waiver must either mention waiver of immunity from suit or clearly indicate a willingness to participate in litigation.[24]

In case of *jus cogens* violations, the implied waiver may be described as;

> *"The existence of system of rules that states may not violate implies that when a state acts in violation of such a rule, the act is not recognized as a sovereign act. When a state act is no longer recognized as sovereign, the state is no longer entitled to invoke the defence of sovereign immunity. Thus, in recognizing a group of preemptory norms, states are implicitly consenting to waive their immunity when they violate one of these norms".*[25]

Further, a state's acknowledgment of its wrongdoing does not indicate towards its willingness to stand trial either. In a U.S. civil action, for instance, Libya conceded for the purpose of its appeal that its alleged participation in the bombing of a passenger aircraft would be a violation of *jus cogens*, but disputed the conclusion that such violation demonstrated an implied waiver of its immunity.[26]

Moreover, "when a state is in breach of peremptory rules of international law, it cannot lawfully expect to be granted the right of immunity. Consequently, it is deemed to have tacitly waived such right."[27] It also states that implicit waivers "should . . . include a situation where a foreign state has filed a responsive pleading in an action without raising the defense of sovereign immunity.[28]Respective states have adopted different approaches, but most limit execution against

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[23] Pinochet (No. 3) R., ex parte Pinochet Ugarte (Amnesty International Intervening) (No. 3) [2000] AC 147 (Lord Goff of Chieveley).

[24] Argentina v. Amerada Hess Shipping Corp., 488 U.S. 428, 441-43 (1989).

[25] Adam C. Belsky et al., *"Implied Waiver Under The FSIA: A Proposed Exception To Immunity For Violations Of Peremptory Norms Of International Law",* 77 CAL. L. REV. 365 (1989) (quoting Hersch Lauterpacht, The Problem of Jurisdictional Immunities of Foreign States, 28 BRIT. Y.B. INT'L L. 220, 221 (1951)).

[26] Smith v. Socialist People's Libyan Arab Jamahiriya, 101 F.3d 239, 242 (2d Cir. 1996).

[27] Prefecture of Voiotia v. Federal Republic of Germany, No. 137/1997 (Ct. 1st Inst. Levadia, Oct. 30, 1997).

[28] 1976 U.S.C.C.A.N. at 6617.

foreign States more than adjudication. In particular, immunity from execution must generally be specifically waived as such; a waiver of immunity from jurisdiction does not affect immunity from execution.

III. THEORIES REGARDING SOVEREIGN IMMUNITY

The foreign sovereign states cannot be subjected to the will of other states, in an international order which is traditionally portrayed as a horizontal one. The same remained undisturbed for several decades and got support from the judicial pronouncement of various nations. In such an international legal order, it became a settled practice that whenever any dispute arises between its members, it shall be settled by means of consent. This is so principally when it comes to judicial means of settlement of disagreements. It is undisputed that, like any other rule or doctrine of international law the doctrine of jurisdictional immunity of foreign states has undergone a process of erosion, moving from a theory of absolute immunity to a restrictive one, which was linked to the evolution of the principle of sovereignty of states.

In this part of the paper we shall examine the gradual shift in the state practices of various nations with regard to the jurisdictional immunities conferred to sovereign states.

A. ABSOLUTE IMMUNITY

Absolute immunity means a complete exemption from civil liability, generally granted to officials while performing, particularly important sovereign functions, such as a representative enacting legislation or a judge adjudicating law suit. The first major judicial decision on state immunity came from the Supreme Court of the United States in the famous case of ***The Schooner Exchange v. M' Faddon,***[29] where the Court held that the sovereign equality and absolute independence of states prohibits one state to exercise exclusive territorial jurisdiction which has been stated to the attribute of every nation.[30]

[29] 11 U.S. (7 Cranch) 116 (1812).

[30] HAROLD HONGJU KOH, TRANSNATIONAL LITIGATION IN UNITED STATES COURTS 108 (2008) [hereinafter KOH, TRANSNATIONAL LITIGATION].

This case was one of the first judicial expressions of doctrine of absolute immunity. According to this doctrine, at that time state had enjoyed immunity without restrictions as perfect privilege. The basic notion of those who back absolute immunity is that the State is one. The acts of a State can have but one end in view, i.e. the protection of the public interest. Therefore all acts of a sovereign are public acts (*jure imperii*); none are private acts (*jure gestionis*). The writers who defend this point of view[31] advance three arguments to support their position.[32]

First, the reference/quotation of a foreign sovereign in a municipal Court is contrary to the established customary practice recognized by the nations and is generally considered as opposed to their laws.[33] Secondly, there will be a direct threat posed on executive branch of the government, as it could not satisfactorily conduct foreign relations if the courts were allowed to assume jurisdiction over foreign sovereigns. Reluctantly, the government would become involved in disputes it might think unwise.

Finally, the advocates of this theory contend that the distinction between "public" and "nonpublic" functions performed by the State is gradually becoming meaningless in modern society. The doctrine of absolute immunity has been followed, at least in theory, almost without exception by the courts of the United States, Great Britain, Germany and the Netherlands. Immunity has been granted in cases involving government-owned and operated merchant ships,[34] railroads,[35] and commercial enterprises.[36]

However, after ***Schooner***,[37] the courts gradually began to relax the idea of absolute immunity. Later the U.K. Court also moved towards relaxing the abovementioned idea. In ***Owners of the***

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[31] Fairman, *Some Disputed Applications of the Principle of State Immunity*, 22 AM. J. INT'L L. 566,570 (1928).

[32] D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 306 (6th ed., Sweet & Maxwell limited 2004).

[33] IAN BROWNLIE, PRINCIPLE OF PUBLIC INTERNATIONAL LAW 328 (4th ed., Clarendon Press 1980).

[34] Berizzi Bros. Co. v. S.S. Pesaro, 271 U.S. 562 (1926); Compania Naviera Vascongado v. S.S. Cristina, [1938] A.C. 485; Compania Mercantil Argentina v. United States Shipping Board, 40 T.L.R. 601 (C.A. 1924).

[35] Oliver Am. Trading Co. v. United States of Mexico, 264 U.S. 440 (1924); Mason v. Intercolonial Ry. of Canada, 197 Mass. 349, 83 N.E. 876 (1908).

[36] French Republic v. Board of Supervisors, 200 Ky. 18, 252 S.W. 124 (1923).

[37] Supre note 29.

Philippine Admiral v. Wallem Shipping (Hong Kong) Ltd [38] the Privy Council did not follow the previous decisions upholding the notion of absolute sovereign immunity and held that in cases where a state owned merchant ship involved in ordinary trade was the object of Writ, it would not be entitled to sovereign immunity and the litigation would proceed. After that, the Courts in U.K. have inclined towards applying state immunity with restrictions.

B. RESTRICTIVE / QUALIFIED IMMUNITY

Under the ambit of restrictive approach, courts continue to recognize immunity for *"sovereign"* acts, but deny immunity for *"commercial"* acts. Commercial or private law exception to immunity is the hallmark of the restrictive approach. When a State is engaged in a commercial transaction, it acts as a merchant, not as an independent sovereign state. Because it has ceased to act in a public capacity, it has no immunity for the commercial transactions. The distinction between the two types of acts is frequently addressed, especially in civil law jurisdictions, using the Latin terms, acts ***jure imperii*** and acts ***jure gestionis***.[39] *Acts jure imperii* are the imperial, public acts of the government of a state as Often distinguished from *jure gestionis,* the commercial activities of a state.

Amongst the common law jurisdictions, a key development was the 1952 Tate Letter from the US Department of State, which reviewed international practice and the policy issues, and announced that the Department would henceforth follow the restrictive theory.[40] Other common law States, including the UK, Canada, Australia, Malaysia, Pakistan, South Africa and Singapore soon also enacted legislation incorporating the restrictive approach.[41]

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[38] (1977) A.C. 373, JC.

[39] MAURO RUBENO-SAMMARTANO, INTERNATIONAL ARBITRATION, LAW AND PRACTICE, (2nd Ed., Kluwer Law International, 2001).

[40] Letter of Jack B. Tate, Acting Legal Adviser of the Department of State, to Acting Attorney General (19 May 1952), reprinted in *Alfred Dunhill of London v. Republic of Cuba,* 425 U.S. 682, 711 (1976).

[41] The State Immunity Act 1978 (UK SIA); State Immunity Act (1982) (Canada SIA); Foreign State Immunities Act 1985 (Australia FSIA); Immunities and Privileges Act 1984 (Malaysia); State Immunity Ordinance 1981 (Pakistan); State Immunity Act 1979 (Singapore); Foreign State Immunities Act 1981 (South Africa).

The restrictive theory approach was endorsed by four Supreme Court Justices in ***Alfred Dunhill of London Inc. V. Republic of Cuba.***[42]**.** It was stated by *Lord Denning* that;

"if the dispute concerns... the commercial transactions of a foreign government... and it arises properly within the territorial jurisdiction of [a country's] courts, there is no ground for granting immunity," finding implicitly that it would not "offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country."

It would be of significance to note the change in the trend of restrictive sovereign immunity has been incorporated by many countries, including United Kingdom. In the English case of ***Planmount Ltd. v. Republic of Zaire***[43] it was contended that as Republic of Zaire was a sovereign state, it could not be sued. The court however said that there has been a change in state practice as regards sovereign immunity to the extent that liabilities arising out of commercial activities of the sovereign state would not be protected by the principle of sovereign immunity as such activities are not governmental acts. In another case it was opined that[44]"if a government department goes into the market places of the world and buys boots or cement - as a commercial transaction - that government department should be subject to all the rules of the market place."

The advocates of restrictive approach argue that the courts should not give a literal interpretation to the historical precedents. Although the language of the old cases seems to be inclined towards absolute immunity, the doctrine of sovereign immunity was originally formulated to apply to a medieval civilization in which "sovereigns" were individual autocratic rulers.

Recently, the Supreme Court of India in ***Ethiopian Airlines v. Ganesh Narain Saboo***[45] held that in the modern era where there is close interconnection among countries in trade and business, the principle of sovereign immunity is not absolute and they will have to abide by the laws of the country they operate in.

[42]15 ILM, 1976, pp. 735, 744, 746-747; 66 ILR, pp.212, 221, 224.

[43] (1981) 1 All ER 1110.

[44] Trendtex Trading Corpn. Ltd. v. Central Bank of Nigeria [1977] 529 [Q.B.]

[45] Ethiopian Airlines v. Ganesh Narain Saboo AIR 2011 SC 3495.

By the above analysis, two very pertinent aspects can reasonably be inferred. Firstly, the gradual shift from the absolute to the restrictive theory of sovereign immunity. During that period, states that still approved absolute immunity to foreign states failed to protest this development. Secondly, even now that the restrictive theory enjoys widespread support, it is understood differently by various municipal Courts and legislations.[46] State practice so far has been anything but unvarying, and it is not surprising that 'a closer examination of the details demonstrates that agreement exist only at a rather high level of abstraction'.[47] It is of course true that most states agree on the private–public distinction. But when it comes to determining the legal effects of sovereign immunity, the relevance of uniformity on an abstract level should not be overestimated. It is the question how this concept is actually applied and defined in practice which is crucial for legal analysis.

IV. INTERNATIONAL SCENARIO WITH REGARD TO FOREIGN SOVEREIGN IMMUNITY

So far we have discussed that most of the common law nations have enacted respective legislations addressing the concept of sovereign immunity.[48] The legislations so enacted serve as a mode law of state immunity among different countries. The current state practice of state immunity is derived from the U.K law and similar of the U.S. law. These laws serve a proper clear indication that how their legislations should be promulgated on state immunity. Thus, U.K. law and U.S. law can be seen as current state practice regarding foreign state immunity. Subsequently, the UNCSI[49] (though yet not been entered into force) has already adopted as a

[46] Supra note 11 at 292: '[t]he restrictive doctrine . . . ha[s] not produced uniformity in practice nor reliable guidance as to when a national court will assume or refuse jurisdiction.. . . [R]eference neither to the nature nor to the purpose of the activity can disguise the arbitrary choices made by courts.'

[47] *See* the conclusion of Dellapenna, '*Foreign State Immunity in Europe'*, 5 NY Int'l L Rev 61 (1992); R. JENNINGS and A. WATTS (eds), OPPENHEIM'S INTERNATIONAL LAW, I/1, at 342–343 (1992) also point out that beyond a general understanding of sovereign immunity, national decisions differ in both detail and substance.

[48] Supra note 41.

[49] United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004.

recent development in this regard. In this part, the U.S. and the U.K. along with the United Nations Convention law shall be discussed in brief.

A. U.K. (STATE IMMUNITY ACT, 1978)

The State Immunity Act, 1978 of the United Kingdom accords immunity to an entity distinct from the Government for "anything done by it in the exercise of sovereign authority".[50]Since the end of the Second World War united kingdom had become increasingly isolated in its adherence under the common law to the doctrine of sovereign immunity.

Part I of the law is modeled on the European Convention[51], whose main principles with minor variations are applied uniformly across the globe. The fundamental approach of this part of the Act is to provide an exhaustive list of cases where immunity cannot be granted and to state an enduring rule that in other cases a state impleaded before the English is entitled to immunity.[52] Part II contains provisions implementing the important provisions of the Convention which require states to give effect to judgments of the Courts of other Convention countries against them. This is the only part of the Act that is limited to the European forum.

The Act makes a distinction between a "state" and a "separate entity." The term "state" includes the head of State, the government and departments of the government.[53] The test for other bodies-separate entities-is twofold: *(1)* whether they are distinct from the executive organs of the government and *(2)* whether they are capable of suing and being sued If they are, they are separate entities and are not entitled to immunity unless the proceedings relate to activities in the exercise of sovereign authority in respect of which a state would enjoy immunity[54]. The

[50] 3 (1) (a), 14.*See Also* Rahimatoola v. Nizam of Hyderabad, [1957] 3 All E.R. 441; I Congresso del Partido [1981] All E.R. 1092, (C.A.); Playa Lorga v. I Congresso del Partido [1981] 3 W.L.R. 328 (H.L.); Alcom v. Republic of Colombia [1983] A.C. 580, and Maclaine Watson & Co. v. Department of Trade and Industry [1988] 3 All E.R. 257 (C.A.).

[51] Article by Sinclair, *"The European Convention on State Immunity"* (1973) 22 I.C.L.Q. 254.

[52] § 1 of the State Immunity Act, 1978.

[53] Krajina v. Toss Agency [19491 2 Ail E.R. 274; Baccua S.R.L. v. Servicio Nacional del Trigo [19571 1 Q.B. 438; Trendtex and Rolimpex.

[54] H.C. Deb., Vol. 949, col. 412 (May 4, 1978)

questions raised are essentially the same as those the courts have asked. But the answers to those questions can now be given in the light of the provisions of section 14.

Part II of the Act, which only applies as regards states parties to the European Convention[55], implements that part of the European Convention which imposes on states an obligation to give effect to a judgment against them given by the courts of a contracting state. Section 18 of the Act requires the courts of the United Kingdom to recognise judgments given against the United Kingdom[56]; it is, of course, well understood that recognition has a very different meaning from enforcement. Indeed the Convention regime couples the obligation to give effect to judgments with a prohibition on the levying of execution against the property of a state. Section 19 lists a number of situations when the courts of the United Kingdom need not recognise a judgment; some of these exceptions are based on the French order public principle, which has no direct English counterpart.

Thus, it can be concluded that State immunity is a concept that concerns a State, its governmental officers and agencies.

B. U.S. (FOREIGN STATE IMMUNITY ACT, 1976)

The enactment of the FSIA in 1976 was one among several developments in domestic legislation to create significant changes in the backdrop of state practice concerning immunity in the 1970s and the ensuing time period.[57] The FSIA was subsequently amended several times, notably to add a "terrorist state" exception in 1996, which was maintained and re-codified in the 2008

[55] J. H. C. Morris, ZMcey and Mods on the Conflict of Lms (9th ed., 1973).

[56] Lesser, "Rollmpex: A Sweet Solution to Legal Status" (1978) 128 New L.J. 591, June 15, 1978.

[57] *See* Supra note 41. Interestingly, these countries are all common law systems; codification of immunity law has apparently not been thought necessary in civil-law countries, though statutes regulating particular aspects of immunity practice have occasionally been adopted in such countries. A recent example is the enactment in Italy of a law specifically suspending enforcement proceedings against a foreign state during the pendency of an ICJ case challenging such measures of execution. *See* Andrea Atteritano, "*Immunity of States and Their Organs: The Contribution of Italian Jurisprudence over the Past Ten Years"*, 19 ITALIAN Y.B. INT'L L. 33, 36–38 (2009) (discussing the UN Convention and a possible *jus cogens* exception to immunity).

amendments.[58] An impetus for the U.S. Congress's action to create an exception to immunity for state sponsors of terrorism was the fact that the relatives of victims in the explosion of Pan Am Flight 103 over Lockerbie, Scotland were lobbying intensively for such a change, in connection with lawsuits brought against Libya in U.S. courts to obtain redress for the attack.[59]

In ***Permanent Mission of India to the United Nations v. City of New York,***[60] the issue before the Court was whether liens (for unpaid taxes) against real property owned by foreign sovereigns could be an object of litigation. Although not strictly by virtue of the Court's decision, it was noted that its textual reading of the FSIA was consistent with "two well-recognized and related purposes of the FSIA: adoption of the restrictive view of sovereign immunity and codification of international law at the time of the FSIA's enactment."

Moreover, the US Supreme Court[61] for example, decided that the FSIA applies even if the *cause of action* of the case took place before its enactment. The Court also relied on "international practice at the time of the FSIA's enactment".[62]

This Act accordingly had four purposes, which were set out in the accompanying House Report of the legislative history of the Act: to codify the restrictive principle of immunity whereby the immunity of a foreign state is restricted to suits involving its public acts and no to its commercial or private acts, to ensure the application of this restrictive principle in the Courts and not by the state Department, to provide a statutory procedure to make service upon and establish personal

[58] The 1996 amendment (part of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, 1241 (1996)) added a new exception for state sponsors of terrorism in what was then § 1605(a)(7) of the FSIA. 28 U.S.C. § 1605(a)(7) (1996), *repealed by* Pub. L. No 110-181, § 1803(b), 122 Stat. 341 (Jan. 29, 2008). With the 2008 amendments, the re-codification of the terrorist state exception is now found at § 1605A. *See* 28 U.S.C. § 1605A (2008).

[59] *See* Jonathan B. Schwartz, *Dealing with a "Rogue State": The Libya Precedent*, 101 AM. J. INT'L L. 553, 563 (2007) (discussing the role of victims' relatives in motivating the abrogation of sovereign immunities for countries designated as state sponsors of terrorism).

[60] Permanent Mission of India to the United Nations v. City of New York, 551 U.S. 193 (2007).

[61] Republic of Austria v. Altmann, 541 US 667 (2004); *See Also* Dole Food Co. v. Patrickson, 538 US 468 (2003).

[62] *Permanent Mission of India*, 551 U.S. at 200 (quoting RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 68(b) (1965)).

jurisdiction over a foreign state, and to remedy in part the private litigant's inability to obtain execution of a judgment obtained against a foreign state.[63]

The U.S. law adopted a very wide definition of a *State* for the purposes of immunity including instrumentalities and agencies of the foreign states. However, in ***Trajano v. Marcos***, the following test of attribution was applied to the defendant accused of having authorized the kidnapping, torture and murder of the petitioner's son in the Philippines:

> *The FSIA covers a foreign official acting in an official capacity, but that official is not entitled to immunity for acts which are not committed in an official capacity (such as selling personal property), and for acts beyond the scope of her authority (for example, doing something the sovereign has not empowered the official to do).*[64]

All of this is indicative of the very fact that the Court has been concerned as to the content of the common law background rules that formed the basis for the FSIA's codification.[65] It could not be settled all controversies because of its complexity functions. As a national legislation, it needs to accord with the Court of another foreign state that may be involved in sophisticated commercial activities. Thus, the international adoption of immunity has required as a fundamental standard of international law, to achieve consensus among nations.

C. UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTIES, 2004.

The Convention, a relatively new instrument finalized in 2004, is the culmination of decades of on-again, off-again efforts by the United Nations International Law Commission (ILC) to bridge

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[63] Supra note 11 at P 188.

[64] In re Estate of Marcos Human Rights Litig. (Trajano v. Marcos), 978 F.2d 493, 497 (9th Cir. 1992). In that case, the defendant was denied immunity: as she was in default, she was said to have admitted that she acted on her own authority and not on the authority of the Republic of the Philippines.

[65] *See* Samantar v. Yousuf, 130 S. Ct. 2278, 2289 (2010) (indicating that the Court in the *Permanent Mission of India* case examined the "relevant common law and international practice when interpreting the Act"). For an example of relevant "pre- FSIA, common-law doctrine," *See* Republic of the Philippines v. Pimentel, 553 U.S. 851, 866 (2008) (citing Republic of Mexico v. Hoffman, 324 U.S. 30, 35–36 (1945)).

formidable cleavages during a period of rapid changes in state practice concerning sovereign immunity.[66] It became the first modern multilateral instrument to articulate a comprehensive approach towards the issue of sovereign immunity from suits in foreign Courts.[67]

The International Law Commission of the United Nations put the question of "Jurisdictional immunities of the States and Their Properties" on its active agenda as a part of its program towards the radical development and codification of international law on that point.[68] The ILC completed the formulation of the articles in 1991[69] and was considered by the Working Group established by the Sixth Committee of the UNGA in 1994.The fact that the ILC was able to reach an agreement on certain formulations of rules of foreign state immunity could provide modest support for the proposition that states believe that the rules so formulated correspond to the requirements of customary international law (the *opinio juris* component in classic theories of international law).[70]

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[66] For an overview, see David P. Stewart, "*The UN Convention on Jurisdictional Immunities of States and Their Property"*, 99 AM. J. INT'L L. 194 (2005).

[67] For the time being, the 2004 UN Convention is not in force. It has been signed by 28 countries (including the United States and the United Kingdom) but ratified by only 6 (Austria, Iran, Lebanon, Norway, Portugal and Romania). 30 ratifications are required for the Convention to enter into force.

[68] G S Varges, *"Defining a Sovereign for Immunity Purposes: Proposals to amend the ILA Draft Convention"* 26 HARVARD INT LJ 26, 26(1985).

[69] The Sixth Committee of the UNGA considered the draft articles in a Working Group during the year 1992 and 1993 which was mandated to "examine the issues of substance arising out of the draft articles, in order to facilitate a successful conclusion of a Convention through the production of general agreement". However, the WG was not able to reach consensus, and the Chairman in his report identified five major problems and offered his conclusions (A/C.6/49.L.2). Some of the most contentious issues were "criteria for determining the commercial character of a contract of transactions" (the question of whether purpose test could be applied in addition to nature test) "Contract of employment" (the question of clarifying the employees who are recruited to perform governmental functions) and "measure of constraint against state property" (the question of on which state property prejudgment and post judgment measure of constraint could be taken).

[70] On the relationship of custom and treaties, see generally INTERNATIONAL LAW: CASES AND MATERIALS 90-112 (Lori F. Damrosch et al. eds., 5th ed. 2009).

The Convention includes some of the exceptions of general rule of immunity, that if any of these exceptions apply in a case, a state will not be able to claim immunity in a foreign Court.[71] Some of the pertinent provisions of the Convention includes the exclusion of immunity of a foreign state when entered in a commercial transaction,[72] which include contract of professional nature, contracts of employment, personal injury and damage to property, participation in companies and other collective bodies, ship owned and operated by a state used for other than government noncommercial purposes and certain matters relating to arbitration proceedings.[73]

Sovereign immunity always had two extents: a national and an international one. Till date, the international community has observed several attempts to codify the law on sovereign immunity, but until now only the European Convention on State Immunity (ECSI) has entered into force.[74] However, even this Convention has received only eight ratifications since 1972, with Germany having been the last state to ratify it in 1990. The United Nations has also worked on the matter – for several decades. Since its acceptance in December 2004, the UN Convention on Jurisdictional Immunities of States (UNCJIS) has not been ratified by enough states in order to come into force.

The inadequate number of ratifications to date, and particularly the lack of interest from states with well-established rule-of-law customs, leaves a doubt on the usefulness of the Convention. Most notably, it is improbable that a treaty negotiated in full awareness that it was not in consonance with existing immunity law and practice of leading states could be understood as establishing new rules of customary international law at odds with the FSIA and judicial decisions in the United States and other countries. Unless and until such states adopt the Convention's provisions as treaty obligations or take action within their own legal systems to embrace the new rules, they would be free not only to continue their preexisting practices but also to develop new customary international law through changing practices.

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[71] Commentary on 1991 Draft ILC Articles, Art: 2, ¶. (15).

[72] AIG Capital Partners Inc. v. Republic of Kazakhstan [2005] EWHC 2239 (Comm); [2006] 1 WLR 1420 (Aikens J).

[73] Art: 10-17 UNCJI, 2004.

[74] European Convention on State Immunity, 16 May 1972, CETS No. 074, 11 ILM (1972) 470.

V. INTERNATIONAL COURT OF JUSTICE ON SOVEREIGN IMMUNITY

The problem faced by the international Courts and Tribunals is characterized by the paradox between two necessities. The first being the need to safeguard fundamental values of the international order and to ensure that there is no impunity in case of their violation. Subsequently, to ensure that states are immune from the jurisdiction of other states. The doctrine of jurisdictional immunity of States, at the contemporary state of the art, lies between these two pillars.

The Primary concern to deal with while discussing the doctrine of jurisdictional immunity of state from domestic courts, is how this pillar of classical international law interplays with other legal obligations deriving from international agreements and other sources of law, whose provisions have increasingly became part of the foundations of the present day international scenario of the past six decades. The same has been a grey area for academic discussions[75] for the scholars and international Courts as well.[76] In this part of the paper, with the help of a recent judgment rendered by the International Court of Justice, the interplay between conventional principles of the international legal order, such as the universal rule of immunity before municipal Courts of foreign States, and the fundamental values upon which the contemporary international legal order is based, will be discussed.

On 3rd February 2012, the International Court of Justice adjudicated a dispute between the Federal Republic of Germany and the Italian Republic. The dispute concerned Germany's purported immunity in foreign courts (herein Italian) for the atrocities committed by German troops during World War II.[77]The fulcrum around which the case revolved was whether, by

[75] *See* Bianchi, L'immunité des Etats et les violations graves des droits de l'homme: la fonction de l'interprète dans la détermination du droit international pg. 80.

[76] *See* for instance Art 27 of the Statute of the International Criminal Court, art. 7 of the Statute of the International Tribunal of Nuremberg, art. 6 of the Tribunal of Tokyo, art 7.2 of the Statute of the International Tribunal for the Former Yugoslavia, art 6.2 of the Statute of the Tribunal for Rwanda, art. 6.2 of the Statute of the Tribunal for Sierra Leone.

[77] Jurisdictional Immunities of the State (Germany v Italy: Greece intervening) *(Judgment)* (International Court of Justice, General List No 143, 3 February 2012) ('*Germany v Italy'*). The facts took place during the II World War, when the then Nazi Germany was the occupying power in the Italian territory. Mr. Ferrini, was one of the "Italian

denying its immunity in civil claims based on violations of international humanitarian law during World War II, the state of Italy infringed its obligations under international law.[78]

The Court appreciating the traditional notion of sovereign immunity ruled in favour of Germany and reasoned that Germany's conduct constituted *acta jure imperii* (sovereign acts) rather than *acta jure gestionis* (commercial acts). The jurisdictional immunity of a state prevents the forum Court's, not only from adjudicating the case in favour of either of the parties, but also, and more crucially, from even considering the subject-matter of the dispute. The Court in the instant case observed that it was not called upon in these proceedings to address the question of how international law treats the issue of State immunity for non-sovereign activities, especially private and commercial activities to which, under many laws, immunity does not apply.

The Court heavily relied on the *state practice* and held that the customary international law continues to require that a state be accorded absolute immunity. Further, the Court stated that a State cannot be deprived immunity by reason of the nature or gravity of the violations of which it is accused, and this was true even if the proceedings involved violations of peremptory or fundamental international norms. The Court was also not persuaded by the argument that state immunity excludes *jus cogens* violations as a matter of state practice and *opinio juris*, in part because national courts have by and large upheld state immunity for such violations.

The decision of the Court in the instant case gets substantiated through the fact that the European Court of Human Rights (ECHR), the only Court at the international level to have dealt with the issue, also has rejected the view that a grant of immunity to the respondent state in a damage claim for acts of torture violated the individual's right of access to a court guaranteed by the European Convention on Human Rights.[79] In a later case, the ECHR confirmed this holding with respect to the immunity of the foreign state from measures of execution.[80]

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military internee" (IMIs henceforth), to whom Germany had denied the status of prisoner of war and who was obliged to forced labour, in violation of international humanitarian law.

[78] See Press Release, Int'l Court of Justice, Germany Institutes Proceedings Against Italy for Failing to Respect its Jurisdictional Immunity as a Sovereign State, I.C.J. Press Release No. 2008/44 (December 23, 2008).

[79] Al-Adsani v. United Kingdom, 2001-XI Eur. Ct. H.R. 79.

[80] Kalogeropoulou v. Greece, App. No. 59021/00 (Eur. Ct. H.R. Dec. 12, 2002) (admissibility).

On the whole, we can infer that this case reiterates the protections/privileges that States enjoy in international law and the distinctions between sovereign/public and commercial acts, and jurisdictional and enforcement immunity. Entities and individuals transacting with States are well-advised to take into account these principles in mind, and to seek appropriate waivers of immunity wherever possible.

Although some of the Court's ruling appears dubious, state practice and *opinion juris* simply favoured Germany's cause in the present case. The Court offered the state of Italy in the instant case the consolation that the claims of Italian victims "could be the subject of further negotiation involving the two States concerned, with a view to diluting the issue." It is unclear whether the Court's "surprise and regret" will motivate Germany to revisit the terms of its compensation scheme or to conclude another negotiated settlement.

Traditional international law by its very nature follows an irregular evolutionary course, often growing with a slower pace in relative isolation before it gains broader acceptance. It is an organic process, which some might say the Court, in the instant case, has artificially cut off, while others will say it has merely provided determinacy in the law.

The ICJ, to put it differently, is definitely not a court of general jurisdiction. Apart from advisory opinions, which face their own jurisdictional limits, the Court may adjudicate a dispute only if the parties have consented. This consent is usually prior to the dispute, in the form of a declaration/ compromis to accept the Court's jurisdiction in a particular class of cases. In every case, then, the Court must determine whether a declaration or a compromis exists as well as its scope.

The ICJ's finding is worth noting in *Barcelona Traction*[81] case. The dispute involved Spain's expropriation of a Canadian company's property that had mostly Belgian shareholders. Spain through a treaty earlier consented to the jurisdiction of the ICJ over such disputes with respect to Belgium, but no such treaty existed for Canada. The Court in a very controversial decision ruled that the right to diplomatic protection of foreign investors is limited to the direct owners of

[81] Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), [1970] I.C.J. RPT. 3.

property, and therefore do not extend to owners of an entity when the entity suffered an injury. As a consequence, the Court lacked the power to provide any relief to either the company or its shareholders for want of jurisdiction and no rights respectively.

Jurisdiction is not always a concern for the Court, but the instances where it has acted expansively/elaborately have tended to redound to its detriment. The most celebrated judgment in this regard would be the *Military and Paramilitary Activities in and against Nicaragua*.[82] The majority in this case rejected the United States' withdrawal of consent to jurisdiction, found the terms of the prior U.S. consent satisfied on very disputed issues, and over-looked the U.S. reservation with respect to issues involving multilateral treaties by determining norms of customary international law that replicated the impugned treaties.

With regard to *Jurisdictional Immunities*, the competence and jurisdiction of ICJ was unquestioned, but its scope was a matter of great debate. Germany and Italy, as parties to the European Convention for the Peaceful Settlement of Disputes, were under a treaty obligation to submit disputes to the ICJ in the absence of any other available juridical forum.[83] Italy in this particular case did not challenge the competence of the Court to determine the legality of its jurisdiction over Germany in its domestic Courts. However, it asserted a counterclaim against Germany for compensation on behalf of its nationals.

The counter-claim made on behalf of Italy faced a jurisdictional difficulty. The Concerned provision, i.e., Article 27(a) of the European Convention restricted the authority of the 'World Court' by apprehending that it did not extend to disputes relating to "facts and situations" that occurred before the signing of the Convention. The ICJ had to adjudicate upon whether the counter-claim concerning the initial harmful conduct of Germany, which ended with the second world war, or instead to the ongoing refusal to compensate the victims, which has affect till date.

The majority members of the Court, except one, were of the view that it lacked jurisdiction over

[82] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), [1984] I.C.J. RPT. 392 (admissibility), [1986] I.C.J. RPT. 14 (merits).

[83] European Convention for the Peaceful Settlement of Disputes, art. 1, Apr. 29, 1957, 320 U.N.T.S. 4646.

the counterclaim. Rather than adjudicating whether the dispute involved the initial war crime or an innate obligation to compensate, the majority laid stress on Italy's Peace Treaty with the victorious allies. According to the majority, the "facts and situations" on which the counterclaim revolved necessarily implicated the 1947 Peace Treaty, under which Italy waived any claim to compensation from Germany. The Court was not in a position to decide Italy's right without ascertaining the legal effect of that waiver.[84] Brazilian Judge Cançado Trindade dissented on this point, influencing his position on the merits.

The difference in opinion between the majority and dissenting opinions regarding jurisdiction of the Court are instructive in nature. The majority considered Italy's argument that the dispute concerned the existence and scope of Germany's obligation to compensate as per international treaty obligation, but held that this treaty obligation depended fundamentally on the meaning of the 1947 waiver. Subsequent steps by Germany to compensate many victims, but not to those involved here, did not affect the legal obligations as constituted by the Peace Treaty. There was a presence of some legitimate argument as to whether Germany could invoke a provision in a treaty to which it was not a party, and whether Italy had the competence to waive its nationals' claims. All the arguments required resolution of a dispute based on events that took place in 1947, well before the European Convention's grant of jurisdiction. As the dispute was primarily based on European Convention's cut-off, the Court could not decide upon it.

Judge Cançado Trindade wrote a very lengthy dissenting opinion in this case. The dispute, according to him, ignited the customary obligation of Germany to make reparations. The impugned Peace Treaty cannot be said to have on the facts that determine this duty. By entering into negotiations in 1961 to provide compensation to some Italian victims of Nazi atrocities, Germany legally realised its general duty to compensate, notwithstanding Italy's waiver. The actual point to ponder, he insisted, was whether a right of reparation for war crimes existed or not. Furthermore, the true claimants to reparation were individuals, whose "rights are not the same as their State's rights." This ongoing situation came well within the European Convention.

[84] In the Treaty, Italy waived all its claims and those of its nationals. Treaty of Peace with Italy, art. 77(4), Feb.10, 1947, 61 Stat. 1245.

Filling the bridge between these two positions is a well-recognized difference about the significance of the state. For the majority of the members of the Court, Italy's actions in 1947 required judicial scrutiny. It could not consider its counterclaim without taking into consideration the legal consequences of its Peace Treaty waiver, and the European Convention did not provide the Court competence to consider those issues. Italy's position to waive the individual rights of its subjects, as well as its rights as a state, presented no problem. The sate (Italy) on behalf of the victims approached the Court for relief and hence cannot be said to have any problem.

The methodological commitments could be well gathered in this case that would play out on the merits. For the majority, jurisdiction vested on state consent and declarations of consent would be interpreted with utmost care, if not in a strict manner. Judge Trindade focused primarily on the underlying claim. When faced with a case involving a serious war crime, the Court should seize any opportunity it had to hear it. Though, only states can approach the Court for seeking relief or initiating proceedings, the real parties in interest were individuals who suffered damages.

The Court, in this particular case, also addressed one other procedural issue before going to the merits. Greece applied to intervene in the case, but did not claim to be a party to the dispute. Even before litigation in Italian Courts, a Greek court came up with an exception to sovereign immunity, empowering the legal representatives of victims of German atrocities to sue Germany for reparation. Subsequently, the Greek government refused to enforce the operative parts of the judgment, and a special court eventually ruled that Greece would not recognize any exception to sovereign immunity in war crime cases.

Moreover, according to the majority of members, the Court had the jurisdiction to rule upon the enforceability judgments passed by Greek Courts against Germany in Italy. The primary reason being the Court's seizure of this issue, allowing Greece to participate as a non-party would present no problems. In this regard, Judge Cançado Trindade also concurred. He laid stress on the importance of the individual rights at stake in the cases before Greek Courts and the authority of a state to disallow the same. Further, the majority of the members asserted their responsibility as adjudicating state rights and obligations, while Judge Trindade concentrated on individual rights and the implications of ignoring them.

Ultimately, the Court held that, the doctrine of sovereign immunity has a long history, but its implication has changed over time. In initial stages of international judicial developments, states enjoyed complete immunity in civil cases. It is during the 2oth century that, at least, two exceptions have received sufficient recognition, but not universal, acceptance. Several principal legal systems, including the United States and the United Kingdom, now limit immunity to *acta jure imperii*, that is the acts done in furtherance of sovereign functions. Thus, states that engage in commercial transactions often are deprived of their immunity as to such transactions. Moreover, several states, including the two above-mentioned recognize an exception for public acts that wrongfully result in an injury on the territory of the state where immunity is invoked. Italy argued that customary international law now recognizes these exceptions to sovereign immunity. As the Germany's illegality started on Italian territory, where its armed forces seized the aggrieved in the Italian litigation, Italy maintained that their claims fulfilled this widely recognised exception to sovereign immunity.

VI. STATISTICAL COMPILATION OF ICJ CASES

1. **Corfu Channel- United Kingdom of Great Britain and Northern Ireland v. Albania (Contentious Case)**

- **Judgment on Preliminary Objection:** 25 March, 1948
    - **Separate Opinion:** 7 (Judges Basdevant, Alvarez, Winiarski, Zoricic, De Visscher, Badawi Pasha, Krylov)
    - **Dissenting Opinion:** 1 (Judge ad hoc Daxner)
- **Judgment on Merits:** 9 April, 1949
    - **Declaration:** 2 (Judges Basdevant and Zoričić)
    - **Separate opinion:** 1 (Judge Alvarez)
    - **Dissenting Opinion:** 5 (Judges Winiarski, Badawi Pasha, Krylov, Azevedo and Judge ad hoc Ečer)
- **Judgment on the assessment of the amount of compensation due from the people's Republic of Albania to the United Kingdom of Great Britain and Northern Ireland:** 15 December, 1949.
    - **Declaration:** 1 (Judge krylov)
    - **Dissenting Opinion:** 1 (Judge ad hoc Ečer)

2. **Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)- Request for Advisory Opinion**

- **Advisory Opinion:** 28 May, 1948

    - **Individual Opinion:** 2 (Judges M. Alvarez, M. Azevedo)
    - **Joint Dissenting Opinion:** 1 (Judges Basdevant, Winiarski, Sir Arnold McNair, Read)
    - **Dissenting Opinion:** 2 (Judges M. Zoričič and M. Krylov)

3. **Reparation for Injuries Suffered in the Service of the United Nations (Request for Advisory opinion)**

- **Advisory Opinion:** 11 April, 1949

    - **Individual Opinion:** 2 (Judges M. Alvarez, M. Azevedo)
    - **Dissenting Opinion:** 3 (Judges Hackworth, Badawi Pacha, M. Krylov)

4. **Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Request for Advisory Opinion)**

- **Advisory Opinion (First Phase):** 30 March 1950

    - **Separate Opinion:** 1 (Judge Azevedo)
    - **Dissenting Opinion:** 3 (Judges Winiarski, Zoričič and Krylov)

- **Advisory Opinion (Second Phase):** 18 July, 1950

    - **Dissenting Opinion:** 2 (Judges Read and Azevedo)

5. **International Status of South West Africa (Request for Advisory Opinion)**

- **Advisory Opinion:** 11 July, 1950

    - **Declaration:** 2 (Judges Guerrero, Zoricic et Badawi Pasha)
    - **Separate Opinion:** 2 (Judges Sir Arnold Mc Nair, Read)
    - **Dissenting Opinion:** 3 (Judges M Alvarez, de Visscher, Krylov)

6. **Competence of the General Assembly for the Admission of a State to the United Nations (Request for Advisory Opinion)**

- **Advisory Opinion:** 3 March, 1950

    - **Dissenting Opinion:** 2 (Judges M Alvarez, M Azevedo)

7. **Asylum Case- Colombia v. Peru (Contentious Case)**

- **Judgment:** 20 November, 1950

- **Declaration:** 1 (Judge Zoričić)
- **Dissenting Opinion:** 5 (Judges Alvarez, Badawi Pasha, Read, Azevedo and Judge ad hoc M. Caicedo Castilla)

8. Request for Interpretation of the Judgment of 20 November, 1950:

- **Judgment:** 27 November, 1950

    - **Declaration:** 1 (Judge ad hoc M. Caicedo Castilla)

9. <u>Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)</u>

- **Order of Discontinuance**: 29 March, 1950

10. <u>Fisheries- United Kingdom v. Norway (Contentious case)</u>

- **Judgment:** 18 December, 1951

    - **Declaration:** 1 (Judge Hackworth)
    - **Individual Opinion:** 1 (Judge Alvarez)
    - **Separate Opinion:** 1 (Judge Hsu Mo)
    - **Dissenting Opinion:** 2 (Judges Arnold Mc Nair, J.E. Read)

11. <u>Haya de la Torre- Colombia v. Peru (Contentious Case)</u>

- **Judgment:** 13 June, 1951

    - **Declaration:** 1 (Judge ad hoc Alayza y Paz Soldán)

12. <u>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Request for Advisory Opinion)</u>

- **Advisory Opinion:** 28 May, 1951

    - **Joint Dissenting opinion:** 1 (Judges Guerrero, Sir Arnold McNair, Read, Hsu Mo)
    - **Dissenting Opinion:** 1 (Judge Alvarez)

13. <u>Rights of Nationals of the United States of America in Morocco- France v. United States of America (Contentious Case)</u>

- **Judgment:** 27 August, 1952

    - **Declaration:** 1 (Judge Hsu Mo)
    - **Joint Dissenting Opinion:** 1 (Judges Hackworth, Badawi, Levi Carneiro and Sir Benegal Rau)

14. <u>Minquiers and Ecrehos- France v. United Kingdom (Contentious case)</u>

- **Judgment:** 17 November, 1953

- **Declaration:** 1(Judge Alvarez)
- **Individual Opinion:** 2 (Judges Basdevant and Levi carneiro)

15. <u>Ambatielos- Greece v. United Kingdom (Contentious case)</u>

- **Judgment on Preliminary Objection:** 1 July, 1952

    - **Declaration:** 1 (Judge Alvarez)
    - **Individual Opinion:** 2 (Judges Levi carneiro and M. Spiropoulos)
    - **Dissenting Opinion:** 5 (President Mc. Nair and Judges Basdevant, Zoričič, Klaestad, Hsu Mo)

- **Judgment on Merit:** 19 May, 1953

    - **Joint Dissenting opinion:** 1 (President Mc Nair and Judges Blasdevant, Klaestad, Read)

16. <u>Electricité de Beyrouth Company- France v. Lebanon (Contentious Case)</u>

- **Order of Removal from the list:** 29 July, 1954

17. <u>Treatment in Hungary of Aircraft and Crew of United States of America- United States of America v. Union of Soviet Socialist Republics (Contentious Case)</u>

- **Order of Removal from the list:** 12 July, 1954

18. <u>Monetary Gold Removed from Rome in 1943- Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America (Contentious case)</u>

- **Judgment on preliminary question:** 15 June, 1954

    - **Declaration:** 1(President Sir Arnold Mc Nair)
    - **Individual Opinion:** 1 (Judge Read)
    - **Dissenting opinion:** 1 (Judge Levi Carneiro)

19. <u>Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (Request for Advisory Opinion)</u>

- **Advisory Opinion:** 13 July, 1954

    - **Individual Opinion:** 1 (Judge B. Winiarski)
    - **Dissenting Opinion:** 3 (Judges Alvarez, Hackworth, Levi Carneiro)

20. <u>Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa (Request for Advisory opinion)</u>

- **Advisory Opinion:** 7 June, 1955

    - **Declaration:** 1 (Judge Kojevnikov)

- **Separate Opinion:** 3 (Judges Basdevant, Klaestad, Lauterpacht)

21. Nottebohm- Liechtenstein v. Guatemala (Contentious case)

- **Judgment on Preliminary Objection:** 18 November, 1953
    - **Declaration:** 1 (Judge Klaestad)
- **Judgment (Second Phase):** 6 April, 1955
    - **Dissenting Opinion:** 3 (Judges Klaestad, Read and Judge ad hoc M. Guggenheim)

22. Antarctica- United Kingdom v. Chile (Contentious Case)

- **Order of Removal from the list:** 16 March, 1956

23. Antarctica- United Kingdom v. Argentina (Contentious Case)

- **Order of Removal from the list:** 16 March, 1956

24. Aerial Incident of 7 October 1952- United States of America v. Union of Soviet Socialist Republics (Contentious case)

- **Order of Removal from the list:** 14 March, 1956

25. Aerial Incident of 10 March 1953- United States of America v. Czechoslovakia (Contentious Case)

- **Order of Removal from the list:** 14 March, 1956

26. Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco (Request for Advisory Opinion).

- **Advisory Opinion:** 23 October, 1956
    - **Declaration:** 1 (Judge Kojevnikov)
    - **Separate Opinion:** 3 (Judges Winiarski, Klaestad, Sir Muhammad Zafrulla Khan)
    - **Dissenting Opinion:** 4 (President Hackworth, Vice-President Badawi, Judge Read and Córdova)

27. Admissibility of Hearings of Petitioners by the Committee on South West Africa (Request for Advisory Opinion)

- **Advisory Opinion:** 1 June, 1956
    - **Declaration:** 2 (Judges Kojevnikov, Winiarski)
    - **Separate Opinion:** 1 (Judge Sir Hersch Lauterpacht)
    - **Joint Dissenting Opinion:** 1 (Vice-President Badawi, Judges Basdevant, Hsu Mo, Armand-Ugon and Moreno Quintana)

28. Certain Norwegian Loans- France v. Norway (Contentious Case)

- **Judgment (Preliminary Objection):** 6 July, 1957

    - **Declaration:** 1 (Judge Moreno Quintana)
    - **Separate Opinion:** 2 (Vice-president M. Badawi, Judge Sir Hersch Lauterpacht)
    - **Dissenting Opinion:** 3 (Judge Guerrero, Basdevant, Read)

29. Aerial Incident of 4th September, 1954- United States of America v. Union of Soviet Socialist Republics (Contentious case)

- **Order of Removal from the list:** 9 December, 1958.

30. Application of the Convention of 1902 Governing the Guardianship of Infants- Netherlands v. Sweden (Contentious case)

- **Judgment:** 28 November, 1958

    - **Declaration:** 3 (Judges Kojevnikov, Spiropoulos et Zafrulla Khan)
    - **Separate opinion:** 5 (Judges Badawi, Sir Hersch Lauterpacht, Moreno Quintana, Wellington Koo, Sir Percy Spender)
    - **Dissenting Opinion:** 3 (Judges Winiarski, Cordova and Judge ad hoc Offerhaus)

31. Aerial Incident of 7 November 1954- United States of America v. Union of Soviet Socialist Republics (Contentious Case)

- **Order of Removal from the list:** 7 October, 1959

32. Aerial Incident of 27 July 1955- United Kingdom v. Bulgaria (Contentious case)

- **Order of Removal from the list:** 3 August, 1959

33. Sovereignty over Certain Frontier Land- Belgium v. Netherlands (Contentious Case)

- **Judgment:** 20 June, 1959

    - **Declaration:** 2 (Judges Sir Hersch Lauterpacht, Spiropoulos)
    - **Dissenting Opinion:** 2 (Judges Armand-Ugon, Moreno Quintana)

34. Aerial Incident of 27 July 1955- Israel v. Bulgaria (Contentious Case)

- **Judgment (Preliminary Objection):** 26 May, 1959

    - **Declaration:** 1 (Judge Zafrulla khan)
    - **Separate Opinion:** 2 (Judges Badawi, Armand-Ugon)
    - **Joint Dissenting Opinion:** 1 (Judges Hersch Lauterpacht, Wellington Koo and Sir Percy Spender)
    - **Dissenting Opinion:** 1 (Judge ad hoc Goitein)

35. <u>Interhandel- Switzerland v. United States of America (Contentious Case)</u>

- **Order (Request for the indication of interim measures of protection):** 24 October, 1957

    - **Declaration:** 4 (Judges Hackworth, Read, Wellington Koo, Kojevnikov)
    - **Separate Opinion:** 2 (Judges klaestad, Sir Hersch Lauterpacht)

- **Judgment (Preliminary objection):** 21 March, 1959

    - **Declaration:** 4 (Judges Basdevant, Kojevnikov, Judges ad hoc Carry, Zafrulla Khan)
    - **Separate Opinion:** 4 (Judges Hackworth, Córdova, Wellington Koo, Sir Percy Spender)
    - **Dissenting Opinion:** 5 (President Klaestad, Judges Winiarski, Armand-Ugon, Sir Hersch Lauterpacht, Spiropoulos)

36. <u>Arbitral Award Made by the King of Spain on 23 December 1906- Honduras v. Nicaragua (Contentious Case)</u>

- **Judgment:** 18 November, 1960.

    - **Declaration:** 1 (Judge Moreno Quintana)
    - **Separate opinion:** 1 (Judge Sir Percy Spender)
    - **Dissenting Opinion:** 2 (Judge Urrutia Holguin)

37. <u>Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient-Francev. Lebanon (Contentious case)</u>

- **Order of Removal from the list:** 31 August, 1960

38. <u>Aerial Incident of 27 July 1955- United States of America v. Bulgaria (Contentious case)</u>

- **Order of Removal from the list:** 31 May, 1960

39. <u>Right of Passage over Indian Territory- Portugal v. India (Contentious case)</u>

- **Judgment (Preliminary Objection):** 26 November, 1957

    - **Declaration:** 2 (Judges ad hoc Kojevnikov and Fernandes)
    - **Dissenting Opinion:** 3 (Vice- President Badawi, Judges Klaestad, Chagla)

- **Judgment (Merits):** 12 April, 1960

    - **Declaration:** 5 (President Klaestad, Judges Basdevant, Badawi, Kojevnikov, Spiropoulos)
    - **Joint Dissenting Opinion:** 1 (Judges Winiarski, Badawi)
    - **Separate Opinion:** 1 (Judge V. K. Wellington Koo)
    - **Dissenting Opinion:** 5 (Judges Armand-Ugon, Moreno Quintana, Sir Percy Spender, Chagla, Fernandes)

40. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (Request for Advisory Opinion)

- **Advisory Opinion:** 8 June, 1960
    - **Dissenting opinion:** 2 (President Klaestad and Judge Moreno Quintana)

41. Barcelona Traction, Light and Power Company, Limited- Belgium v. Spain (Contentious Case)

- **Order of Removal from the list:** 10 April, 1961

42. Temple of Preah Vihear- Cambodia v. Thailand (Contentious case)

- **Judgment (Preliminary Objection):** 26 May, 1961
    - **Declaration:** 2 (Vice-President Alfaro and Judge Wellington Koo)
    - **Joint Declaration:** 1 (Judges Sir Gerald Fitzmaurice and Tanaka)
    - **Separate Opinion:** 2 (Judges Sir Percy Spender, Morelli)
- **Judgment on Merits:** 15 June, 1962
    - **Joint Declaration:** 1 (Judges Tanaka and Morelli)
    - **Separate Opinion:** 2 (Vice- President Alfaro, Sir Gerald Fitzmaurice)
    - **Dissenting Opinion:** 3 (Judges Wellington Koo, Sir Percy Spender, Moreno Quintana)

43. Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter) (Request for Advisory Opinion)

- **Advisory Opinion:** 20 July, 1962
    - **Declaration:** 1 (Judge Spiropoulos)
    - **Separate Opinion:** 3 (Judges Sir Percy Spender, Sir Gerald Fitzmaurice, Morelli)
    - **Dissenting Opinion:** 5 (President Winiarski, Judges Basdevant, Moreno Quintana, Koretsky, Bustamante)

44. North Cameroons- Cameroon v. United Kingdom (Contentious case)

- **Judgment (Preliminary Objection):** 2 December, 1963
    - **Declaration:** 3 (Judges Spiropoulos, Koretsky, Jessup)
    - **Separate Opinion:** 4 (Judges Wellington koo, Sir Percy Spender, Sir Gerald Fitzmaurice, Morelli)
    - **Dissenting Opinion:** 3 (Judges Badawi, Bustamante and Judge ad hoc Beb a Don)

45. South West Africa- Liberia v. South Africa And Ethiopia v. South Africa (Contentious Case)

- **Order of Composition of the Court:** 18 March, 1965

- **Order of Inspection in loco:** 29 November, 1965

- **Judgment (Preliminary Objection):** 21 December, 1962
  - **Declaration:** 1 (Judge Spiropoulos)
  - **Separate Opinion:** 3 (Judges Bustamante, Jessup, Sir Louis Mbanefo)
  - **Joint Dissenting opinion:** 1 (Sir Percy Spender and Sir Gerald Fitzmaurice)
  - **Dissenting Opinion:** 4 (President Winiarski, Judges Basdevant, Morelli, Van Wyk)

- **Judgment (Second Phase):** 18 July, 1966

  - **Declaration:** 1 (Judge Sir Percy Spender)
  - **Separate Opinion:** 2 (Judges Morelli, Van Wyk)
  - **Dissenting opinion:** 7 (Vice-President Wellington Koo, Judges koretsky, Tanaka, Jessup, Padilla Nervo, Forster, Sir Louis Mbanefo)

46. <u>North Sea Continental Shelf- Federal Republic of Germany/ Netherlands And Federal Republic of Germany/Denmark (Contentious case)</u>

- **Judgment:** 20 February, 1969

  - **Declaration**: 2 (Judges Sir Muhammad Zafrulla Khan, Bengzon)
  - **Separate opinion**: 4 (President J. L. Bustamante y Rivero, Judges Jessup, Padilla Nervo, Fouad Ammoun)
  - **Dissenting Opinion:** 5 (Vice-President Koretsky, Tanaka, Morelli, Lachs, Sørensen)

47. <u>Barcelona Traction, Light and Power Company, Limited- Belgium v. Spain (New Application: 1962) (Contentious Case)</u>

- **Judgment (Preliminary Objection):** 24 July, 1964

  - **Declaration:** 4 (Judges Sir Percy Spender, Spiropoulos, Koretsky, Jessup)
  - **Separate opinion:** 3 (Vice-President Wellington Koo, Judges Tanaka, Bustamante)
  - **Dissenting Opinion:** 2 (Judges Morelli, Armand-Ugon)

- **Judgment (Second Phase):** 5 February, 1970
  - **Joint Declaration:** 1 (Judge Petren, Onyeama)
  - **Declaration:** 1 (Judge Lachs)
  - **Separate Opinion:** 8 (President Bustamante y Rivero, Judges Sir Gerald Fitzmaurice, Tanaka, Jessup, Morelli, Padilla Nervo, Gros, Ammoun)
  - **Dissenting Opinion:** 1 (Judge ad hoc Riphagen)

48. <u>Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Request for Advisory Opinion)</u>

- **Order:** 29 January, 1971

  - **Joint Declaration (1):** (Judges Sir Gerald Fitzmaurice, Gros and Petren)
  - **Joint Declaration (2):** (Judges Onyeama, Dillard)

- **Advisory Opinion:** 21 June, 1971

    - **Declaration:** 1 (President Sir Muhammad Zafrulla Khan)
    - **Separate Opinion:** 6 (Vice-President Ammoun, Judges Padilla Nervo, Petrén, Onyeama, Dillard, de Castro)
    - **Dissenting Opinion:** 2 (Judges Gerald Fritzmauric, Gros)

49. <u>Appeal Relating to the Jurisdiction of the ICAO Council- India v. Pakistan (Contentious Case)</u>

- **Judgment:** 18 August, 1972

    - **Declaration:** 2 (President Sir Muhammad Zafrulla Khan, Lachs)
    - **Separate Opinion:** 5 (Judges Petrén , Onyeama, Dillard, de Castro , Jiménez de Aréchaga)
    - **Dissenting Opinion:** 2 (Judges Morozov, Nagendra Singh)

50. <u>Trial of Pakistani Prisoners of War- Pakistan v. India (Contentious Case)</u>

- **Order (Request for the indication of interim measures of protection):** 13 July, 1973

    - **Separate opinion:** 1 (Judge Nagendra Singh)
    - **Dissenting Opinion:** 1 (Judge Petrén)

- **Order of Removal from list:** 15 December, 1973

51. <u>Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal (Request for Advisory Opinion)</u>

- **Advisory Opinion:** 12 July, 1973

    - **Declaration:** 3 (President Lachs, Judges Forster and Nagendra Singh)
    - **Separate Opinion:** 3 (Judges Onyeama, Dillard, Jiménez de Aréchaga)
    - **Dissenting Opinion:** 4 (Vice-President Ammoun, Gros, de Castro, Morozov)

52. <u>Nuclear Tests- New Zealand v. France (Contentious case)</u>

- **Order (Request for the indication of measures of protection):** 22 June, 1973

    - **Declaration**: 4 (Judges Jiménez de Aréchaga, Sir Humphrey Waldock, Nagendra Singh, Judge ad hoc Sir Garfield Barwick**)**
    - **Dissenting Opinion:** 4 (Judges Forster, Gros, Petrén, Ignacio-Pinto)

- **Order (Application by Fiji for permission to intervene):** 12 July, 1973

    - **Declaration:** 4 (Judges Gros, Petrén, Onyeama, Ignacio-Pinto)

- **Order (Application by Fiji for permission to intervene):** 20 December, 1974

- **Declaration:** 4 (Judges Gros, Onyeama, Jiménez de Aréchaga and Judge ad hoc Garfield Barwick)
- **Joint Declaration:** 1 (Judges Dillard and Sir Humphrey Waldock)

- **Judgment:** 20 December, 1974

  - **Separate opinion:** 4 (Judges Forster, Gros, Petrén, Ignacio-Pinto)
  - **Joint Dissenting Opinion:** 1 (Judges Onyeama, Dillard, Jiménez de Aréchaga and Sir Humphrey Waldoc)
  - **Dissenting Opinion:** 2 (Judge de Castro and Judge ad hoc Sir Garfield Barwick)

53. <u>Nuclear Tests- New Zealand v. France (Contentious case)</u>

- **Order (Request for the indication of measures of protection):** 22 June, 1973

  - **Declaration**: 4 (Judges Jiménez de Aréchaga, Sir Humphrey Waldock, Nagendra Singh, Judge ad hoc Sir Garfield Barwick**)**
  - **Dissenting Opinion:** 4 (Judges Forster, Gros, Petrén, Ignacio-Pinto)

- **Order (Application by Fiji for permission to intervene):** 12 July, 1973

  - **Declaration:** 4 (Judges Gros, Petrén, Onyeama, Ignacio-Pinto)

- **Order (Application by Fiji for permission to intervene):** 20 December, 1974

  - **Declaration:** 4 (Judges Gros, Onyeama, Jiménez de Aréchaga and Judge ad hoc Garfield Barwick)
  - **Joint Declaration:** 1 (Judges Dillard and Sir Humphrey Waldock)

- **Judgment:** 20 December, 1974

  - **Separate opinion:** 4 (Judges Forster, Gros, Petrén, Ignacio-Pinto)
  - **Joint Dissenting Opinion:** 1 (Judges Onyeama, Dillard, Jiménez de Aréchaga and Sir Humphrey Waldock)
  - **Dissenting Opinion:** 2 (Judge de Castro and Judge ad hoc Sir Garfield Barwick)

54. <u>Fisheries Jurisdiction- Federal Republic of Germany v. Iceland (Contentious case)</u>

- **Order (Request for the indication of interim measures of protection):** 17 August, 1972

  - **Joint Declaration:** 1 (Vice-President Ammoun and Judges Forster and Jiménez de Aréchaga)
  - **Dissenting opinion:** 1 (Judge Padilla Nervo)

- **Order (Continuance of interim measures of protection):** 12 July, 1973

  - **Declaration:** 1 (Judge Ignacio-Pinto)
  - **Dissenting Opinion:** 2 (Judges Gros and Petrén)

- **Judgment (Jurisdiction of the Court):** 2 February, 1973

    - **Declaration:** 1 (President Sir Muhammad Zafrulla Khan)
    - **Separate Opinion:** 1 (Judge Sir Gerald Fitzmaurice)
    - **Dissenting Opinion:** 1 (Judge Padilla Nervo)

- **Judgment on Merits:** 25 July, 1974

    - **Declaration:** 4 (President Lachs, Judges Dillard, Ignacio-Pinto, Nagendra Singh)
    - **Joint Separate Opinion:** 1 (Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh and Ruda)
    - **Separate Opinion:** 2 (Judges de Castro, Waldock)
    - **Dissenting Opinion:** 3 (Judges Gros, Petrén, Onyeama)

55. <u>Fisheries Jurisdiction- United Kingdom of Great Britain and Northern Ireland v. Iceland (Contentious Case)</u>

- **Order (Request for the indication of interim measures of protection):** 17 August, 1972

    - **Joint Declaration:** 1 (Vice-President Ammoun and Judges Forster and Jiménez de Aréchaga)
    - **Dissenting opinion:** 1 (Judge Padilla Nervo)

- **Order (Continuance of interim measures of protection):** 12 July, 1973

    - **Declaration:** 1 (Judge Ignacio-Pinto)
    - **Dissenting Opinion:** 2 (Judges Gros and Petrén)

- **Judgment (Jurisdiction of the Court):** 2 February, 1973

    - **Declaration:** 1 (President Sir Muhammad Zafrulla Khan)
    - **Separate Opinion:** 1 (Judge Sir Gerald Fitzmaurice)
    - **Dissenting Opinion:** 1 (Judge Padilla Nervo)

- **Judgment on Merits:** 25 July, 1974

    - **Declaration:** 4 (President Lachs, Judges Dillard, Ignacio-Pinto, Nagendra Singh)
    - **Joint Separate Opinion:** 1 (Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh and Ruda)
    - **Separate Opinion:** 2 (Judges de Castro, Waldock)
    - **Dissenting Opinion:** 3 (Judges Gros, Petrén, Onyeama)

56. <u>Western Sahara (Request for Advisory Opinion)</u>

- **Order (Judge ad hoc):** 22 may, 1975

    - **Declaration:** 1 (President Lachs)
    - **Dissenting Opinion:** 1 (Judge Morozov)

- **Advisory opinion:** 16 October, 1975

    - **Declaration:** 3 (Judges, Gros, Ignacio-Pinto, Nagendra Singh)
    - **Separate opinion:** 6 (Vice-president Ammoun, Judges Forster, Petrén, Dillard, de Castro and Judge ad hoc Boni)
    - **Dissenting opinion:** 1 (Judge Ruda)

57. <u>Aegean Sea Continental Shelf- Greece v. Turkey (Contentious Case)</u>

- **Order (Request for the Indication of Interim Measures of Protection):** 11 September, 1976

    - **Separate Opinion:** 8 (President Jiménez de Aréchaga, Vice-president Nagendra Singh, Judges Lachs, Morozov, Ruda, Mosler, Elias, Tarazi)
    - **Dissenting Opinion:** 1 (Judge ad hoc Stassinopoulos)

- **Judgment (Jurisdiction of the Court):** 19 December, 1978

    - **Separate Opinion:** (Vice-President Nagendra Singh, Lachs, Tarazi)
    - **Declaration:** 2 (Judges Gros, Morozov)
    - **Dissenting Opinion:** 2 (Judge de Castro and Judge ad hoc Stassinopoulos)

58. <u>Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Request for Advisory Opinion)</u>

- **Advisory Opinion:** 20 December, 1980

    - **Separate Opinion:** 8 (Judges Gros, Lachs, Ruda, Mosler, Oda, Ago, El- Erian, Sette-Camara)
    - **Dissenting Opinion:** 1 (Judge Morozov)

59. <u>United States Diplomatic and Consular Staff in Tehran- United States of America v. Iran (Contentious case)</u>

- **Order for the indication of Provisional Measures:** 15 December, 1979

- **Judgment:** 24 may, 1980

    - **Separate Opinion:** 1 (Judge Lachs)
    - **Dissenting opinion:** 2 (judges Morozov and Tarazi)

- **Order of Removal from the list:** 12 May, 1981.

60. <u>Continental Shelf- Tunisia v. Libyan Arab Jamahiriya (Contentious Case)</u>

- **Judgment (Application by Malta for permission to Intervene):** 14 April, 1981

    - **Separate Opinion:** 3 (Judges Morozov, Oda, Schwebel)

- **Judgment:** 24 February, 1982

- **Separate Opinion:** 3 (Judges Ago, Schwebel and Judge ad hoc Jiménez de Aréchaga)
- **Dissenting Opinion:** 3 (Judges Gros, Oda and Judge ad hoc Evensen)

61. Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal (Request for Advisory Opinion)

- **Advisory opinion:** 20 July, 1982

  - **Separate Opinion:** 4 (Judges Nagendra Singh, Ruda, Mosler, Oda)
  - **Dissenting Opinion:** 4 (Judges Lachs, Morozov, El-khani, Schwebel)

62. Delimitation of the Maritime Boundary in the Gulf of Maine Area- Canada v. United States of America (Contentious case)

- **Order (Constitution of Chamber):** 20 January, 1982

  - **Declaration:** 1 (Judge Oda)
  - **Dissenting Opinion:** 2 (Judges Morozov, El-Khani)

- **Order (Appointment of Expert):** 30 march, 1984

- **Judgment (By the Chamber):** 12 October, 1984

  - **Separate opinion:** 1 (Judge Schwebel)
  - **Dissenting Opinion:** 1 (Judge Gros)

63. Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)

- **Judgment:** 10 December, 1985

  - **Separate Opinion:** 4 (Judges Ruda, Oda, Schwebel and Judge ad hoc Bastid)

64. Continental Shelf- Libyan Arab Jamahiriya v. Malta (Contentious Case)

- **Judgment (Application by Italy for Permission to Intervene):** 21 March, 1984

  - **Separate Opinion:** 4 (Judges Morozov, Nagendra Singh, Mbaye, Jiménez de Aréchaga)
  - **Dissenting Opinion:** 5 (Vice-President Sette-Camara, Judges Oda, Ago, Schwebel, Sir Robert Jennings)

65. Frontier Dispute- Burkina Faso v. Republic of Mali (Contentious Case)

- **Order (Constitution of Chamber):** 3 April, 1985

- **Order (Request for the indication of Provisional Measures):** 10 January, 1986

- **Order (Nomination of Experts):** 9 April, 1987

- **Judgment:** 22 December, 1986

    - **Separate Opinion:** 2 (Judge ad hoc Luchaire and Judge ad hoc Abi-Saab)

66. Border and Transborder Armed Actions- Nicaragua v. Costa Rica (Contentious case)

- **Order of Removal from the list:** 19 August, 1987

67. Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal (Request for Advisory Opinion)

- **Advisory Opinion:** 27 May, 1987

    - **Declaration:** 1 (Judge Lachs)
    - **Separate Opinion:** 3 (Judges Elias, Oda, Ago)
    - **Dissenting Opinion:** 3 (Judges Schwebel, Sir Robert Jennings, Evensen)

68. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Request for Advisory Opinion)

- **Advisory Opinion:** 26 April, 1988

    - **Declaration:** 1 (Judge Elias)
    - **Separate Opinion:** 3 (Judges Oda, Schwebel, Shahabuddeen)

69. Elettronica Sicula S.p.A. (ELSI)- United States of America v. Italy (Contentious case)

- **Order (Composition of Chamber):** 20 December, 1988

- **Judgment:** 20 July, 1989

    - **Separate Opinion:** 1 (Judges Oda)
    - **Dissenting Opinion:** 1 (Judge Schwebel)

70. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Request for Advisory Opinion)

- **Advisory Opinion:** 15 December, 1989

    - **Separate Opinion:** 3 (Judges Oda, Evensen, Shahabuddeen)

71. Arbitral Award of 31 July 1989- Guinea-Bissau v. Senegal (Contentious case)

- **Order (Request for Indication of provisional Measures):** 2 March, 1990

    - **Separate Opinion:** 2 (Judges Evensen, Shahabuddeen)
    - **Dissenting Opinion:** 1 (Judge ad hoc Thierry)

- **Judgment:** 12 November, 1991

- **Declaration:** 2 (Judges Tarassov and Mbaye)
- **Separate Opinion:** 4 (Vice-President Oda, Judges Lachs, Ni, Shahabuddeen)
- **Joint Dissenting Opinion:** 1 (Judges Aguilar Mawdsley and Ranjeva)
- **Dissenting Opinion:** 2 (Judges Weeramantry, Thierry)

72. <u>Military and Paramilitary Activities in and against Nicaragua- Nicaragua v. United States of America (Contentious case)</u>

- **Order (Request for the indication of Provisional Measures):** 10 May, 1984

  - **Separate Opinion:** 2 (Judges Mosler, Jennings)
  - **Dissenting Opinion:** 1 (Judge Schwebel)

- **Order (Declaration of Intervention of the Republic of El Salvador):** 4 October, 1984

  - **Separate Opinion:** 3 (Judges Nagendra Singh, Oda, Bedjaoui)
  - **Joint Separate Opinion:** 1 (Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière)
  - **Dissenting Opinion:** 1 (Judge Schwebel)

- **Judgment (Jurisdiction of the Court and Admissibility of the Application):** 26 November, 1984

  - **Separate Opinion:** 6 (Judges Nagendra Singh, Ruda, Mosler, Oda, Ago, Sir Robert Jennings)
  - **Dissenting Opinion:** 1 (Judge Schwebel)

- **Judgment (Merits):** 27 June, 1986

  - **Separate Opinion:** 7 (President Nagendra Singh, Judges Lachs, Ruda, Elias, Ago, Sette-Cama, Ni)
  - **Dissenting Opinion:** 3 (Judges Oda, Schwebel, Sir Robert Jennings)

- **Order of Removal from the list:** 26 September, 1991

73. <u>Land, Island and Maritime Frontier Dispute- El Salvador/Honduras: Nicaragua intervening (Contentious Case)</u>

- **Order (Constitution of Chamber):** 8 May, 1987

- **Order (Composition of Chamber):** 13 December, 1989

  - **Separate Opinion:** 1 (Judge Shahabuddeen)

- **Order (Application for Permission to Intervene):** 28 February, 1990

  - **Declaration:** 1 (Judge Oda)
  - **Dissenting Opinion:** 3 (Judges Elias, Tarassov, Shahabuddeen)

- **Judgement (Application by Nicaragua for Permission to Intervene):** 13 September, 1990

- **Separate Opinion:** 1 (Judge Oda)

- **Judgment:** 11 September, 1992

  - **Declaration:** 1 (Judge Oda)
  - **Separate Opinion:** 2 (Judge ad hoc Valticos and Judge Torres-Bernárdez)
  - **Dissenting Opinion:** 1 (Judge Oda)

74. <u>Passage through the Great Belt- Finland v. Denmark (Contentious Case)</u>

- **Order (Request for the Indication of Provisional Measures):** 29 July, 1991

  - **Declaration:** 1 (Judge Tarassov)
  - **Separate opinion:** 3 (Vice-President Oda, Judge Shahabuddeen and judge ad hoc Broms)

- **Order of Removal from the list:** 10 September, 1992

75. <u>Border and Transborder Armed Actions- Nicaragua v. Honduras (Contentious case)</u>

- **Order (Withdrawal of Request for the indication of Provisional Measures):** 31 March, 1988

- **Judgment (Jurisdiction of the Court and Admissibility of the Application):** 20 December, 1988

  - **Declaration:** 1 (Judge Lachs)
  - **Separate Opinion:** 3 (Judges Oda, Schwebel, Shahabuddeen)

- **Order of Removal from the List:** 27 May, 1992

76. <u>Certain Phosphate Lands in Nauru- Nauru v. Australia (Contentious Case)</u>

- **Judgment (Preliminary Objection):** 26 June, 1992

  - **Separate Opinion:** 1 (Judge Shahabuddeen)
  - **Dissenting opinion:** 4 (President Jennings, Vice-president Oda, Judges Ago, Schwebel)

- **Order of Discontinuance:** 13 September, 1993

77. <u>Maritime Delimitation in the Area between Greenland and Jan Mayen- Denmark v. Norway (Contentious Case)</u>

- **Judgment:** 14 June, 1993

  - **Declaration:** 4 (Vice-President Oda, Judges Evensen, Aguilar Mawdsley, Ranjeva)
  - **Separate Opinion:** 5 (Vice President Oda, Judges Schwebel, Shahabuddeen, Weeramantry, Ajibola)
  - **Dissenting Opinion:** 1 (Judge ad hoc Fischer)

78. Territorial Dispute- Libyan Arab Jamahiriya/Chad (Contentious case)

- **Judgment:** 3 February, 1994

    - **Declaration:** 1 (Judge Ago)
    - **Separate Opinion:** 2 (Judges Shahabuddeen, Ajibola)
    - **Dissenting opinion:** 1 (Judge Sette- Camara)

79. Maritime Delimitation between Guinea-Bissau and Senegal- Guinea-Bissau v. Senegal (Contentious case)

- **Order of Removal from the list:** 8 November, 1995

80. Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests- New Zealand v. France Case

- **Order (Request for an examination of the situation - Request for the Indication of Provisional Measures):** 22 September, 1995

    - **Declaration:** 3 (Vice-President Schwebel, Judges Oda, Ranjeva)
    - **Separate Opinion:** 1 (Judge Shahabuddeen)
    - **Dissenting Opinion:** 3 (Judges Weeramantry, Koroma and Judge ad hoc Sir Geoffrey palmer)

81. East Timor- Portugal v. Australia (Contentious case)

- **Judgment (Preliminary Objection):** 30 June, 1995

    - **Separate Opinion:** 4 (Judges Oda, Shahabuddeen, Ranjeva, Vereshchetin)
    - **Dissenting Opinion:** 2 (Judge Weeramantry and Judge ad hoc Skubiszewski)

82. Aerial Incident of 3 July 1988- Islamic Republic of Iran v. United States of America (Contentious Case)

- **Order:** 13 December, 1989

    - **Declaration:** 1 (Judge Oda)
    - **Separate Opinion:** 2 (Judges Schwebel, Shahabuddeen)

- **Order of Removal from the list:** 22 February, 1996

83. Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion)

- **Advisory Opinion:** 8 July, 1996

    - **Declaration**: 5 (President Bedjaoui, Judges Herczegh, Shi, Vereshchetin, Ferrari Bravo)
    - **Separate Opinion:** 3 (Judges Guillaume, Ranjeva, Fleischhauer)
    - **Dissenting Opinion:** 6 (Vice-President Schwebel, Judges Oda, Shahabuddeen, Weeramantry, Koroma, Higgins)

84. Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion)

- **Advisory Opinion:** 8 July, 1996
    - **Declaration:** 2 (Judges Ranjeva, Ferrari Bravo)
    - **Separate opinion:** 1 (Judge Oda)
    - **Dissenting Opinion:** 3 (Judges Shahabuddeen, Weeramantry, Koroma)

85. Fisheries Jurisdiction- Spain v. Canada (Contentious Case)

- **Order (Decision to not authorize filing of Reply and Rejoinder on question of jurisdiction):** 8 May, 1996
    - **Dissenting Opinion:** 1 (Judge ad hoc Torres Bernárdez)
- **Judgment (Jurisdiction of the Court):** 4 December, 1998
    - **Separate Opinion:** 4 (President Schwebel, Judges Oda, Koroma, Kooijmans)
    - **Dissenting Opinion:** 5 (Vice-President Weeramantry, Judges Bedjaou, Ranjeva, Vereshchetin and Judge ad hoc Torres-Bernárdez)

86. Vienna Convention on Consular Relations- Paraguay v. United States of America (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 9 April, 1998
    - **Declaration:** 3 (President Schwebel, Judges Oda, Koroma)
- **Order of Removal from the list:** 10 November, 1998

87. Kasikili/Sedudu Island- Botswana/Namibia (Contentious Case)

- **Judgment:** 13 December, 1999
    - **Declaration:** 3 (Judges Ranjeva, Koroma, Higgins)
    - **Separate Opinion:** 2 (Judges Oda, Kooijmans)
    - **Dissenting opinion:** 4 (Vice-President Weeramantry, Judges Fleischhauer, Parra-Aranguren, Rezek)

88. Legality of Use of Force- Yugoslavia v. United States of America (Contentious case)

- **Order- Request for the Indication of Provisional Measures (Removal from the list):** 2 June 1999
    - **Declaration:** 3 (Judges Shi, Koroma, Vereshchetin)
    - **Separate Opinion:** 2 (Judges Oda, Parra-Aranguren)
    - **Dissenting Opinion:** 1 (Judge ad hoc kreca)

89. Legality of Use of Force- Yugoslavia v. Spain (Contentious Case)

- **Order- Request for the Indication of Provisional Measures (Removal from List):** 2 June, 1999

    - **Declaration:** 3 (Judges Shi, Koroma, Vereshchetin)
    - **Separate Opinion:** 4 (Judges Higgins, Parra-Aranguren, Kooijmans and Judge ad hoc kreca)

90. Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon) (Contentious case)

- **Judgment:** 25 March, 1999

    - **Dissenting Opinion:** 3 (Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola)

91. Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Request for Advisory Opinion)

- **Advisory Opinion:** 29 April, 1999

    - **Separate Opinion:** 3 (Vice-President Weeramantry, Judges Oda, Rezek)
    - **Dissenting Opinion:** 1 (Judge Koroma)

92. Aerial Incident of 10 August 1999- Pakistan v. India (Contentious Case)

- **Judgment (Jurisdiction of the Court):** 21 June, 2000

    - **Separate Opinion:** 3 (Judges Oda, Koroma and Judge ad hoc Reddy)
    - **Dissenting Opinion:** 2 (Judge Al-Khasawneh and Judge ad hoc Pirzada)

93. LaGrand- Germany v. United States of America (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 3 March, 1999

    - **Declaration:** 1 (Judge Oda)
    - **Separate opinion:** 1 (President Schwebel)

- **Judgment:** 27 June, 2001

    - **Declaration:** 1 (President Guillaume)
    - **Separate Opinion:** 3 (Vice-President Shi, Judges Koroma, Parra-Aranguren)
    - **Dissenting Opinion:** 2 (Judges Oda, Buergenthal)

94. Maritime Delimitation and Territorial Questions between Qatar and Bahrain- Qatar v. Bahrain (Contentious case)

- **Judgment (Jurisdiction and Admissibility):** 1 July, 1994

- **Declaration:** 1 (Judge Shahabuddeen)
- **Separate Opinion:** 2 (Vice-President Schwebel and Judge Valticos)
- **Dissenting Opinion:** 1 (Judge Oda)

- **Judgment (Jurisdiction and Admissibility):** 15 February, 1995

    - **Dissenting Opinion:** 5 (Vice-President Schwebel, Judges Oda, Shahabuddeen, Koroma, Valticos)

- **Judgment on Merits:** 16 march, 2001.

    - **Separate Opinion:** 5 (Judges Oda, Parra-Aranguren, Kooijmans, Al-Khasawneh and Judge ad hoc Fortier)
    - **Joint Dissenting Opinion:** 1 (Judges Bedjaoui, Ranjeva and Koroma)
    - **Declaration:** 3 (Judges Herczegh, Vereshchetin, Higgins)
    - **Dissenting Opinion:** 1 (Judge ad hoc Torres Bernárdez)

95. Armed Activities on the Territory of the Congo- Democratic Republic of the Congo v. Burundi (Contentious Case)

- **Order of Removal from the list:** 30 January, 2001.

96. Armed Activities on the Territory of the Congo- Democratic Republic of the Congo v. Rwanda (Contentious case)

- **Order of Removal from the list:** 30 January, 2001.

97. Sovereignty over Pulau Ligitan and Pulau Sipadan- Indonesia/Malaysia (Contentious case)

- **Judgment (Application by the Philippines for Permission to Intervene):** 23 October, 2001

    - **Dissenting Opinion:** 1 (Judge Oda)
    - **Separate opinion:** 3 (Judges Koroma, Judge ad hoc Weeramantry and Judge ad hoc Franck)
    - **Declaration:** 2 (Judges Parra-Aranguren, Kooijmans)

- **Judgment:** 17 December, 2002

    - **Declaration:** 1 (Judge Oda)
    - **Dissenting Opinion:** 1 (Judge ad hoc Franck)

98. Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening) (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 15 march, 1996
    - **Declaration:** 5 (Judges Oda, Shahabuddeen, Ranjeva, Koroma and Judge ad hoc Mbaye)
    - **Joint Declaration:** 1 (Judges Weeramantry, Shi and Vereshchetin)
    - **Separate Opinion:** 1 (Judge Ajibola)

- **Judgment (Preliminary Objection):** 11 June, 1998

    - **Separate opinion:** 5 (Judges Oda, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans)
    - **Dissenting Opinion:** 3 (Vice-President Weeramantry, Koroma and Judge ad hoc Ajibola)

- **Judgment:** 10 October, 2002

    - **Declaration:** 3 (Judges Oda, Herczegh, Rezek)
    - **Separate Opinion:** 4 (Judges Ranjeva, Parra-Aranguren, Al-Khasawneh and Judge ad hoc Mbaye)
    - **Dissenting Opinion:** 2 (Judge Koroma and Judge ad hoc Ajibola)

99. <u>Arrest Warrant of 11 April 2000- Democratic Republic of the Congo v. Belgium (Contentious Case)</u>

- **Order (Request for the Indication of Provisional Measures):** 8 December, 2000

    - **Declaration:** 3 (Judges Oda, Ranjeva and Judge ad hoc Van den Wyngaert)
    - **Separate Opinion:** 2 (Judges Koroma, Parra-Aranguren)
    - **Dissenting Opinion:** 2 (Judge Rezek and Judge ad hoc Bula-Bula)

- **Judgment:** 14 February, 2002

    - **Declaration:** 1 (Judge Ranjeva)
    - **Separate Opinion:** 4 (President Guillaume, Judges Koroma, Rezek and Judge ad hoc Bula-Bula)
    - **Joint Separate Opinion:** 1 (Judges Higgins, Kooijmans and Buergenthal)
    - **Dissenting Opinion**: 3 (Judges Oda, Al-Khasawneh and Judge ad hoc Van den Wyngaert)

100. <u>Application for Revision of the Judgment of 11 September 1992 in the Case concerning theLand, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)- El Salvador v. Honduras (Contentious case)</u>

- **Judgment:** 18 December, 2003

    - **Dissenting Opinion:** 1 (Judge ad hoc Paolillo)

101. <u>Oil Platforms- Islamic Republic of Iran v. United States of America (Contentious Case)</u>

- **Judgment (Preliminary Objection):** 12 December, 1996

    - **Separate Opinion:** 5 (Judges Shahabuddeen, Ranjeva, Higgins, Parra-Aranguren and Judge ad hoc Rigaux)
    - **Dissenting Opinion:** 2 (Vice-President Schwebel and Judge Oda)

- **Judgment:** 6 November, 2003

- **Declaration:** 2 (Vice-President Ranjeva and Judge Koroma)
- **Separate Opinion:** 7 (Judges Higgins, Parra-Aranguren, Kooijmans, Buergenthal, Owada, Simma and Judge ad hoc Rigaux**)**
- **Dissenting Opinion:** 2 (Judges Elaraby, Al-Khasawneh)

102. <u>Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie- Libyan Arab Jamahiriya v. United States of America (Contentious Case)</u>

- **Order (Request for the Indication of Provisional Measures):** 14 April, 1992

  - **Declaration:** 2 (Vice-President Oda- Acting President, Judge Ni)
  - **Joint Declaration:** 1 (Judges Evensen, Tarassov, Guillaume, Aguliar Maudsley)
  - **Separate Opinion:** 2 (Judges Lachs, Shahabuddeen)
  - **Dissenting opinion:** 5 (Judges Bedjaoui, Weereamantry, Ranjeva, Ajibola and Judge ad hoc El- Kosheri)

- **Judgment (Preliminary Objection):** 27 February, 1998

  - **Joint Declaration (1):** (Judges Bedjaoui, Ranjeva, Koroma)
  - **Joint Declaration (2):** (Judges Guillaume, Fleischhauer)
  - **Declaration:** 1 (Judge Herczegh)
  - **Separate Opinion:** 2 (Judges Kooijmans, Rezek)
  - **Dissenting Opinion:** 2 (President Schwebel and Judge Oda)

- **Order of Removal from the list:** 10 September, 2003

103. <u>Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie- Libyan Arab Jamahiriya v. United Kingdom (Contentious Case)</u>

- **Order (Request for the Indication of Provisional Measures):** 14 April, 1992

  - **Declaration:** 2 (Vice-President Oda- Acting President, Judge Ni)
  - **Joint Declaration:** 1 (Judges Evensen, Tarassov, Guillaume, Aguliar Maudsley)
  - **Separate Opinion:** 2 (Judges Lachs, Shahabuddeen)
  - **Dissenting opinion:** 5 (Judges Bedjaoui, Weereamantry, Ranjeva, Ajibola and Judge ad hoc El- Kosheri)

- **Judgment (Preliminary Objection):** 27 February, 1998

  - **Joint Declaration (1):** (Judges Bedjaoui, Guillaume, Ranjeva)
  - **Joint Declaration (2):** (Judges Bedjaoui, Ranjeva, Koroma)
  - **Joint Declaration (3):** (Judges Guillaume, Fleischhauer)
  - **Declaration:** 1 (Judge Herczegh)
  - **Separate Opinion:** 2 (Judges Kooijmans, Rezek)
  - **Dissenting Opinion:** 3 (President Schwebel, Judge Oda and Judge ad hoc Sir Robert Jennings)

104. Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina) (Contentious Case)

- **Judgment:** 3 February, 2003

    - **Separate Opinion:** 2 (Judge Koroma and Judge ad hoc Mahiou)
    - **Dissenting Opinion:** 2 (Judge Vereshchetin and Judge ad hoc Dimitrijevic)
    - **Declaration:** 1 (Judge Rezek)

105. Legality of Use of Force- Serbia and Montenegro v. United Kingdom (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

    - **Declaration:** 4 (Vice-President Weeramantry, Judges Shi, Koroma, Vereshchetin)
    - **Separate Opinion:** 4 (Judges Oda, Higgins, Parra-Aranguren, Kooijmans)
    - **Dissenting Opinion:** 1 (Judge ad hoc kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

    - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
    - **Declaration:** 1 (Judge Koroma)
    - **Separate Opinion:** 4 (Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

106. Legality of Use of Force- Serbia and Montenegro v. Portugal (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

    - **Declaration:** 1 (Judge Koroma)
    - **Separate Opinion:** 4 (Judges Oda, Higgins, Parra-Aranguren, Kooijmans)
    - **Dissenting Opinion:** 4 (Vice-President Weeramantry, Judges Shi, Vereshchetin and Judge ad hoc Kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

    - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
    - **Declaration:** 1 (Judge Koroma)
    - **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

107. Legality of Use of Force- Serbia and Montenegro v. Netherlands (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

    - **Declaration:** 1 (Judge Koroma)
    - **Separate Opinion:** 4 (Judges Oda, Higgins, Parra-Aranguren, Kooijmans)

- **Dissenting Opinion:** 4 (Vice-President Weeramantry, Judges Shi, Vereshchetin and Judge ad hoc Kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

  - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

108. Legality of Use of Force- Serbia and Montenegro v. Italy (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

  - **Declaration:** 5 (Vice-President Weeramantry, Judges Shi, Koroma, Vereshchetin and Judge ad hoc Gaja)
  - **Separate Opinion:** 2 (Judges Oda, Parra-Aranguren)
  - **Dissenting Opinion:** 1 (Judge ad hoc Kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

  - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

109. Legality of Use of Force- Serbia and Monténégro v. Germany (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

  - **Declaration:** 4 (Vice-President Weeramantry, Judges Shi, Koroma, Vereshchetin)
  - **Separate Opinion:** 2 (Judges Oda, Parra-Aranguren)
  - **Dissenting Opinion:** 1 (Judge ad hoc Kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

  - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

110. Legality of Use of Force- Serbia and Montenegro v. France (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

  - **Declaration:** 4 (Vice-President Weeramantry, Judges Shi, Koroma, Vereshchetin)
  - **Separate Opinion:** 2 (Judges Oda, Parra-Aranguren)
  - **Dissenting Opinion:** 1 (Judge ad hoc Kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

- **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
- **Declaration:** 1 (Judge Koroma)
- **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

111. Legality of Use of Force- Serbia and Montenegro v. Canada (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Oda, Higgins, Parra-Aranguren, Kooijmans)
  - **Dissenting Opinion:** 4 (Vice-President Weeramantry, Judges Shi, Vereshchetin and Judge ad hoc kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

  - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

112. Legality of Use of Force- Serbia and Montenegro v. Belgium (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 2 June, 1999

  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Oda, Higgins, Parra-Aranguren, Kooijmans)
  - **Dissenting Opinion:** 4 (Vice-President Weeramantry, Judges Shi, Vereshchetin and Judge ad hoc kreca)

- **Judgment (Jurisdiction of the Court):** 15 December, 2004

  - **Joint Declaration:** 1 (Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby)
  - **Declaration:** 1 (Judge Koroma)
  - **Separate Opinion:** 4 (Judges Higgins, Kooijmans, Elaraby and Judge ad hoc Kreca)

113. Avena and Other Mexican Nationals- Mexico v. United States of America (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 5 February, 2003

  - **Declaration:** 1 (Judge Oda)

- **Judgment:** 31 March, 2004

  - **Declaration:** 2 (President Shi and Vice-President Ranjeva)
  - **Separate Opinion:** 4 (Judges Vereshchetin, Parra-Aranguren, Tomka and Judge ad hoc Sepúlveda)

114. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for Advisory Opinion)

- **Order (Composition of the Court):** 30 January, 2004
    - **Dissenting Opinion:** 1 (Judge Buergenthal)
- **Advisory Opinion:** 9 July, 2004
    - **Declaration:** 1 (Judge Buergenthal)
    - **Separate Opinion:** 6 (Judges Koroma, Higgins, Kooijmans, Al Khasawneh, Elaraby, Owada)

115. Frontier Dispute- Benin/Niger (Contentious Case)

- **Order (formation of Chamber):** 27 November, 2002
- **Order (Composition of Chamber):** 16 February, 2005
- **Judgment:** 12 July, 2005
    - **Dissenting Opinion:** 1 (Judge ad hoc Bennouna)

116. Certain Property - Liechtenstein v. Germany (Contentious Case)

- **Judgment (Preliminary Objection):** 10 February, 2005
    - **Dissenting Opinion:** 4 (Judges Kooijmans, Elaraby, Owada and Judge ad hoc Sir Berman)
    - **Declaration**: 1 (Judge ad hoc Fleischhauer)

117. Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations- Commonwealth of Dominica v. Switzerland (Contentious case)

- **Order of Removal from the list:** 9 June, 2006

118. Armed Activities on the Territory of the Congo (New Application: 2002) Democratic Republic of the Congo v. Rwanda (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 10 July, 2002
    - **Declaration:** 4 (Judges Koroma, Higgins, Buergenthal, Elaraby)
    - **Separate Opinion:** 2 (Judge ad hoc Dugard and Judge ad hoc Mavungu)
- **Judgment (Jurisdiction of the Court and Admissibility of the Application):** 3 February, 2006
    - **Dissenting Opinion:** 2 (Judge Koroma and Judge ad hoc Mavungu)
    - **Joint Separate Opinion:** 1 (Judges Higgins, Kooijmans, Elaraby, Owada and Simma)
    - **Declaration:** 2 (Judges Kooijmans, Elaraby)
    - **Separate Opinion:** 2 (Judges Al-Khasawneh and Judge ad hoc Dugard)

119. Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea- Nicaragua v. Honduras (Contentious Case)

- **Judgment:** 8 October, 2007

    - **Separate Opinion:** 2 (Judges Ranjeva, Koroma)
    - **Declaration:** 2 (Judge Parra-Aranguren and Judge ad hoc Gaja)
    - **Dissenting Opinion:** 1 (Judge ad hoc Torres Bernárdez)

120. Application of the Convention on the Prevention and Punishment of the Crime of Genocide- Bosnia and Herzegovina v. Serbia and Montenegro (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 8 April, 1993

    - **Declaration:** 1 (Judge Tarassov)

- **Order (Further Requests for the Indication of Provisional Measures):** 13 September, 1993

    - **Declaration:** 1 (Vice-president Oda)
    - **Separate Opinion:** 4 (Judge Shahabuddeen, Ajibola, Vice-President Weeramantry and Judge ad hoc Lauterpacht)
    - **Dissenting Opinion:** 2 (Judge tarassov and Judge ad hoc Kreca)

- **Judgment (Preliminary Objections):** 11 July, 1996

    - **Declaration:** 2 (Judge Oda and Judge ad hoc Lauterpacht)
    - **Joint Declaration:** 1 (Judge Shi and Judge Vereshchetin)
    - **Separate Opinion:** 3 (Judges Shahabuddeen, Weeramantry, Parra-Aranguren)

- **Judgment:** 26 February, 2007

    - **Dissenting Opinion:** 2 (Vice-President Al-Khasawneh and Judge ad hoc Mahiou)
    - **Joint Declaration:** 1 (Judges Shi, Koroma)
    - **Declaration:** 3 (Judges keith, Bennouna, Skotnikov)
    - **Joint Dissenting Opinion:** 1 (Judges Ranjeva, Shi, Koroma)
    - **Separate opinion:** 4 (Judges Ranjeva, Owada, Tomka and Judge ad hoc kreca)

121. Certain Questions of Mutual Assistance in Criminal Matters- Djibouti v. France (Contentious Case)

- **Judgment:** 4 June, 2008

    - **Separate Opinion:** 5 (Judges Ranjeva, Koroma, Parra-Aranguren, Tomka and Judge ad hoc Yusuf)
    - **Declaration:** 4 (Judges Owada, Keith, Skotnikov and Judge ad hoc Guillaume)

122. Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Contentious case)

- **Judgment:** 23 May, 2008

    - **Declaration:** 2 (Judges Ranjeva, Bennouna)
    - **Separate opinion:** 2 (Judge Parra-Aranguren and Judge ad hoc Sreenivasa Rao)
    - **Joint Dissenting Opinion:** 1 (Judges Simma and Abraham)
    - **Dissenting Opinion:** 1 (Judge ad hoc Dugard)

123. Dispute regarding Navigational and Related Rights- Costa Rica v. Nicaragua (Contentious Case)

- **Judgment:** 13 July, 2009

    - **Separate Opinion:** 2 (Judges Sepúlveda-Amor and Skotnikov)
    - **Declaration:** 1 (Judge ad hoc Guillaume)

124. Maritime Delimitation in the Black Sea- Romania v. Ukraine (Contentious case)

- **Judgment:** 3 February, 2009

125. Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)- Mexico v. United States of America (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 16 July, 2008

    - **Dissenting Opinion:** 2 (Judges Buergenthal, Skotnikov)
    - **Joint Dissenting Opinion:** 1 (Judges Owada, Tomka, Keith)

- **Judgment:** 19 January, 2009

    - **Declaration:** 2 (Judges Koroma, Abraham)
    - **Dissenting Opinion:** 1 (Judge Sepúlveda-Amor)

126. Certain Criminal Proceedings in France- Republic of the Congo v. France (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 17 June, 2003

    - **Joint Separate Opinion:** 1 (Judges Koroma and Vereshchetin)
    - **Dissenting Opinion:** 1 (Judge ad hoc de Cara)

- **Order of Removal from the list:** 16 November, 2010.

127. Certain Questions concerning Diplomatic Relations- Honduras v. Brazil (Contentious Case)

- **Order of Removal form the list:** 12 May, 2010

128. Pulp Mills on the River Uruguay- Argentina v. Uruguay (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 13 July, 2006

    - **Declaration:** 1 (Judge Ranjeva)
    - **Separate Opinion:** 2 (Judge Abraham, Bennouna)
    - **Dissenting Opinion:** 1 (Judge ad hoc Vinuesa)

- **Order (Request for the Indication of Provisional Measures):** 23 January, 2007

    - **Declaration:** 2 (Judges Koroma, Buergenthal)
    - **Dissenting opinion:** 1 (Judge ad hoc Torres Bernárdez)

- **Judgment:** 20 April, 2010

    - **Joint Dissenting Opinion:** 1 (Judges Al-Khasawneh and Simma)
    - **Separate Opinion:** 4 (Judges Keith, Cançado Trindade, Greenwood and Judge ad hoc Torres Bernárdez)
    - **Declaration:** 2 (Judges Skotnikov, Yusuf)
    - **Dissenting Opinion:** 1 (Judge ad hoc Vinuesa)

129. Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)

- **Advisory Opinion:** 22 July, 2010

    - **Declaration:** 2 (Vice-President Tomka and Judge Simma)
    - **Dissenting Opinion:** 3 (Judges Koroma, Bennouna, Skotnikov)
    - **Separate Opinion:** 4 (Judges keith, Amor, Cançado Trindade, Yusuf)

130. Application of the Interim Accord of 13 September 1995- the former Yugoslav Republic of Macedonia v. Greece (Contentious case)

- **Judgment:** 5 December, 2011

    - **Separate Opinion:** 1 (Judge Simma)
    - **Declaration:** 2 (Judge Bennouna and Judge ad hoc Vukas)
    - **Dissenting Opinion:** 2 (Judge Xue and Judge ad hoc Roucounas)

131. Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters- Belgium v. Switzerland (Contentious Case)

- **Order of Removal from the list:** 5 April, 2011

132. Application of the International Convention on the Elimination of All Forms of Racial Discrimination- Georgia v. Russian Federation (Contentious case)

- **Order (Request for the Indication of Provisional Measures):** 15 October, 2008

    - **Joint Dissenting Opinion:** 1 (Vice-President Al-Khasawneh and Judges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov)
    - **Declaration:** 1 (Judge ad hoc Gaja)

- **Judgment (Preliminary Objection):** 1 April, 2011

    - **Joint Dissenting Opinion:** 1 (President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja)
    - **Declaration:** 2 (Vice-President Tomka, Skotnikov)
    - **Separate opinion:** 6 (President Owada, Judges Koroma, Simma, Abraham, Greenwood, Donoghue)
    - **Dissenting Opinion:** 1 (Cançado Trindade)

133. <u>Territorial and Maritime Dispute- Nicaragua v. Colombia (Contentious case)</u>

- **Judgment (Preliminary Objection):** 13 December, 2007

    - **Dissenting Opinion:** 2 (Vice-President Al-Khasawneh and Judge Bennouna)
    - **Separate Opinion:** 2 (Judges Ranjeva, Abraham)
    - **Declaration:** 5 (Judges Parra-Aranguren, Simma, Tomka, Keith and Judge ad hoc Gaja)

- **Judgment (Application by Costa Rica for Permission to Intervene):** 4 May, 2011

    - **Dissenting Opinion:** 3 (Judges Al-Khasawneh, Abraham, Donoghue)
    - **Joint Dissenting Opinion:** 1 (Judges Cançado Trindade and Yusuf)
    - **Declaration:** 2 (Judge keith and Judge ad hoc Gaja)

- **Judgment (Application by Honduras for Permission to Intervene):** 4 May, 2011

    - **Declaration:** 2 (Judge Keith, Al-Khasawneh)
    - **Dissenting Opinion:** 2 (Judges Donoghue, Abraham)
    - **Joint Declaration:** 1 (Judges Cançado Trindade and Yusuf)

- **Judgment:** 19 November, 2012

    - **Dissenting Opinion:** 1 (Judge Owada)
    - **Separate Opinion:** 2 (Judge Abraham, Donoghue)
    - **Declaration:** 4 (Judges Keith, Xue, Judge ad hoc Mensah and Judge ad hoc Cot)

134. <u>Questions relating to the Obligation to Prosecute or Extradite- Belgium v. Senegal (Contentious Case)</u>

- **Order (Request for the Indication of Provisional Measures):** 28 May, 2009

    - **Joint Declaration:** 1 (Judges Koroma and Yusuf)
    - **Joint Separate Opinion:** 1 (Judges Al-Khasawneh and Skotnikov)
    - **Dissenting Opinion:** 1 (Cançado Trindade)
    - **Separate Opinion:** 1 (Judge ad hoc Sur)

- **Judgment:** 20 July, 2012

    - **Declaration:** 2 (Judges Owada, Donoghue)
    - **Separate Opinion:** 5 (Judges Abraham, Skotnikov, Cançado Trindade, Yusuf, Sebutinde)

- **Dissenting Opinion:** 2 (Judges Xue and Judge ad hoc Sur)

135. <u>Ahmadou Sadio Diallo- Republic of Guinea v. Democratic Republic of the Congo (Contentious Case)</u>

- **Judgment (Preliminary Objection):** 24 may, 2007

  - **Declaration:** 1 (Judge ad hoc Mahiou)
  - **Separate Opinion:** 1 (Judge ad hoc Mampuya)

- **Judgment:** 30 November, 2010

  - **Joint Declaration**: 2 (Judges Al-Khasawneh, Simma, Bennouna, Cançado Trindade and Yusuf) (Judges Keith and Greenwood)
  - **Joint Dissenting Opinion**: 1 (Judges Al-Khasawneh and Yusuf)
  - **Dissenting Opinion**: 2 (Judge Bennouna and Judge ad hoc Mahiou)
  - **Separate Opinion**: 2 (Judge Cançado Trindade and Judge ad hoc Mampuya)

- **Judgment (Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea):** 19 June, 2012

  - **Separate Opinion:** 3 (Judge Cançado Trindade, Judge ad hoc Mahiou and Judge ad hoc Mampuya)
  - **Declaration:** 2 (Judges Yusuf, Greenwood)

136. <u>Jurisdictional Immunities of the State- Germany v. Italy: Greece intervening (Contentious case)</u>

- **Order:** 6 July, 2010

  - **Joint Declaration:** 1 (Judges keith and Greenwood)
  - **Dissenting Opinion:** 1 (Judge Cançado Trindade)
  - **Declaration:** 1 (Judge ad hoc Gaja)

- **Order (Application by the Hellenic Republic for Permission to Intervene):** 4 July, 2011

  - **Separate Opinion:** 1 (Judge Cançado Trindade)
  - **Declaration:** 1 (Judge ad hoc Gaja)

- **Judgment:** 3 February, 2012

  - **Separate Opinion:** 3 (Judges Koroma, Keith, Bennouna)
  - **Dissenting Opinion:** 3 (Judges Cançado Trindade, Yusuf and Judge ad hoc Gaja)

137. <u>Judgment No.2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (Request for Advisory Opinion)</u>

- **Advisory Opinion:** 1 February, 2012

- **Separate Opinion:** 2 (Judges Cançado Trindade, Greenwood)

138. Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand) (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 18 July, 2011

  - **Dissenting Opinion:** 5 (President Owada, Judges Al-Khasawneh, Xue, Donoghue and Judge ad hoc Cot)
  - **Declaration:** 2 (Judge Koroma and Judge ad hoc Guillaume)
  - **Separate opinion:** 1 (Judge Cançado Trindade)

- **Judgment:** 11 November, 2013

  - **Joint Declaration:** 1 (Judges Owada, Bennouna and Gaja)
  - **Separate opinion:** 1 (Judge Cançado Trindade)
  - **Declaration:** 2 (Judge ad hoc Guillaume and Judge ad hoc Cot)

139. Aerial Herbicide Spraying- Ecuador v. Colombia (Contentious case)

- **Order of Removal from the list:** 13 September, 2013

140. Frontier Dispute (Burkina Faso/Niger) (Contentious Case)

- **Judgment:** 16 April, 2013

  - **Declaration:** 1 (Judge Bennouna)
  - **Separate Opinion:** 4 (Judges Cançado Trindade, Yusuf, Judge ad hoc Mahiou and Judge ad hoc Daudet)

141. Whaling in the Antarctic- Australia v. Japan: New Zealand intervening (Contentious case)

- **Order (Declaration of Intervention by New Zealand):** 6 February, 2013

  - **Declaration:** 2 (Judges Owada and Gaja)
  - **Separate Opinion:** 1 (Judge Cançado Trindade)

- **Judgment:** 31 march, 2014

  - **Dissenting Opinion:** 4 (Judges Owada, Abraham, Bennouna and Yusuf)
  - **Declaration:** 1 (Judge Keith)
  - **Separate Opinion:** 6 (Judges Cançado Trindade, Greenwood, Xue, Sebutinde, Bhandari and Judge ad hoc Charlesworth)

142. Maritime Dispute- Peru v. Chile (Contentious Case)

- **Judgment:** 27 January, 2014

- **Declaration:** 6 (President Tomka, Vice-President Amor, Judges Skotnikov, Donoghue, Gaja and Judge ad hoc Guillaume)
- **Separate Opinion:** 1 (Judge Owada)
- **Joint dissenting opinion:** 1 (Judges Xue, Gaja, Bhandari and Judge ad hoc Orrego Vicuña)
- **Dissenting Opinion:** 1 (Judge Sebutinde)
- **Separate opinion, partly concurring and partly dissenting, of Judge ad hoc Orrego-Vicuña**

143. Application of the Convention on the Prevention and Punishment of the Crime of Genocide- Croatia v. Serbia (Contentious Case)

- **Judgment (Preliminary Objection):** 18 November, 2008

  - **Separate Opinion:** 4 (Vice-President Al-Khasawneh, Judges Tomka, Abraham and Judge ad hoc Vukas)
  - **Joint declaration:** 1 (Judges Ranjeva, Shi, Koroma and Parra-Aranguren)
  - **Dissenting Opinion:** 4 (Judges Ranjeva, Owada, Skotnikov and Judge ad hoc Kreca)
  - **Declaration:** 1 (Judge Bennouna)

- **Judgment:** 3 February, 2015

  - **Separate opinion:** 8 (President Tomka, Judges Owada, Keith, Skotnikov, Gaja, Sebutinde, Bhandari and Judge ad hoc Kreća)
  - **Dissenting Opinion:** 2 (Judge Cançado Trindade and Judge ad hoc Vukas)
  - **Declaration:** 2 (Judges Xue, Donoghue)

PENDING CASES

144. Maritime Delimitation in the Indian Ocean- Somalia v. Kenya (Contentious Case)

145. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament- Marshall Islands v. United Kingdom (Contentious case)

146. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament- Marshall Islands v. Pakistan (Contentious Case)

147. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament- Marshall Islands v. India (Contentious Case)

148. Maritime Delimitation in the Caribbean Sea and the Pacific Ocean- Costa Rica v. Nicaragua (Contentious Case)

149. Questions relating to the Seizure and Detention of Certain Documents and Data- Timor-Leste v. Australia (Contentious Case)

- **Order (Request for the Indication of Provisional Measures):** 3 March, 2014

  - **Dissenting Opinion:** 3 (Judges Keith, Greenwood and Judge ad hoc Callinan)

- **Separate Opinion:** 2 (Judges Donoghue, Cançado Trindade)

150. Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea- Nicaragua v. Colombia (Contentious Case)

151. Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast- Nicaragua v. Colombia (Contentious Case)

152. Obligation to Negotiate Access to the Pacific Ocean- Bolivia v. Chile (Contentious Case)

153. Construction of a Road in Costa Rica along the San Juan River- Nicaragua v. Costa Rica (Contentious Case)

- **Order (Joinder of Proceedings):** 17 April, 2013
  - **Separate Opinion:** 1 (Judge Cançado Trindade)
- **Order (Request by Nicaragua for the Indication of Provisional Measures):** 13 December, 2013

154. Certain Activities carried out by Nicaragua in the Border Area- Costa Rica v. Nicaragua (Contentious Case)

- **Order:** 8 March, 2011
  - **Separate Opinion**: 3 (Judges Koroma, Sepúlveda-Amor and Judge ad hoc Dugard)
  - **Declaration:** 4 (Judges Skotnikov, Greenwood, Xue and Judge ad hoc Guillaume)
- **Order (Joinder of Proceedings):** 17 April, 2013
  - **Separate Opinion:** 1 (Judge Cançado Trindade)
- **Order (Counter-Claim):** 18 April, 2013
  - **Separate Opinion:** 1 (Judge ad hoc Guillaume)
- **Order (Requests for the modification of the Order of 8 March 2011 indicating provisional measures):** 16 July, 2013
  - **Dissenting Opinion:** 2 (Judge Cançado Trindade and Judge ad hoc Dugard)
- **Order (Request presented by Costa Rica for the Indication of new Provisional Measures):** 22 November, 2013
  - **Separate Opinion:** 1 (Judge Cançado Trindade)
  - **Declaration:** 2 (Judge ad hoc Guillaume and Judge ad hoc Dugard)

155. <u>Armed Activities on the Territory of the Congo- Democratic Republic of the Congo v. Uganda (Contentious Case)</u>

- **Order (Request for the Indication of Provisional Measures):** 1 July, 2000
    - **Declaration:** 2 (Judges Oda, Koroma)
- **Order (Finding on Counter-claims; fixing of time-limits: Reply and Rejoinder):** 29 November, 2001
    - **Declaration:** 1 (Judge ad hoc Verhoeven)
- **Judgment:** 19 December, 2005
    - **Declaration:** 3 (Judges Koroma, Tomka and Judge ad hoc Verhoeven)
    - **Separate Opinion:** 4 (Judges Parra-Aranguren, Kooijmans, Elaraby, Simma)
    - **Dissenting Opinion:** 1 (Judge ad hoc Kateka)

156. <u>Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (Contentious Case)</u>

- **Order (Decision of the Court Concerning Site Visit):** 5 February, 1997
- **Judgment:** 25 September, 1997
    - **Declaration:** 2 (President Schwebel and Judge Rezek)
    - **Separate Opinion:** 3 (Vice-President Weeramantry, Judges Bedjaoui, Koroma)
    - **Dissenting Opinion:** 7 (Judges Oda, Ranjeva, Herczegh, Fleischhauer, Vereshchetin, Parra-Aranguren and Judge ad hoc Skubiszewski)

VII. JURISDICTIONAL IMMUNITY OF FOREIGN STATES UNDER THE INDIAN LAW

In India, the demarcation between sovereign and non-sovereign functions was maintained in relation to principle immunity of the state for the tortuous acts of its servants. There is also an absence of any legislation, which governs the liability of the State. It is Article 300 of the Constitution of India, 1949, which provides the liability of the Union or State with regard to an act of the Government.

Article 300 of the Constitution of India has its root from Section 176 of the Government of India Act, 1935. As per section 176 of the Government of India Act, 1935, the liability was corresponding with that of secretary of State for India under the Government of India Act, 1915, which ultimately made it coextensive with that of the East India Company, prior to the Government of India Act, 1858. Further, Section 65 of the Government of India Act, 1858, provided that all persons shall and may seek such remedies and proceedings against Secretary of State for India as they would have sought against the East India Company.

It is therefore seen that by series of enactments beginning with the Act of 1858, the Government of India and Government of each State are successors of the East India Company. To put it differently, the liability of the Government is in consonance as that of the East India Company before, 1858.

A careful review of Article 300 provides that first part of the legal provision relates to the way in which proceedings by or against Government may be instituted. It further provides that a State may sue and be sued by its name of the Union of India and a State may sue and be sued by the name of the concerned State (province). The Second part provides that the Union of India or a State may sue or be sued if it relates to its affairs in cases on the similar issues as that of Dominion of India or a equivalent Indian State as the case may be, might have sued or been sued of the Constitution had not been enacted.

In India the principle of Sovereign Immunity started with the decision of Peacock C.J. in **P. and *O. Navigation Company* v. *Secretary of State for India***[85], in which the terms "Sovereign" and "non sovereign" were used while deciding the liability of the East India Company for the torts committed by its servants. In this particular case the provisions of the Government of India Act, 1858 for the first time appeared before the Calcutta Supreme Court for judicial scrutiny and C.J. Peacock determined the vicarious liability of the East India Company by differentiating its functions into "sovereign "and "non sovereign".

Two divergent school of thoughts were expressed by the courts after this landmark decision in which the most important issue was settled by the Madras High Court in the case **of *Hari Bhan Ji* v. *Secretary of State***[86] , where the Madras High Court stated that the immunity of the 'East India' company extended only to the extent of what were called the 'acts of state', strictly so called and that the demarcation between sovereign and Non-sovereign functions was not a well founded one.

After the enforcement of the Constitution, the first major case on the principle of sovereign immunity along with tortious claim which came up before the Supreme Court for the adjudicating the liability of government for torts of its employees was the case of ***State of Rajasthan* v. *Vidyawati*.**[87] In this case, the Court rejected the defense of immunity of the State and held that the State was liable to pay compensation for the tortious act of the driver like any other employer. Later in ***Kasturilal* v. *State of U.P.*[88],** the Supreme Court held that the liability of the State cannot be established as the act by the police is an act in furtherance of sovereign functions of the state.[89]

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[85] 5 Bom HCR App. 1

[86] (1882) 5 ILR Mad. 273

[87] AIR 1962 SC 933

[88] AIR 1965 SC 1039

[89] In this particular case, the members of a jewellery firm established in Amritsar came to Meerut for selling ornaments made of gold and silver. The same day, both the members were arrested by the police in suspicion of having stolen property. In case of lack of evidence against them, they were released but their seized property, in its entirety, was not returned to them. It was established that the police officer in charge of the Malkhana flew the country along with the property of the petitioners. The Apex Court held that, in such circumstances, the liability of the state cannot be established.

In India civil laws are governed by the Civil Procedure Code, 1908 which is an adjective law. It is projected to regulate the procedure to be followed by civil courts. India, unlike its American, British and other Common law counterparts, does not have a comprehensive and codified immunity Act, However, a chapter entitled *"Suits by Aliens and by or against Foreign Rulers, Ambassadors and Envoys"* of the CPC, inter alia, deals with suit against a foreign State in India. The rationale behind the incorporation of Section 86 of the Code is to give effect to the Principles of International Law. Section 86(1)[90], CPC, inter alia, stipulates that no foreign State be sued in India without written consent of the Central Government and therefore it can be said that effect of this section is to alter the extent of absolute doctrine of immunity recognized under the customary international law. And Section 86(2) directs the Central Government not to accord its consent unless it appears to it that the foreign State: Has instituted a suit in the court against the person desiring to sue it, or By itself or another trades within the jurisdiction of the court, or Is in possession of immovable property situated within such jurisdiction and it is to be sued with reference to such property or for money charged thereon, or Has expressly or implicitly waived the privilege accorded to it by section 86 (1).

A. THE DILEMMA OF "CONSENT"

In the case of ***Narain Lal v. Sundar Lal,*** the Court held that [91] the words "may be sued" appearing in section 86 of the code not only refers to institution of suits against foreign State but also to their continuance Section 86, thus, not only exclusively empowers the Central Government to determine competency of suits against a foreign State in Indian domestic Courts but it also sup- plants the relevant principles of international law governing sovereign immunity.[92] However, no consent is needed if the proposed suit is for recovery of arrears of rent from the foreign State in respect of property belonging to the Plaintiff[93]. Further, neither the

[90] § 86 (1) CPC - "Suit against Foreign rules, Ambassadors and Envoys". No foreign State may be sued in any Court otherwise competent to try the suit except with consent of the Central Government certified in writing by a Secretary to that Government.

[91] AIR 1967 SC 1540.

[92] Ali Akbar v. United Arab Republic, A.I.R. 1966 S.C. 230.

[93] Century T. O. Pvt. Ltd. v. Union of India, AIR 1987 Del 124.

CPC nor any other legal instrument prescribes procedure to be followed by the Central Government while granting (or refusing) the requisite sanction.[94]

The situations enumerated under clause (2) of section 86, though in ultimate analysis, coincides with the generally accepted principles of international law and state practice of waiver of immunity, yet clause (1) of section 86 leaves it entirely to the discretion of the Central Government to give or refuse its consent to sue a foreign State. And when the Central Government provides such consent, the foreign State cannot rely upon rules of international law relating to jurisdictional immunity of states, however if the consent of the Central Government has not been obtained before filing the suit necessarily the suit will not be maintainable.[95]

Further, the inevitable requirement of obtaining the consent from the central government prior to the institution of suit in any Court in India has created a lot of space for juristic discussions and debate. In a very interesting case of ***Harbhajan Singh v. Union of India***[96], the Supreme Court while dealing with this issue in an elaborate manner held that the Central Government while permitting or denying the consent, as far as possible, must adhere to the principles of natural justice. The significant point to note here is that the Court ultimately failed to provide with some specific guidelines to be adopted by the appropriate authority before passing the administrative Order. In this matter, the Government refused to grant permission to sue the state of Algeria which led to the filing of a writ petition by the aggrieved person who performed certain maintenance and repairing work at the premise of the the embassy of Algeria.

Further the Supreme Court in ***Shanti Prasad Agarwalla v. Union of India***[97]**,** held that the appropriate authority while taking into account the application under Section 86 of the Code must decide the same in accordance with the provisions of the section itself and state clearly and intelligibly its reasons for rejecting it. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in Court but inasmuch as there is no provision of

[94] B. SEN, A DIPLOMAT'S HANDBOOK OF INTERNATIONAL LAW AND PRACTICE 115 (Martinus Nijhoff, The Hague, 1965).

[95] Mansoor Mumtaz v. Saudi Arabian Airlines Corporation, AIR 2002 Delhi 103.

[96] AIR 1987 SC 9.

[97] AIR1991SC 814.

appeal, it is necessary that there should be an objective evaluation and examination by the authority of relevant and material factors in exercising its jurisdiction. The decision must be expressed in such a manner that reasons can be spelt out from such decision. Though this is an administrative Order in a case of this nature there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and reasonable hearing to the person to be affected by the Order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered.

But, however, may refuse to accord sanction under this section if the dispute is petty or is frivolous. It can also refuse to give consent if no prima facie case is made out. However, the Government of India in its exercise of power to grant sanction is not supposed to go in detail into intricate questions involved and to adjudicate them on merits.[98] It is interesting to note that a province of a foreign has not been provided with the status of independent international personality and cannot claim the immunities mentioned in the section.[99]

B. EXCEPTION OF COMMERCIAL ACTIVITIES

In the absence of a complete/codified definition of a *"foreign State*" in the Code, it is difficult to identify and define different organs and instrumentalities of a foreign State for their immunity in India.[100]It is, thus, of great significance that the questions like; which organ or entity or instrumentality of a foreign State constitutes a "part" of a State for immunity purpose, is consent of the Central Government required to sue such an entity or instrumentality, when can a state entity or instrumentality claim immunity be answered.

[98] Maharaj Kumar Takendra v. Secretary to Govt. of India, AIR 1964 SC 1663.

[99] CIT v. Mir Usman Ali Khan, AIR 1966 SC 1260.

[100] Section 9, *The Diplomatic Relations (Vienna Convention) Act*, 1972. India had espoused the view that the certificate issues by the Foreign office must be treated as conclusive and binding on the courts. See Answers provided by India for the Questionnaire circulated by AALCC, *Report of the Asian-African Legal Consultative Committee*, Third Session, Colombo, vol. II, 20 January to 4 February, 1960, at 194.

In ***Royal Nepal Airline Corporation*** **v.** ***Monorama,***[101] a Division Bench of the Calcutta High Court was called upon to address the question as to whether the provisions of section 86 could be made applicable to a legally incorporated body having separate and distinct personality from the State itself. The Court after carefully analyzing the different state practices and judicial pronouncement of various nations held that a Government Department of a foreign State is entitled to jurisdictional immunity in India. *Mitter J*., reviewing the then prevailing overseas leading decisions, in his concurring opinion, deduced a set of principles of immunity in India. One of the principles was that a suit does not lie against an agent of a foreign State where the act complained of is purported to be done as such an agent.

The other principle deduced was that a suit does not lie against a department of a foreign State. Mere incorporation of a body does not deprive it of immunity even if it is a department of State.[102] An incorporated body, which has a juristic personality carrying on business, according to his Lordship, falls outside the "protective umbrella" of immunity. Similarly, a corporation organised by a foreign Government for commercial objects in which the government is interested does not share the sovereign immunity.

Moreover, a plain reading of section 86 does not make it clear whether the requirement of consent of the Central Government is necessary for instituting a suit against an instrumentality or authority, including a trading corporation, of a foreign State. The Calcutta High Court in *Monorama*[103] was, inter alia, called upon to decide this question against the Royal Nepal Airline Corporation, a foreign trading corporation, for damages for death of a pilot in an air crash. The suit was instituted without consent of the Government of India. The Airline Corporation, owned, controlled and supervised by the Government of Nepal through its Ministry of Transport and Communication, contended that the suit against it was in reality a suit against the Nepal Government as it was financially and otherwise interested in the said corporation and therefore the suit could have been instituted only with the previous permission of the Central Government

[101] A.I.R. 1966 Cal. 319.

[102] Syrian Arab Republic v. A.K. Jajodia, R.F.A (OS) No.30/2003), Decision by the High Court of Delhi, December 9, 2004; (116 (2005) *Delhi Law Times* 444 (DB).

[103] Supra note 80.

of India. Rebutting the said argument, the defendant argued that the Government of Nepal was not a party to the action and therefore, the suit was not in reality against the foreign state and it, therefore, was not necessary to obtain consent of the Central Government to institute the suit. *Bose C.J.*, after an exhaustive review of the then leading English authorities, held that the Airline Corporation was a Department of the Government of Nepal and therefore, it was entitled to jurisdictional immunity.[104]

Subsequently, again in 1983 a Division Bench of the Calcutta High Court was invited to examine the applicability of the statutory requirement of consent of the Central Government when a suit is against an organ, instrumentality or department of a foreign State.[105] The court, recalling the warning of *Lord Stephenson* sounded in ***Trendtex***[106] that the courts should be extremely careful in extending sovereign immunity to bodies which are not clearly entitled to it and realizing that while interpreting section 86 the courts must not extend or curtail rights of individuals, opined that consent of the Central Government is not required to institute a suit against a body or an organ of a foreign State even if it is a part of a foreign State. The court also observed that the legislative intention underlying section 86 does not warrant such consent.[107] The Government of India in its Memorandum on State Immunity[108]submitted to the Asian-African Legal Consultative Committee has taken the position that immunity should not be extended to commercial activities undertaken by a foreign State or its trading organisations. It has also made it clear that no distinction be drawn between such activities undertaken directly by a Government and those undertaken through trading organisations, with or without separate juristic personality.

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[104] Bidhusbhusan Prasad v. Royal Nepal Film Corporation, A.I.R. 1983 NOC 75 (Cal.).

[105] New Central Jute Mills Co. Ltd. v. VEB Deutfracht Seereederei Rostock, A.I.R. 1983 Cal.225.

[106] Supra note 44.

[107] *Protocol Handbook* (Protocol Division, Ministry of External Affairs, Government of India, June 2006), at 9. The Foreign Trade Commissioners, on the other hand, are treated in India quite apart from the Diplomatic and Consular officers and does not provide any special immunity or privileges to them, except that they are entitled to the considerations shown to Foreign Government officials functioning in the country with the cognizance and the approval of the receiving State. However, fiscal privileges may be extent on the principle of reciprocity to the Foreign Trade Commissioners and the staff members, at 22.

[108] Asian-African Legal Consultative Committee (AALCC), Final Report of the Committee on Immunity of States in respect of Commercial and other Transactions of a Private Character 58-62 (New Delhi, 1960).

It would be significant to recall that the Supreme Court in the ***Mirza Ali Akbar case***[109] has disclaimed its jurisdictional authority to decide immunity questions in accordance with the principles of international law by holding that the provisions of Section 86, being *lex fori*, are binding on the courts in India.

However, in India the privilege is only a qualified privilege, because a suit can be brought with the consent of the Central Government in certain circumstances. Thus, it can be said that effect of this section is to modify the extent of doctrine of immunity recognized by the International Law.

[109] Mirza Akbar v. United Arab Republic, AIR1966 SC 230; United Arab Republic v. Mirza Ali, A.I.R. 1962 Cal. 387.

VIII. CONCLUSION

Corporations and individuals are no longer only seen as legal objects, but as legal subjects entitled to remedies when those rights are violated. Yet, the possibility of gaining international enforcement for these rights remains problematic, because international adjudication mechanisms are only still being developed. Hence, the aggrieved parties have sought other ways to obtain redress, in particular by bringing civil claims against the responsible State in the national courts of another State. But, it is exactly in this national sphere where the barrier known as the doctrine of sovereign State immunity arises. Consequently, the underlying tension between State immunity law and commercial norms has also become increasingly significant. Indeed, the idea and existence of a so-called commercial exception to sovereign immunity has been one of the most discussed and debated issues in this area of law. The research question of this dissertation can, thus, be summarized to the following:

- ***What different kinds of approaches to advocate commercial exception to State immunity from jurisdiction have been proposed over time and which of them can still be considered legally credible today?***

Sovereign immunity is best understood not as an established norm of customary international law, but as a legally binding principle of international law. Apart from treaty obligations, states are free to define the scope and limitations of sovereign immunity within their legal systems as long as they observe the limitations set by other principles of international law. Observing the notion of sovereign immunity as a principle delivers for a much better explanation of the still diverse state practice than the currently prevailing notion that conceives immunity as a rule of customary international law and its denial as an exception to that rule. The distinction between principle and rule also has far-reaching practical consequences. Rather than asking whether state practice allows for a certain exception, the focal point of discussion must be on the limits that international law prescribes/provides. Sovereign states therefore enjoy much greater liberty to define the limits and scope of immunity, even though this liberty is restricted.

By the above analysis, it is clear that the international community, in terms of varying national decisions, has not answered the question of sovereign imunity in its entirety. In India, the concept of sovereign immunity is dealt through judicial interpretations. It can also be observed that there is “a ripe for codification” in this regard. Unlike, U.S. and U.K., case laws have been the sole source for addressing the complex issues of state immunity. A comprehensive legislation, in this regard can best address the situation. Also, state owned entities, which find India as a suitable market for investment will invest with greater ease and satisfaction in presence of a legislation addressing the questions of state immunity.

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