

**THE ATTITUDES OF THE LESSER DEVELOPED COUNTRIES
TOWARD THE INTERNATIONAL COURT OF JUSTICE**

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The International Court of Justice represents one of the symbols of man's belief in a world of law and order, a world in which might ceases to be right, and truth and justice prevail. It has, however, remained little more than a symbol because too many States have refused to give the Court their trust and confidence. Nigeria is happy to join the band of those who are prepared to do so. We are not doing this because we think that everything is right with the Court, or with the state of International Law itself. We are doing it because we believe that the proper course for all peace-loving countries is to demonstrate their belief in an ordered world by accepting the jurisdiction of the Court and their co-operating to secure the removal of those features that handicap its effective and world-wide co-operation. I wish to emphasize that Nigeria's acceptance of the compulsory jurisdiction of the International Court is without the sort of reservations which make acceptances of limited value. Our acceptance is subject only to the one condition of reciprocity.

(Declaration of His Excellency Chief S. O. Adebó on the occasion of the formal presentation of Nigeria's declaration of acceptance of the compulsory jurisdiction of the International Court of Justice.)

I. INTRODUCTION

A perennially fashionable pastime of some observers of the international scene is to comment on the alleged rejection of

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international law by the «lesser developed» countries (hereafter, the «LDCs»). Such observations, however, confuse rule with process. What is indeed noteworthy about the conduct of the LDCs is not that they have opted out of the international legal process, but rather, that they are intensively engaged in all features of that process to create, maintain, modify or terminate prescriptions of international law in ways best suited to achieve the world community goals that they favor. That the claims of the LDCs partly conflict with those of the developed States is to be expected, but we observe with satisfaction that through the forging of new developments in customary practice and agreement these conflicting claims continue to be accommodated.

However, what are the attitudes of the LDCs toward international adjudication of their disputes, especially, adjudication by the International Court of Justice, an institution symbolizing the ideal that international disputes should be resolved through process of law and not by unauthorized coercion? Legal writers have given little attention to the attitudes of the LDCs toward the International Court of Justice¹ (hereafter, the «Court»). Further, much of the writings that have commented upon the attitudes of some of these States toward international adjudication, in general, have been quite theoretical. In 1958, Professor Quincy Wright wrote that, «In the Orient generally, there has been a preference to settle disputes by negotiation, mediation or conciliation rather than by courts applying positive law.»² «The «Asian States», he explained, «regard law as a body of ethical and political principles rather than as a logical system of rules to be applied for the solution of disputes and the conduct of nations». These national

1. See, R. P. ANAND, «Attitude of the «New» Asian-African Countries Toward the International Court of Justice», 4 *International Studies*, 119, (1962); STONE, «The International Court and World Crisis», *International Conciliation* No. 536, 36-37, (1962); WRIGHT, «Asian Experience and International Law», 1 *International Studies* 84, (1959); SHIHATA, «The Attitude of New States Toward the International Court of Justice», *XIX International Organization* 203-22, (1965).

2. WRIGHT, «The Influence of the New Nations of Asia and Africa Upon International Law» 7 *Foreign Affairs Reports* 38, (1958).

traditions, according to Wright, are applied in the international field and explain the preference for negotiation or conciliation in the settlement of their disputes over adjudication and application of positive international law.³ Other writers have expressed similar views. Brierly writes that the new Asian and African States, «...are inclined to look on international law as an alien system which the Western nations, whose moral or intellectual leadership they no longer recognize, are trying to impose upon them»,⁴ an attitude that would not be conducive to those States submitting legal disputes to the Court, whose primary function is to apply this «alien» system of law. Thus, one view would be that the LDCs have rejected the Court as being a symbol of the present international legal system which is unacceptable to those states. In his revised report on arbitral procedure to the International Law Commission, the special rapporteur, Professor George Scelle, found what was to him a clearly defined difference of attitude between two groups of States toward his project on arbitral procedure, which sought to make the procedure more like the judicial process than classic arbitration. On the one hand, governments of States, «with a long democratic tradition and a constant concern for judicial correctitude», such as Canada, Denmark, Greece, Netherlands, Sweden, Great Britain and the United States, were «favorably disposed to the adoption of the draft in both its letter and spirit». On the other hand, States that had newly acquired sovereignty and the Communist States and certain Latin American States, were opposed to the draft.⁵ Professor F. S. C. Northrop is very much convinced that, unlike the Islamic world and the Christian West, Asian countries, because of their intuitive philosophy and religion, have great antipathy to the settling of disputes by recourse to laws and processes of litigation. To take a case to the court, he says, is regarded as an immoral act and an evil in those countries. There is always a tendency to settle disputes through mediation

3. *Id.* at 84-6.

4. BRIERLY, *The Law of Nations* 43 (6th ed., 1963).

5. *Yearbook of the International Law Commission 1957*, 11; U.N. Doc. A/CN4/109, para. 8.

and compromise and to forego determinate legal codes except as a last resort.⁶

We suggest that these general assertions must be suspect. Their validity is impeached, first, because the conclusions drawn rest on such foundations as supposed traditions and customs or characteristics peculiar to a racial, cultural, or geographical grouping. Secondly, the conclusions assume that the same attitudes are represented by each State in a bloc, e.g., an Asian or African bloc, or all of the «new» States or all of the «developing» States. The thesis of this article is that the respective attitudes of the LDCs toward the Court vary, just as do the attitudes of the developed States, and that the LDCs do not respond as one or more blocs on the basis of development, new statehood status, or otherwise. This does not suggest that as to a specific question concerning the use or practice of the Court, some or all of the LDCs would not take basically the same position. However, if they did so, our contention would be that their respective interests coincide on that specific issue, not because of a common underlying attitude toward the Court. In this article, we shall test the above thesis by an empirical analysis of the attitudes of the LDCs.

The fact a State is a party to the Statute of the International Court of Justice is an insufficient ground on which to judge the attitude of that State toward the Court. All member States of the United Nations are, under Article 93 of the United Nations Charter, automatically parties to the Statute.⁷ Therefore, for empirical analysis of attitudes of the LDCs, we must look to other factors. The factors we examine here, albeit briefly and impressionistically, are:

- a. the acceptance by LDCs of the «compulsory» jurisdiction provided for in Article 36 (2) of the Statute of the Court;

6. NORTHROP, *Philosophical Anthropology and Practical Politics*, 160-8, 1960; *Taming of the Nations*, 80-1, 1952.

7. Under Article 92 of the Charter of the United Nations, The Statute of the Court is annexed to the Charter, of which it forms an integral part. The text of the Statute may also be found in *I.C.J. Acts and Documents*, No. 1, 2d ed., 37-52.

- b. the degree to which LDCs have made actual use of the Court;
- c. the degree of compliance by LDCs with the decisions of the Court;
- d. the presence of provisions in agreements to which LDCs are parties that confer jurisdiction on the Court to settle legal disputes arising under such agreements;
- e. the presence of provisions in agreements to which LDCs are parties that calling for the Presidente of the Court to choose an arbitrator, umpire, a conciliation commission, etc, and
- f. statements of LDCs' political leaders and representatives in international organizations, and writings of its scholars that refer to the Court.

We recognize that all States are «developing» States. This article uses the term «LDC» in a relative sense and applies it to States whose development levels, in a material sense, are significantly lower than the levels of those designated as «developed» States. The determination of which States were to be classified as LDCs was based on use of various statistical works⁸ providing comparison of relevant factors.⁹

II. JURISDICTION OF THE COURT IN ADVERSARY PROCEEDINGS

In examining the attitudes of the LDCs toward the Court, we give specific attention to their acceptance of the Court's juris-

8. **United Nations Statistical Yearbook, 1975; Statistical Abstract of the United States, Sec. 32, «Comparative International Statistics», 1975; Worldmark Encyclopedia, 1971.**

9. Some of the relevant factors considered were: (a) the nature of the economy; whether basically a raw material economy or based on handicrafts or light industry; (b) per capita income; (c) illiteracy rate; (d) the numbers of teachers in relation to the number of students and the number of teachers per capita; (e) infant mortality rate; (f) the number of rooms per dwelling and the number of persons per room; (g) the number of vehicles per capita, and (h) the number of radios and telephones per capita.

diction for the settlement of legal disputes. Therefore, a brief examination of the jurisdiction of the Court and how it attaches is in order. The function of the Court in adversary proceedings is to decide in accordance with international law such disputes as are submitted to it.¹⁰ Its jurisdiction with respect to such proceedings is defined in Article 93 of the Charter of the United Nations and in Articles 34 to 37 of the Statute of the Court. Such jurisdiction is based on the consent of the States to which the Court is open. The form in which this consent is expressed determines the manner in which a case may be brought before the Court. Article 36, paragraph 1, of the Statute of the Court provides that its jurisdiction comprises all cases which the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a «special agreement» and concluded by the parties especially for that purpose. The subject of the dispute and the parties must be indicated.¹¹ The above-cited provision of the Court's Statute also deals with matters specially provided for in treaties and conventions in force. In such cases a matter is normally brought before the Court by a written application.¹² This is a unilateral act that must, like the «special agreement» discussed above, indicate the subject of the dispute and the parties, and, as far as possible, specify the provision that the applicant contends is the basis for the jurisdiction of the Court.¹³

Thirdly, the Statute of the Court provides that a State may recognize as compulsory the jurisdiction of the Court in all legal

10. Statute of the Court, Art. 38, para. 1. For comprehensive discussion of the jurisdiction of the Court, see Rosenne's works, *The International Court of Justice* (1957) and *The Law and Practice of the International Court of Justice* (1965); JENKS, *The Compulsory Jurisdiction of International Courts and Tribunals* (1957); ANAND, *Compulsory Jurisdiction of the International Court of Justice* (1961).

11. Statute of the Court, Art. 40, para. 1.

12. International Court of Justice, *Yearbook*, 1974-1975, 38. Hereafter, «*Yearbook*».

13. Rules of Court, Art. 35, para. 2. See International Court of Justice, *I.C.J. Acts and Documents*, No. 2; International Court of Justice, *Yearbook*, 1971-1972, 3-11 (1972).

disputes, in relation to any other State accepting the same obligation. These cases are brought before the Court by means of written applications. The conditions on which such compulsory jurisdiction may be recognized are contained in paragraphs 2 — 5 of Article 36 of the Statute, which read as follows:

2. The States parties to the present Statute may at any time declare that they recognize as compulsory **ipso facto** and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

Finally, it should be noted that Article 36, paragraph 6, of the Statute provides that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the de-

cision of the Court. Article 67 of the Rules of the Court lays down the conditions which govern the filing of objections to the jurisdiction of the Court. As a related matter, a considerable number of international instruments provide that in certain eventualities the President of the Court may be requested by the contracting parties to appoint arbitrators, umpires, members of conciliation commissions, etc. Requests to the Presidente of the Court to make such appointments have always been acceded to.¹⁴

III. ACCEPTANCES BY THE DEVELOPED OF THE COMPULSORY JURISDICTION OF THE COURT

To assist our appraisal of the attitudes of the LDCs toward the Court, we turn first, for comparison, to a brief examination of the attitudes of developed States. One should note that the majority of the developed States have accepted the Court's compulsory jurisdiction, and that most of those acceptances are without condition, other than that the opposing party must have also accepted the Court's jurisdiction — the condition of reciprocity — and the reservation that if the parties to the dispute have agreed to some other form of settlement, that is to control (hereafter, the «another form of settlement» reservation).¹⁵ However, France recently withdrew its acceptance of the Court's jurisdiction. This resulted from dissatisfaction over the order of the Court granting preliminary relief in the **French Nuclear Test Cases**,¹⁶ despite the refusal of the French Government even to appear in the case, on the basis of its claim that the Court lacked jurisdiction

14. *Yearbook*, *supra*, note 12, at 42.

15. The latest edition of the International Court of Justice *Yearbook*, will set forth the text of all declarations of acceptance of the Court's compulsory jurisdiction. Discussion herein is based on the *Yearbook, 1974-1975*. The standard form of the «another form of settlement» reservation is illustrated in the declaration of Austria, *Yearbook, 1975-1975*, 50: «This Declaration does not apply to any dispute in respect of which the parties thereto have agreed or shall agree to have recourse to other means of peaceful settlement for its final and binding decision».

16. [1973] I. C. J. Reports 135.

over the particular dispute. Earlier, the Union of South Africa did likewise due to proceedings resulting from disputes over South African control of Namibia (South West Africa).¹⁷ Further, the Communist States have unanimously refused to accept the Court's jurisdiction on the ground of ideological hostility to subjecting their disputes to a tribunal applying law derived from the capitalist system. As Lissitzyn put it, in commenting on the Communist attitude: «In a world divided into two hostile camps, there can be no 'impartial' judges».¹⁸ Surely, here is a bloc approach, but not one explained by alleged perspectives derived from status as «non-Western», or «developing» or «new» states. Indeed, within the group of Communist states are states Western and Non-Western, old and new, developed and lesser developed.

Other developed States with, in Professor Scelle's words, «a constant concern for judicial correctitude», have accepted the Court's jurisdiction, but with significant reservations. Canada excludes all disputes with members of the British Commonwealth of Nations (hereafter, the «Commonwealth Member» reservation). More significantly, Canada also excludes all disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada regarding «conservation, management or exploitation of the living resources of the sea», or concerning «the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada».¹⁹ This latter reservation was made after Canada asserted controversial jurisdictional maritime claims over Arctic areas, and shows refusal to have those claims adjudicated by the Court. Further, Canada, and also the United Kingdom, reserve the right to add to the list of their reservations at any time, with effect from the moment of notification of reservation (hereafter, the «right to change» re-

17. [1966] I. C. J. Reports 4; [1971] I. C. J. Reports 11; *Yearbook*, *supra* note 12, at 49.

18. LISSITZYN, *International Law Today and Tomorrow* 61-63 (1965).

19. *Yearbook*, *supra*, note 12, at 52.

reservation),²⁰ and the United Kingdom excludes disputes as to which any party to the dispute accepted the Court's jurisdiction only for the purpose of that dispute, or where any party accepted the Court's jurisdiction less than twelve months before bringing the dispute before the Court (hereafter, the «twelve-month prior acceptance» reservation).²¹ Such reservations obviously could be used to restrict greatly the number of disputes that otherwise could be brought before the Court. New Zealand excludes disputes arising out of events occurring at a time when New Zealand was involved in hostilities (hereafter, the «belligerency» reservation).²² Israel excludes disputes between it and any State that refuses to establish or maintain normal diplomatic relations with Israel, if the absence or breach of normal relations precedes the dispute and exists independently of that dispute.²³ Israel also excludes disputes arising out of the initial period of establishment of the State, and has a comprehensive belligerency reservation, excluding any dispute arising out of any hostilities, war, state of war, breach of the peace, breach of armistice agreement or belligerent or military occupation, whether war was declared or not, and was declared or not, and whether any state of belligerence was recognized or not. These reservations operate to exclude all disputes between Israel and a substantial number of states, notably the Arab States with which Israel might be expected to have most of its controversies.

20. The Canadian «right to change» reservation reads: «The Government of Canada also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.» *Yearbook, supra*, note 12, at »3.

21. *Yearbook, supra*, note 12, at 77.

22. *Yearbook, supra*, note 12, at 69.

23. *Yearbook, supra*, note 12, at 60-61.

Most of the developed States' acceptances are terminable upon notice.²⁴ Some exclude disputes with regard to questions that by international law fall «exclusively» within the jurisdiction of the reserving State.²⁵ Since, by Article 36 of the Court's Statute, the acceptance of compulsory jurisdiction extends only to disputes over specified issues that clearly could not be «exclusively» within the domestic jurisdiction of a State, this reservation is redundant and represents no limitation on the ambit of acceptance. Its presence would appear to be a gratuitous admonishment to the Court not to exceed its jurisdiction.

However, the reservation pertaining to domestic jurisdiction in the United States' declaration of acceptance of the Court's jurisdiction is of a quite different nature. The United States excludes; «(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America»²⁶ Under this reservation, quite clearly the United States Government has reserved the right, at the time any particular dispute occurs, to exclude the dispute from the Court's jurisdiction by deciding that the dispute is a matter essentially within its domestic jurisdiction. In the **Interhandel Case**,²⁷ brought by Switzerland against the United States, the latter invoked this reservation, asserting the

24. Denmark, Finland, Luxembourg, The Netherlands, Norway, and Sweden provide for automatic renewal of 5 year periods of acceptance, unless at least 6 months prior notice of termination is given before a prior 5 year period is due to end. Switzerland's acceptance is for no specified period, but requires prior notice of one year before acceptance is ended. The United States of America has a 6 month notice provision. **Yearbook, supra**, note 12 at 54, 57, 64, 68, 70-71, 75-76, 78.

25. Canada and New Zealand, **Yearbook, supra**, note 12, at 52-53, 69-70.

26. **Yearbook, supra**, note 21, at 78. Emphasis added. France, India and Pakistan once had the self-judging reservations, but after France dropped her self-judging reservation on July 10, 1957 (International Court of Justice, **Yearbook 1959-1960**, 240), India dropped hers on September 14, 1959, and Pakistan did likewise on September 12, 1960 (International Court of Justice, **Yearbook 1960-1961**, 210-211).

27. See I. C. J. Pleadings, **Interhandel Case** (1959).

unilateral, unrestricted competence of the United States thus to determine, at the time a proceeding was brought against it, whether it would accept the Court's jurisdiction:

... This determination by the United States of America is not subject to review or approval by any tribunal... the determination operates to remove definitively from the jurisdiction of the Court the matter which it determines. After the United States of America has made such a determination... the subjectmatter of the determination is not justiciable.²⁸

Subsequently, in the case of the **Aerial Incident of 27 July 1955**,²⁹ the United States initiated proceedings against Bulgaria for deaths of American nationals on an Israeli civil airplane destroyed while flying over Bulgarian territory. Bulgaria, on the basis of reciprocity, asserted for its benefit the «self-judging» reservation in the United States declaration. Initially, the United States replied that its reservation was conditioned by reasonableness; that the reservation, «does not permit the United States or any other State to make an arbitrary determination, in bad faith».³⁰ This characterization would have subjected the United States' assertion of the reservation to the judgment of the Court, at least for the question of whether the assertion was arbitrary. Perhaps, on reflection, the United States Government decided that if the Court disagreed with the accuracy of the United States' assertion of the reservation in future cases, the Court might well equate inaccuracy with arbitrariness, thus rendering the self-judging provision nugatory in operation. In any event, the United States subsequently stated that, «... A determination under reservation (b) that a matter is essentially domestic constitutes an absolute bar to

28. *Id.*, at 320.

29. See **I. C. J. Pleadings, Aerial Incident of 27 July 1955 (1959)**.

30. *Id.*, at 308. For discussion on this issue, see Gross, «Bulgaria Invokes the Connally Amendment,» 56 **American Journal of International Law** 357 (1962).

jurisdiction irrespective of the propriety or arbitrariness of the determination».³¹ On that basis, the United States, conceding Bulgaria the reciprocal right to assert unconditionally the self-judging reservation against the United States, requested discontinuance of the proceedings, which was granted by order of the Court.

With its self-judging reservation as to domestic jurisdiction, the United States' advance «acceptance» of the Court's jurisdiction appears terminable at any moment, even after a proceeding has been initiated against the United States. Is such a declaration of acceptance of jurisdiction valid? Paragraph 6, Article 36 of the Statute of the Court provides that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the Court. In the **Norwegian Loans Case**³² the then current French acceptance contained a self-judging reservation similar to that of the United States. The majority of the Court avoided deciding whether the self-judging provision was valid. The holding was, since Norway claimed reciprocal benefit of the reservation to avoid the Court's jurisdiction, no dispute existed between the parties as to whether the Court had jurisdiction, which under Article 36 of the Statute was a precondition for the Court's responsibility to determine the question of jurisdiction. Subsequently, in the **Interhandel Case**,³³ in which the United States asserted its self-judging reservation, the Court again side-stepped the issue by disposing of the case on the ground that national judicial remedies in the United States had not been fully satisfied by Switzerland. In both cases some judges of the Court contended that such self-judging reservations were invalid, or invalidated the declaration of acceptance.³⁴ However, the outcome of these decisions, and the action

31. Communication of May 13, 1960, of United States to the Registrar of the Court, **I. C. J. Pleadings, Aerial Incident of 27 July 1955**, 677.

32. [1957] **I. C. J. Reports** 9.

33. [1959] **I. C. J. Reports** 6.

34. See opinion of Judge Lauterpacht in the **Certain Norwegian Loans case**, *supra*, note 32, at 119; opinions of JUDGES LAUTERPACHT, SPENDER KLAESTAD and ARMAND-UGEN in the **Interhandel case**, *supra*, note 33, at 95, 54, 75 and 85. See, generally, 1 Rosenne, **The Law and Practice of the International Court** 395-99 (1965).

of the Court in granting the United States' request for dismissal of proceedings in the case of the **Aerial Incident of 27 July 1955**,³⁵ appears to be the quite pragmatic decision to accept declarations with self-judging domestic jurisdiction reservations for whatever they may be worth, and allow the State making the reservation, or its opponent, in subsequent proceedings before the Court to use the clause to escape the Court's jurisdiction. The operational result, of course, is that whenever a proceeding does continue in which at least one party thereto has a self-judging domestic jurisdiction reservation, the case proceeds on the basis of ad hoc consent of the parties, not on the basis of a purported advance acceptance of the Court's compulsory jurisdiction.

In summary, a majority of the developed States have accepted the Court's compulsory jurisdiction. However, in turning to consider the attitudes of the LDCs, we suggest that a significant feature for comparison is that several of the developed States, especially those who are more powerful, either do not accept the Court's jurisdiction, or have major reservations sharply limiting the extent of their acceptance of jurisdiction.

IV. ACCEPTANCES BY LDCs OF THE COMPULSORY JURISDICTION OF THE COURT

A. **African and Middle Eastern LDCs** — Twelve African and Middle Eastern LDCs have accepted the compulsory jurisdiction of the Court.³⁶ They are: Botswana, Egypt, Gambia, Kenya, Liberia, Malawi, Malta, Nigeria, Somalia, Swaziland, Sudan, and Uganda. As regards Egypt, its acceptance does not figure in this analysis since Egypt has accepted the Court's jurisdiction solely for legal disputes that may arise under one provision of one docu-

35. See Order of the Court, [1960] I. C. J. Reports 146.

36. Yearbook *supra*, note 12, at 51, 55, 57-58, 62-63, 65-66, 70, 74-75, 77.

ment.³⁷ At one time, Iran also had accepted the Court's jurisdiction, but denounced its declaration of acceptance after the United Kingdom brought action against it in the Anglo-Iranian Oil Case,³⁸ and the Court ordered preliminary relief despite Iran's objections that the Court lacked jurisdiction in the particular case.³⁹ At the outset, we see that a substantial number of African LDCs have accepted the Court's jurisdiction. Let us examine the nature of the reservations contained in each of the declarations of acceptance to determine if at that level a bloc approach is taken toward the jurisdiction of the Court. The acceptances of Gambia, Kenya, Liberia, Malta, Somalia and the Sudan state that they are effective until notice of termination is given. The acceptances of Botswana, Malawi, Nigeria, Swaziland and Uganda contain no statement as to the period that the acceptance will be effective nor is there any statement as to their termination. Certain members of each of these groups — Botswana, Kenya, Malawi, Malta, Somalia and Swaziland — have the «right to change» reservation referred to above, for Canada and the United Kingdom. As with the United States, three of the African LDCs have «self-judging» domestic jurisdiction reservations. They are Liberia, Malawi and Sudan. Botswana, Gambia, Kenya, Malta and Swaziland have the domestic jurisdiction reservation without the self-judging provision. The acceptances of the other African LDCs have no reservation of this type. Clearly, the varied picture as to the above reservations indicate that the African LDCs differ substantially in the degree of confidence which they have accepted the Court's jurisdiction.

37. Egypt has accepted the compulsory jurisdiction of the Court with respect to legal disputes that may arise under paragraph 9(b) of the Declaration of the Government of the Republic of Egypt on the Suez Canal and the Arrangements for its Operation. International Court of Justice, *Yearbook 1974-1975* 55 (1975). Cited Declaration may be found in 265 U.N.T.S. I, No. 3821.

38. I. C. J. Pleadings, *Anglo-Iranian Oil Co. Case* (1952); [1952] I. C. J. Reports 93.

39. *Yearbook*, *supra*, note 37, at 49.

Turning to other reservations, we note first that Nigeria and Uganda have no reservations in their acceptances. Botswana, Gambia, Kenya, Liberia, Malawi, Malta, Sudan and Swaziland have the «another manner of settlement» reservation. Malta and Somalia have the same «twelve-month prior acceptance» reservation as does the United Kingdom. Gambia, Kenya and Malta exclude «Commonwealth Member» disputes. Kenya, Malawi, Malta and the Sudan have «belligerency» reservations. Kenya and Malta have an unusual reservation excluding disputes relating to or arising out of «the discharge of any functions pursuant to any recommendation or decision of an organ of the United Nations, in accordance with which the government of the Government of Malta [Republic of Kenya] have accepted obligations».⁴⁰ Malta reserves against disputes arising under a multilateral treaty unless all parties to the treaty affected by the decision are also parties to the case before the Court (hereafter, the «multilateral treaty» reservation). Again, one can see that these reservations vary considerably. Appraising these reservations in the acceptances of African LDCs, we see that they do not reflect a common attitude as to the nature of the disputes which the LDCs desire the Court to settle or as to the degree of confidence that the Court will not exceed its jurisdiction.

B. Asian LDCs — Five Asian LDCs have accepted the compulsory jurisdiction of the Court.⁴¹ They are: Cambodia, India, Mauritius, Pakistan and the Philippines. Again, as with the African LDCs, a significant number of Asian LDCs have accepted the Court's jurisdiction. Noteworthy, also, is that two of the most powerful of the Asian States, India and Pakistan, have done so. As regards the effective period of these acceptances, all but India's provide that they are effective until notice of termination is given. India's acceptance contains no statement as to the period that the acceptance will be in effect nor is there any statement as to its termination. As regards reservations pertaining to domestic

40. *Yearbook, supra*, note 37, at 62.

41. *Yearbook, supra*, note 37, at 52, 59-60, 67, 71-73. At one time China and Thailand had accepted the Court's jurisdiction, but no longer do so. *Supra*, at 49.

jurisdiction, in its prior acceptance, the Philippines made no reference to disputes concerning matters falling within its domestic jurisdiction.⁴² However, in the present acceptance of December 23, 1971, the Philippines added the «self-judging» domestic jurisdiction reservation. No other Asian LDC has the self-judging provision. All other acceptances do have the normal domestic jurisdiction reservation, with Cambodia, Mauritius, and Pakistan referring to matters falling «exclusively» within the domestic jurisdiction, and India using the more protective term, «essentially».

As regards other reservations, all five of the Asian LDCs have the «another manner of settlement» exclusion, and India and Mauritius have the «Commonwealth Member» reservation. The Mauritian acceptance contains the unusual reservation noted above, in the Kenyan acceptance, excluding disputes arising out of belligerent or military occupation, or the discharge of any functions pursuant to United Nations recommendations or decisions in accordance with which the State has accepted obligations. India has a most comprehensive and detailed «belligerency» reservation and also, similar to the Israeli declaration discussed earlier, excludes disputes with the government of any State with which, on the date of an application bringing a dispute before the Court, India has no diplomatic relations. India, Mauritius and the Philippines have the «twelve-month prior acceptance» reservation, and India, Pakistan and the Philippines, the «multilateral treaty» reservation. India also has a comprehensive reservation regarding disputes concerning its land or maritime boundaries and the superjacent airspace.⁴⁴ Although partly dealing with the concerns evidenced in the Canadian reservation, the Indian provision is much more extensive, excluding disputes concerning or relating to:

- (a) the status of its territory or the modification or delimitation of its frontiers or any other matter concerning boundaries;

42. 7 U.N.T.S. I, No. 101.

43. Yearbook, *supra*, note 37, at 72-73.

44. Yearbook, *supra*, note 37, at 60.

- (b) the territorial sea, the continental shelf and the margins, the exclusive fishery zone, the exclusive economic zone, and other zones of national maritime jurisdiction including for the regulation and control of marine pollution and the conduct of scientific research by foreign vessels;
- (c) the condition and status of its islands, bays and gulfs and that of the bays and gulfs that for historical reasons belong to it;
- (d) the airspace superjacent to its land and maritime territory; and
- (e) the determination and delimitation of its maritime boundaries.

Similar in nature, although different in its wording, is the reservation of the Philippines excluding disputes concerning jurisdiction or rights claimed or exercised by the Philippines:⁴⁵

- (i) in respect of the natural resources, including living organisms belonging to sedentary species, of the seabed and subsoil of the continental shelf of the Philippines, or its analogue in an archipelago, as described in in Proclamation No. 370 dated 20 March 1968 of the President of the Republic of the Philippines; or
- (ii) in respect of the territory of the Republic of the Philippines, including its territorial seas and inland waters; . . .

As with the African LDCs, these reservations in the acceptances of the Asian LDCs indicate differing attitudes concerning the nature of the disputes they are willing to have the Court settle and the degree of confidence that the Court will not exceed its jurisdiction.

C. Caribbean, Central and South American LDCs («American» LDCs) — Ten American LDCs have accepted the compulsory jurisdiction of the Court.⁴⁶ They are: Colombia, Costa Rica,

45. *Yearbook*, *supra*, note 37, at 73.

46. *Yearbook*, *supra*, note 37, at 53-56, 58-59, 68, 70, 72. At one time, Bolivia, Brazil, and Guatemala also accepted the Court's jurisdiction, but no longer do so. *Supra*, at 49.

Dominican Republic, El Salvador, Haiti, Honduras, Mexico, Nicaragua, Panama, Uruguay. Again, as with the African and Asian LDCs, a significant number of American LDCs have accepted the Court's jurisdiction. Only the acceptances of Costa Rica, El Salvador and Mexico refer to the effective period of their acceptances or the manner of their termination. All three provide they are effective for a period of five years, with the Costa Rican declaration stating it will be understood to be tacitly renewed for like periods unless denounced, similar to the acceptance of several of the developed States. The El Salvador declaration is silent on renewal, which would indicate an express renewal would be required. The Mexican acceptance provides that it will be in force until six months after the notice of denunciation, similar to the United States acceptance. Of the American LDCs, only Mexico has the self-judging domestic jurisdiction clause in its acceptance, and only El Salvador has the usual domestic jurisdiction reservation. As regards other reservations, only El Salvador's acceptance⁴⁷ contains others, such as the «another manner of settlement», «belligerency» and «multilateral treaty» reservations. The current El Salvadorian acceptance, recently renewed in 1973, also contains a reservation very similar to the Indian reservation discussed earlier, excluding all disputes as to land and maritime boundaries and the superjacent airspace. This El Salvadorian reservation obviously was copied by India in its subsequent 1974 renewal of its acceptance, quoted earlier, in discussion of Asian LDC's acceptances.

The American LDCs, acceptances of the Court's jurisdiction demonstrate, on the whole, a more positive attitude than indicated for the African and Asian LDCs. However, one must not that Mexico, the most powerful of the American LDCs accepting the Court's jurisdiction, indicates by its self-judging domestic jurisdiction reservation that it lacks confidence that the Court will not exceed its jurisdiction. Further, El Salvador has set up very important exclusions as to the nature of the disputes that it is willing to have the Court settle.

47. Yearbook, *supra*, note 37, at 55-56.

V. CASES INITIADED BEFORE THE COURT BY THE LDCs. COMPLIANCE OF LDCs WITH DECISIONS OF THE COURT

Of the twenty-two States that have initiated actions before the Court seeking judgments in contentious cases, eight were LDCs. Those cases were: the **Trial of Pakistani Prisoners of War**⁴⁸ (Pakistan v. India); the **Appeal Relating to the Jurisdiction of the ICAO Council**⁴⁹ (India v. Pakistan); the **Case Concerning the Northern Cameroons**⁵⁰ (Cameroon v. United Kingdom); the **South West Africa Cases**⁵¹ (Ethiopia v. South Africa and Liberia v. South Africa); the **Case Concerning the Temple of Preah Vihear**⁵² (Cambodia v. Thailand); the **Arbitral Award Made by the King of Spain on 23 December, 1906**⁵³ (Honduras v. Nicaragua), and the cases of **Asylum**⁵⁴ and **Haya De La Torre**⁵⁵ (Columbia v. Peru). In all but one of these cases, one LDC brought an action against another LDC. Of the twelve contentious cases filed before the Court since 1960, five were initiated by LDCs, two African and three Asian.

As to compliance of the LDCs with decisions of the Court, no LDC can be said to have failed to comply with a final judgment of the Court. The only case of non-compliance with a final judgment has been that of Albania in the third judgment in the **Corfu Channel Case**⁵⁶ (United Kingdom v. Albania). Iran did not comply with the Court's order indicating interim measures of protection in the **Anglo-Iranian Oil Co. Case**,⁵⁷ but, as discussion in the Security Council on this question revealed,⁵⁸ the binding effect of orders of this type are not beyond controversy, particularly if given before

48. [1973] I. C. J. Reports 328.

49. [1972] I. C. J. Reports 3.

50. [1963] I. C. J. Reports 15.

51. [1966] I. C. J. Reports 4;

52. [1961] I. C. J. Reports 17; [1962] I. C. J. Reports 2.

53. [1960] I. C. J. Reports 192.

54. [1950] I. C. J. Reports 266.

55. [1951] I. C. J. Reports 71.

56. [1949] I. C. J. Reports 244.

57. *Supra*, note 38.

58. See Security Council, **Official Records** (6th year), 559th-565th meetings, Oct. 1-19, 1951.

jurisdiction of the Court over the principal case is established. Further, we should note that France likewise did not comply with the interim measures of protection in the **Nuclear Test Cases**.⁵⁹ Immediately following the judgment in the Temple of Preah Vihear Case, Thailand's attitude appeared somewhat doubtful, but the decision eventually was duly executed.

VI. AGREEMENTS CONTAINING PROVISIONS ACCEPTING THE JURISDICTION OF THE COURT OVER DISPUTES ARISING OUT OF SUCH AGREEMENTS, TO WHICH LDCs ARE PARTIES

A. Bilateral Agreements

1. **African and Middle Eastern LDCs** — Eleven African and Middle Eastern LDCs are parties to thirty-two bilateral agreements calling for disputes arising out of such agreements to be settled by the Court.⁶⁰ Those LDCs are: Afghanistan, Algeria, Egypt, Ethio-

59. [1973] *I. C. J. Reports* 135.

60. **Afghanistan:** Air services agreement with Pakistan (Art. XI), 327 *U.N.T.S.* I, No. 4717; same, with Denmark (Art. IX), 695 *U.N.T.S.* I, No. 9951. **Algeria:** Agreement on Settlement of Disputes with France, 507 *U.N.T.S.* I, No. 7395. **Egypt:** Declaration concerning the Suez Canal and the arrangements for its operation (Para. 9), 265 *U.N.T.S.* I, No. 3821; Air transportation agreement with France (Art. XVI), 127 *U.N.T.S.* I, No. 1710; Air services agreement with Australia (Art. XIV), 173 *U.N.T.S.* I, No. 2269. **Ethiopia:** Agreement relating to air services with Pakistan (Art. XI), 150 *U.N.T.S.* I, No. 1979; Agreement regarding Headquarters of U. N. Economic Commission for Africa (Art. IX), 317 *U.N.T.S.* I, No. 4597; Treaty of Amity and Economic Relations with United States (Art. XVII), 206 *U.N.T.S.* I, No. 2785. **Ghana:** Loan Agreement with United Kingdom (Art. VII), 805 *U.N.T.S.* I, No. 11467. **Guinea:** Air transportation agreement with Netherlands (Art. 9), 392, *U.N.T.S.* I, No. 5646; Air transportation agreement with Norway (Art. 9), 466, *U.N.T.S.* I, No. 6738; Air services agreement with Sweden (Art. 9), 465 *U.N.T.S.* I, No. 6729. **Iran:** Treaty of Friendship with Pakistan (Art. IV), 161 *U.N.T.S.* I, No. 2119; Treaty of Amity, economic relations and consular rights with United States (Art. XXI), 284 *U.N.T.S.* I, No. 4132; Air services agreement with Denmark (Art. 12), 255 *U.N.T.S.* I, No. 3602; Same, with Netherlands (Art. 12), 254 *U.N.T.S.* I, No. 3596;

pia, Ghana, Guinea, Iran, Jordan, Lebanon, Liberia, and Togo. Of these, twenty-two are air service or air transportation agreements. Of special interest are: Ethiopia's agreement with the United Nations regarding the Headquarters of the U.N. Economic Commission for Africa (Article IX);⁶¹ the Treaties of Amity and Economic Relations between the United States and Ethiopia (Article XVII),⁶² Iran (Article XXI),⁶³ and Togo (Article XIV),⁶⁴ respectively, and the Agreement Concerning Monetary and Financial Relations between Lebanon and France (Article XXIII).⁶⁵ One should note that although most of the African and Middle Eastern LDCs named here have not accepted the compulsory jurisdiction of the Court, nevertheless, they are parties to certain bilateral agreements calling for settlement by the Court of disputes arising under such agreements.

2. **Asian LDCs** — Eight Asian LDCs are parties to some forty-three agreements calling for settlement by the Court of dis-

Air transportation agreement with Belgium (Art. 13), 381 U.N.T.S. I, N. 5473. **Jordan:** Air services agreement with Belgium (Art. 9), 479 U.N.T.S. I, No. 6959; Same, with Netherlands (Art. 9), 466 U.N.T.S. No. 6733. **Lebanon:** Agreement concerning monetary and financial relations with France (Art. 23), 173 U.N.T.S. I, No. 2263; Air services agreement with Belgium (Art. 10), 219 U.N.T.S. I, No. 2972; Same, with Pakistan (Art. XII, para B, ii), 614 U.N.T.S. I, No. 8863; Same, with Liberia (Art. XII), 794 U.N.T.S. I, No. 11304; Same, with Yugoslavia (Art. XIII), 602 U.N.T.S. I, No. 8713; Air transportation agreement with Netherlands (Art. IX), 108 U.N.T.S. I, No. 1474; Same, with Italy (Art. 9), 497 U.N.T.S. I, No. 3223. **Liberia:** Air services agreement with Norway (Art. VIII), 466 U.N.T.S. I, No. 6739; Same, with Sweden (Art. VIII), 464 U.N.T.S. I, No. 6716; Same, with Lebanon (Art. XII) 794 U.N.T.S. I, No. 11304; Same, with Switzerland (Art. XII), 559 U.N.T.S. I, No. 8160. **Togo:** Treaty of Amity and Economic Relations with the United States (Art. XIV), 680 U.N.T.S. I, No. 9677.

61. 317 U.N.T.S. I, No. 4597.

62. 206 U.N.T.S. I, No. 2785.

63. 284 U.N.T.S. I, No. 4132.

64. 680 U.N.T.S. I, No. 9677.

65. 173 U.N.T.S. I, No. 2263.

putes arising out of such agreements.⁶⁶ Those LDCs are: Burma, India, Indonesia, the Republic of Korea, Pakistan, the Philippines, Sri Lanka, and Thailand. Three of these States are parties to a considerable number of such agreements. Pakistan is a party to fifteen, the Philippines, to nine, and India, to eight agreements. Of these forty-three, twenty-four are air service agreements. Of

66. **Burma:** Treaty of Peace with Japan (Art. IX), 251 U.N.T.S. I, No. 3542; Treaty regarding recognition of Burmese Independence with United Kingdom (Art. 14), 70 U.N.T.S. I, No. 904. **India:** Treaty of cession of the territory of the free town of Chandernagore with France (Art. XI), 203 U.N.T.S. I, No. 2744; Treaty of Friendship with Philippines (Art. II), 203 U.N.T.S. I, No. 2741; Air services agreement with Australia (Art. XI), 35 U.N.T.S. I, No. 552; Same, with Italy (Art. XI), 464 U.N.T.S. I, No. 6714; Same, with the Netherlands (Art. XI), 108 U.N.T.S. I, No. 1471; Same, with Pakistan (Art. XI), 28 U.N.T.S. I, No. 423; Same, with Sweden (Art. XI), 34 U.N.T.S. I, No. 543. **Indonesia:** Treaty of Peace with Japan (Art. 6), 324 U.N.T.S. I, No. 4688; Treaty of Friendship with Thailand (Art. VI), 213 U.N.T.S. I, No. 2893. **Republic of Korea:** Treaty of Friendship, Commerce and Navigation with United States (Art. XXIV), 302 U.N.T.S. I, No. 4367; Consular Convention with United States (Art. 16), 493, U.N.T.S. I, No. 7211. **Pakistan:** Treaty of Friendship and Commerce with Japan (Art. XIII), 423 U.N.T.S. I, No. 6093; Treaty of Friendship with Iran (Art. IV), 161 U.N.T.S. I, No. 2119; Treaty for the Promotion and Protection of Investments with Federal Republic of Germany (Art. II), 453 U.N.T.S. I, No. 6575; Treaty of Friendship and Commerce with United States (Art. XXIII), 404 U.N.T.S. I, No. 5816; Air services agreement with Afghanistan (Art. XI), 321 U.N.T.S. I, No. 4717; Same (with Ceylon (Sri Lanka) (Art. XI), 28 U.N.T.S. I, No. 428; Same, with Denmark (Art. XI), 302 U.N.T.S. I, No. 4353; Same, with Ethiopia (Art. XI), 150 U.N.T.S. I, No. 1979; Same, with India (Art. XI), 28 U.N.T.S. I, No. 423; Same, with Lebanon (Art. XII, para. B,ii), 614 U.N.T.S. I, No. 8863; Same, with Norway (Art. XI), 334 U.N.T.S. I, No. 4769; Same, with Netherlands (Art. XI), 150 U.N.T.S. I, No. 1980; Same, with Portugal (Art. XI), 320 U.N.T.S. I, No. 4645; Same, with Sweden (Art. XI), 393 U.N.T.S. I, No. 5656. **Philippines:** Treaty of Amity with China (Art. 2), 11 U.N.T.S. I, No. 175; Treaty of Friendship with India (Art. 11), 203 U.N.T.S. I, No. 2741; Treaty of Friendship and General Relations with Italy (Art. V), 44 U.N.T.S. I, No. 674; Treaty of Friendship with Switzerland (Art. 2), 293 U.N.T.S. I, No. 4284; Treaty of Friendship with Thailand (Art. II), 81 U.N.T.S. I, No. 1062; Air services agreement with Thailand (Art. 10), 174 U.N.T.S. I, No. 2274; Same, with United Kingdom (Art. II), 216

special note are: The Treaty of Friendship between Indonesia and Thailand (Article VI);⁶⁷ the Treaty of Friendship between Pakistan and Iran (Article IV);⁶⁸ the Trade Agreement between the Philippines and the Netherlands, Belgium and Luxembourg (Article IX);⁶⁹ and the Treaty for the Promotion and Protection of Investments between Pakistan and the Federal Republic of Germany (Article II).⁷⁰ Again, of these eight Asian parties to such agreements, five have not accepted the compulsory jurisdiction of the Court.

3. **Caribbean, Central and South American LDCs («American» LDCs)** — Eight American LDCs are parties to bilateral agreements calling for settlement by the Court of disputes arising out of such agreements.⁷¹ Those States are: Argentina, Brazil,

U.N.T.S. I, No. 2932; Same, with India (Art. XI), 72 U.N.T.S. I, No. 934; Trade Agreement with Belgium, Luxembourg and The Netherlands (Art. IX), 863 U.N.T.S. I, No. 12382. Sri Lanka (Ceylon): Air services agreement with Australia (Art. XII), 53 U.N.T.S. I, No. 789; Same, with The Netherlands (Art. II), 193 U.N.T.S. I, No. 2608; Same, with Pakistan (Art. XI), 28, U.N.T.S. I, No. 428. **Thailand:** Treaty of Friendship with Indonesia (Art. VI), 213 U.N.T.S. I, No. 2893; Treaty of Friendship with Philippines (Art. II), 81 U.N.T.S. I, No. 1062; Air services agreement with Philippines (Art. 10), 174 U.N.T.S. I, No. 2274.

67. 213 U.N.T.S. I, No. 2893.

68. 161 U.N.T.S. I, No. 2119.

69. 863 U.N.T.S. I, No. 12382.

70. 493 U.N.T.S. I, No. 7211.

71. **Argentina:** General Treaty on Judicial Settlement of Disputes with Chile, 857 U.N.T.S. I, No. 12293. **Brazil:** Treaty for the Pacific Settlement of Disputes with Venezuela, 51 U.N.T.S. II, No. 195. **Chile:** General Treaty on Judicial Settlement of Disputes with Argentina, 857 U.N.T.S. I, No. 12293. **Honduras:** Agreement on Commerce with Belgium, Luxembourg and The Netherlands (Art. XII), 645 U.N.T.S. I, No. 9234. **Mexico:** Commercial Agreement with Belgium, Luxemburg and The Netherlands (Art. 7), 188 U.N.T.S. I, No. 2523; Consular Convention with United Kingdom (Art. 36), 331 U.N.T.S. I, No. 4750. **Nicaragua:** Treaty of Friendship, Commerce and Navigation with United States (Art. XXIV), 367 U.N.T.S. I, No. 5224. **Paraguay:** Agreement on Trade and Navigation with Belgium, Luxembourg and The Netherlands (Art. XVI), 592 U.N.T.S. I, No. 8572. **Venezuela:** Treaty for the Pacific Settlement of Disputes with Brazil, 51 U.N.T.S. II, No. 195.

Chile, Honduras, Mexico, Nicaragua, Paraguay, and Venezuela. These States are parties to ten such agreements, most of which are of substantial import. Of special interest are: the Treaty for the Pacific Settlement of Disputes between Brazil and Venezuela;⁷² the Consular Convention between Mexico and the United Kingdom (Article 36);⁷³ the General Treaty on the Judicial Settlement of Disputes between Chile and Argentina;⁷⁴ the Treaty of Friendship, Commerce and Navigation between Nicaragua and the United States (Article XXIV),⁷⁵ and the Commercial Agreement between Mexico and Belgium, Luxembourg, and the Netherlands (Article VII).⁷⁶ Such agreements certainly indicate a willingness on the basis of a particular bilateral relationship to accept the jurisdiction of the Court for settlement of disputes arising out of that relationship, although five of the above named States, Argentina, Brazil, Chile, Paraguay, and Venezuela, do not accept the compulsory jurisdiction of the Court.

B. Multilateral Agreements

Perhaps of much greater importance than LDC acceptance of the Court's jurisdiction over disputes arising out of bilateral agreements is the fact that many of the LUDCs are parties to multilateral agreements which provide for the Court to settle disputes arising thereunder. The names of States subscribing to such agreements conferring jurisdiction on the Court are shown in the U.N. Document, **Status of Multilateral Conventions in Respect of Which the Secretary-General Acts as Depository.**⁷⁷

Many LDCs are parties to such multilateral agreements as: the International Convention on the Elimination of all Forms of Racial Discrimination (Article 22);⁷⁸ the Convention on the Settle-

72. 51 U.N.T.S. II, No. 195.

73. 331 U.N.T.S. I, No. 4750.

74. 857 U.N.T.S. I, No. 12293.

75. 367 U.N.T.S. I, No. 5224.

76. 188 U.N.T.S. I, No. 2523.

77. U. N. Doc. St/Leg/ 3, Rev. 1.

78. 660 U.N.T.S. I, No. 9464.

ment of Investment Disputes between States and Nationals of Other States (Article 64);⁷⁹ the Agreement for the Establishment of an Indo-Pacific Fisheries Council (Article XIII);⁸⁰ the Single Convention on Narcotic Drugs (Article 48);⁸¹ the Convention Against Discrimination in Education (Article 8);⁸² the Convention on the Nationality of Married Women (Article 10);⁸³ the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Article 10);⁸⁴ the Slavery Convention signed at Geneva on 25 September 1926, as amended (Article 8);⁸⁵ the Universal Copyright Convention (Article XV);⁸⁶ the Convention Relating to the Status of Refugees (Article 38);⁸⁷ the Convention on the Prevention and Punishment of the Crime of Genocide (Article IX);⁸⁸ and the Convention on International Health Regulations (Article 106).⁸⁹ We have named only a few of the many multilateral agreements providing for the Court's jurisdiction over disputes arising thereunder, to which LDCs are parties. As one writer on the attitude of new African and Asian States has stated, «With regard to multilateral treaties, new states cannot be said to have particularly adopted the attitude of objecting to compromissory clauses conferring on the Court the jurisdiction to interpret and apply the treaty involved. . . . [M]any new states have accepted the jurisdiction of the Court through their accession to multilateral treaties».⁹⁰

This discussion of bilateral and multilateral agreements calling for the Court's jurisdiction, to which LDCs are parties, indicates

79. 575 U.N.T.S. I, No. 8359.

80. 418 U.N.T.S. I, No. 1615.

81. 520 U.N.T.S. I, No. 7515.

82. 429 U.N.T.S. I, No. 6193.

83. 309 U.N.T.S. I, No. 4468.

84. 226 U.N.T.S. I, No. 3822.

85. 212 U.N.T.S. I, No. 2861.

86. 216 U.N.T.S. I, No. 2937.

87. 189 U.N.T.S. I, No. 2545.

88. 78 U.N.T.S. I, No. 1021.

89. 764 U.N.T.S. I, No. 10921.

90. SHIHATA, «The Attitude of New States toward the International Court of Justice,» XIX *International Organization* 211-12 (1965). SHIHATA,

that any LDCs who have not accepted the compulsory jurisdiction of the Court nevertheless are willing to confer jurisdiction on the Court to handle disputes arising out of specific agreements. This would tend to establish that there is a gradation of attitudes among the LDCs toward the Court, rather than a polarity between those

writing a decade ago, surveyed the already promising trend of attitudes of some of the newer LDCs:

«Thus, Upper Volta on March 27, 1962 acceded without reservation to the Revised General Act for the Pacific Settlement of International Disputes. At least thirteen new states have also signed the Convention on the Privileges and Immunities of the United Nations without making a reservation as to the compromissory clause. The Optional Protocol concerning the Compulsory Settlement of Disputes arising out of the application of the Optional Protocol concerning Acquisition of Nationality of April 18, 1961, was signed by at least eight new states. The second protocol on this subject (of April 24, 1963) has been signed by thirteen new states, an even greater number. The Convention on the Prevention and Punishment of the Crime of Genocide, Article 9 of which confers jurisdiction on the Court, was signed without reservation to this Article by 25 new states and with a reservation to it only on the part of India, Morocco, and Algeria. Again, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of March 21, 1950, has been signed without objection to the compromissory clause by sixteen new states. The compulsory clause in this Convention was objected to only by Algeria along with the socialist states. The Convention on the Political Rights of Women of March 31, 1953, was also signed without objection to the compromissory clause (Article 9) by thirteen new states and was signed with an objection to Article 9 by Indonesia. Also, the Convention on the Nationality of Married Women of April 20, 1957, was signed without reservation to the jurisdiction of the Court by four new states and with a reservation for which India stipulated the consent of the state in each specific case. The Optional Protocol of Signature concerning the Compulsory Settlement of Disputes of April 29, 1958, arising out of the application of any convention of the law of the sea has so far been signed by ten new states, including Indonesia. On the other hand, ten new states have ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, and two others have signed it. Many of the new states have also accepted the resort to compulsory arbitration provided for in other multilateral conventions.» *Id.*

who are firmly in favor of the Court and those who oppose adjudication by the Court. Again, this tends to disprove any «bloc» theory as to attitudes of the LDCs toward the Court.

VII. AGREEMENTS THAT PROVIDE FOR THE PRESIDENT OF THE COURT TO APPOINT ARBITRATORS, UMPIRES, MEDIATION COMMISSIONS, AND THE LIKE, TO WHICH THE LDCs ARE PARTIES

Although advance consent to appointment by the President of the Court of arbitrators, umpires, mediation commissions, and the like, certainly does not display the same confidence in the Court as acceptance of its compulsory jurisdiction, such consent does indicate a belief in the ability and inclination of the President to appoint competent, impartial officials to perform functions of decision or mediation in international disputes. Nearly all of the LDCs, regardless of geographical location, cultural background, time of establishment of statehood status, or level of development, are parties to one or more of approximately four hundred agreements providing for such appointment power by the President of the Court.⁹¹ The great majority of these agreements concern financial assistance to the LDCs. The African and Middle Eastern States are parties to approximately one hundred such agreements, the Asian States, one hundred and thirty, and the American States, one hundred and seventy-five. The bulk of these agreements fall within the following categories:

- a. Agreements concerning assistance from the United Nations Special Fund;
- b. Loan Agreements with the International Bank for Reconstruction and Development;
- c. Guaranty agreements with the International Bank for Reconstruction and Development;

91. Information on these agreements can be acquired by contacting the Registrar of the International Court of Justice.

- d. Development credit agreements with the International Development Agency, and
- e. Agreements regarding investment guaranties with the United States.

VIII. STATEMENTS OF LDC POLITICAL LEADERS AND REPRESENTATIVES IN INTERNATIONAL ORGANIZATIONS, WRITING OF THEIR SCHOLARS, AND OTHER INDICIA OF ATTITUDES TOWARD THE COURT

In commenting on the attitudes of new African and Asian States toward international adjudication in general, one writer has stated:

«In their writings, scholars from new states may be critical of some of the old rules of international law, but none among them are known to be against the whole system or its judicial machinery. In fact, all the publications of African and Asian scholars known to this writer tend to restate views familiar in standard Western works. Surprising as it may seem, the major criticism against traditional rules of international law has first come from sources other than new states, particularly from writers and socialists, Latin American and even Western countries. Members of the International Law Commission coming from new states as well as representatives of new states in the committees of the General Assembly have occasionally called for qualitative changes in international law to meet the quantitative changes in the international community, but none of them asserted that short of these changes no confidence will be invested in international adjudication.»⁹²

92. SHIHATA, *supra*, note 90, at 213, cites such statements by members of the International Law Commission from LDCs, See, e. g., statements by Mr. el-Erian (United Arab Republic), Mr. el Khouri (Syria) and Mr. Pal (India) in *Yearbook of the International Law Commission*, 1957, U. N. Doc. A/CN. 4/Ser. A/—1957 Add. 1, Vol. II, pp. 161, 169, 158. See also, the Commission's *Yearbook* for 1959, U. N. Doc. A/CN. 4/Ser.

A decade ago, at a «Round Table on the Teaching of International Law Relations» held at Singapore, Egyptian Professor B. Boutros-Ghali stated that, «It appears that Western scholars are more enthusiastic to see a «new approach» on the part of the Afro-Asians than the Afro-Asians themselves».⁹³ Adherence to the international legal process and to the great bulk of established prescriptions of international law was also manifested by other Asian scholars participating in the Round Table.⁹⁴ Reports submitted by participants showed also that Western or Western-styled law books were used for teaching international law in these countries and that, «there is no noticeable tendency among students to regard international law as a product of Western civilization.»⁹⁵

It would seem that any hesitancy felt by LDCs in accepting international adjudication would not concern all disputes, but only those involving some aspect of traditional international law considered to be particularly damaging to the LDCs' position. For example, as Mr. Louis Padilla Nervo, the Mexican member of the International Law Commission, said, when that Commission discussed the law of responsibility of States:

Since... consent to arbitration in a dispute signified willingness to submit to the application of the international

A/1959, Vol. I, p. 151 and *Yearbook* for 1960, U. N. Doc. A/CN. 4/Ser. A/1960, Vol. I, p. 264. See generally, RADHABINOD PAL, «Future Role of the International Law Commission in the Changing World,» 9 *United National Review* 29-34, (Sept., 1962) SHIHATA also cited statements by representatives of LDCs in Committees of the General Assembly. See, for example, the statements of the Algerian delegate, General Assembly, *Official Records... Second Committee* (17th Session), p. 332, and the statements of the Tunisian delegate, General Assembly, *Official Records... Sixth Committee* (17th Session), pp. 227-228.

93. Round Table on the Teaching of International Law Relations, *Final Report of the Round Table, Singapore, January 13-16, 1964*, p. 56.

94. *Id.*, at 57-59.

95. *Id.*, at 68, 113, 133, 209. Compare these views with Western writers such as ROLING, *International Law in an Expanded World* (1960), and STONE, «The International Court and World Crisis», *International Conciliation* No. 536, 36-37 (1962).

rules applying at the moment to the subject under dispute, it was perfectly natural for the new states to be reluctant to submit voluntarily in the matter of state responsibility to a body of rules which, far from taking account of their just aspirations, was created to serve the purposes of their probable opponents.⁹⁶

A very clear example of a LDC's dissatisfaction with a specific area of present international law, but at the same time, a willingness to accept the jurisdiction of the Court, is the long-standing dispute between Great Britain and Guatemala over the territory of Belize, wherein Great Britain has requested that the dispute be submitted to the Court, so that the controversy might be resolved according to international law. Guatemala has rejected this offer, but in turn, has proposed that the case be submitted to the Court, not for decision on the basis of international law, but **ex aequo et bono**.⁹⁷ We suggest that LDCs are not alone in resisting adjudication of disputes where the established law is viewed as contrary to one's position.

As early as 1945, at the «United Nations Conference on International Organizations», fourteen LDCs voted not for just the «optional clause system», but for truly compulsory jurisdiction of the International Court of Justice,⁹⁸ a system by which mere membership in the United Nations would constitute acceptance of the jurisdiction of the Court. The majority of these States were Central and South American, but some were African and Middle Eastern. As a related matter, there are many instances in which developing States have asked the Security Council or the General Assembly of the United Nations to submit a dispute to the advi-

96. Yearbook of International Law Commission 1957, 155.

97. See CASTANEDA, «The United Nations and the Development of International Law,» 15 *International Organization*, 41-42 (Winter, 1961).

98. U. N. Doc. 661, IV/I/50, *Documents of the United Nations Conference on International Organization*, Vol. 13, pp. 224-227; U. N. Doc. 759, IV/I/59, *Id.*, at 246-251. Some of the States so voting were: Bolivia, Costa Rica, Ecuador, El Salvador, Egypt, Guatemala, Iran, Liberia, Mexico, Panama, Syria, Uruguay.

sory confidence of the Court, because it involved legal questions. Such instances cover, in particular, disputes in which the LDCs were involved. As examples, we have the Palestine question⁹⁹ (advisory opinion requested by Syria), the Hyderabad question¹⁰⁰ (submission of the question for an advisory opinion of the Court requested by Pakistan) and the Suez Canal question¹⁰¹ (advisory opinion requested by Egypt). In various regional meetings of political leaders or lawyers from LDCs there have been proposals for regional courts.¹⁰² However, these proposals do not reflect antipathy or dissatisfaction with the International Court of Justice as such, nor with international law or international adjudication machinery in general. Rather, such proposals could be said to be suggestions for the continued improvement and development of the machinery of international adjudication, and, as with the European Court of Justice in the European Economic Community, recognize the value of having regional courts, also. As evidence of approval of the Court, the distinguished legal scholar, Dr. Foda,

99. See the draft resolution submitted by Syria, Security Council **Official Records** (3rd year), 340th Meeting, July 27, 1948, pp. 33-34.

100. Proposal of Muhammad Zafrullah Khan of Pakistan in Security Council **Official Records** (4th year), 426th Meeting, May 24, 1949, p. 28.

101. See the draft resolution submitted by Egypt in Security Council **Official Records** (6th year), 555th Meeting, August 27, 1951, p. 16.

102. A draft for an Arab Court of Justice was prepared by a commission of the Arab League in 1951. This plan was publicized when the heads of the Arab States resolved at their second «Summit Conference» held in Alexandria on September 5-11, 1964, to establish an Arab Court of Justice to solve legal disputes arising between them. The proposed charter of an Organization of the Inter-African and Malagasy States which was approved at Lagos on January 30, 1962, also provided for the conclusion of a separate treaty establishing a permanent conciliation commission. Finally, the Organization of African Unity (OAU) during the second Assembly of Heads of State and Government held in Cairo on July 17-21, 1964, approved a Protocol of Mediation, Conciliation and Arbitration. This Protocol, it should be noted, provides that the arbitral tribunal will decide the cases in accordance with treaties between the states, **International law**, the OAU Charter, and if the parties agree, **ex aequo et bono**.

author of the book, *The Projected Arab Court of Justice*, stated that the Court has been regarded as, «one of the noblest international institutions we have achieved in modern times, designed to preserve peace on earth.»¹⁰³ One of the most dramatic expressions of the attitude of a developing State toward the Court, as evidenced by statements of its political leaders, was the statement in September, 1965, by Chief S. O. Adebó made at the time Nigeria's acceptance of compulsory jurisdiction of the Court was filed. We have quoted that statement in its entirety to introduce this article, in order to emphasize this highly favorable perspective.

We have suggested above, that a LDC might not be inclined to submit a particular dispute to the Court, because the international law that is applicable to that dispute takes no cognizance of interests of the LDCs. Arguably, the attitudes of the developed States is another factor playing a large part in whatever neutral or negative response may exist in the attitudes of some of the LDCs. If States having substantial positions of military or industrial power fail to show a wholehearted acceptance of the jurisdiction of the Court, why should the LDCs be expected to? During the discussion in the Security Council on the Iranian Oil question, after the United States representative had spoken in support of the Court's adjudication of that question, this factor was demonstrated. The Premier of Iran, Mohammed Mossadegh, replied with a withering reminder of the presence of the «self-judging» domestic jurisdiction reservation in the United States' acceptance of the Court's jurisdiction:

You will forgive my saying so, but I cannot understand how the United States can justify a piece of legislation which reduces the Court to a mockery and which effectively prevents any rule of law ever being established in the international field. You must not forget that the United States proudly claims to be the leader of the free world. She wants peace, but peace with justice; and how can you ever have justice

103. FODA, *The Projected Arab Court of Justice*, 168 (1957).

if the only forum which can settle international disputes is reduced to a humiliating position where it cannot entertain any disputes which ought to be properly decided by it?¹⁰⁴

Certainly, the more developed States have given ample evidence of neglect or disregard of judicial methods for settlement of disputes. For example, as Professor Corbett has pointed out in commenting on the United Kingdom's position in its Buraimi dispute with Saudi Arabia: «The determination to keep this dispute out of the hands of the International Court of Justice suggests either a lack of confidence in that tribunal or some doubt as to the justice of the British case.»¹⁰⁵ Merely illustrative of many other examples are: (1) Australia's refusal to submit her Pearl Fisheries dispute with Japan to be settled upon the basis of international law;¹⁰⁶ (2) the United States' evocation of her self-judging reservation in the **Interhandle** case;¹⁰⁷ (3) Israel's refusal, backed by France, Great Britain and the United States, to go before the Court in her dispute with Egypt over the latter's right to stop Israeli ships and cargoes passing through the Suez Canal;¹⁰⁸ and (4) France's refusal to litigate its disputes with Australia and New Zealand over its atmospheric nuclear tests in the Pacific.¹⁰⁹ Surely, it does nothing to foster wholehearted acceptance of the jurisdiction of the Court by LDCs when the United States in her agreements with those States, **mainly treaties of economic assistance**, inserts a self-judging reservation into the clause conferring jurisdiction on the Court in the event of disputes arising under the agreements.¹¹⁰

104. Security Council **Official Records**, (6th year), 559th-565th Meetings, October 1-19, 1951, at 241.

105. CORBETT, **Law in Diplomacy**, 182 (1960).

106. TAOKA, «Japan and the Optional Clause», **Japanese Annual of International Law**, 8-9 (1959).

107. [1959] **I.C.J. Reports** 6.

108. LARSON, «Peace Through Law: The Role and Limits of Adjudication», **Proceedings of the American Society of International Law 1960**, p. 12.

109. [1973] **I. C. J. Reports** 135.

110. SHIHATA, *supra*, note 90, art. 211.

Some time ago, as a matter of personal interest, this writer sought an express statement from the Governments of eighty-two LDCs concerning their attitudes toward the Court. The United Nations Representative of each of these States was asked to set forth the position of his Government with respect to the following questions:

- (1) The position of your nation regarding acceptance by it of compulsory jurisdiction before the International Court of Justice, and, if compulsory jurisdiction is not favored;
- (2) The position of your nation regarding modifications in the structure, composition, powers or procedure of the International Court of Justice which, if made, would cause your nation to look more favorably upon acceptance of such compulsory jurisdiction.

Replies were received from twenty-five U. N. Representatives or their home Government offices, a level of response perhaps commensurate with an informal inquiry from an academic. Some replies merely quoted the text of their Stat's acceptances of the Court's jurisdiction. However, several provided interesting insights into the attitudes of the LDCs toward the Court, and pertinent to this article, showed highly varied attitudes.

There are those Governments who do not intend to declare their advance acceptance of the Court's jurisdiction, regardless of change in the Court's composition, procedure, etc.:

Having due regard to the provisions of Article 36 of the Statute of the Court, retention of the optional clause is preferred by the Government of Ethiopia. This basic position is not likely to be affected by any institutional and structural modification which might be contemplated for the Court.¹¹¹

111. Letter from Ambassador Tesfaye Gebre-Egzy, Permanent Representative of Ethiopia to the United Nations.

In that Ethiopia has not accepted the compulsory jurisdiction of the Court, this response favoring retention of the optional clause would indicate that Ethiopia does not anticipate a change of attitude regardless of improvements in the Court's composition or procedure. At the opposite end of the attitudinal spectrum, other Governments, such as those of Nigeria¹¹² and Colombia,¹¹³ emphasize their unqualified acceptances of the Court's jurisdiction and their support for the Court's role in maintenance and development of international law. Between these polar positions are those who demand various changes to make the Court more representative of the present international community as the condition for their acceptance of its jurisdiction.¹¹⁴ However, perhaps representative of the attitude of many of the LDCs was

112. Letter from B. C. Odogwu, Second Secretary for the Nigerian Mission to the United Nations. His letter also forwarded the following suggestions by Chief S. O. Adebo for improvement of the Court:

- «(a) redistribution of the seats on the court to reflect the increase in the number of independent African, Asian and other states that have become members of the United Nations since 1945;
- (b) establishment of a United Nations panel of eminent jurists to pass on the qualifications of candidates before they are considered for election by the Security Council and the General Assembly.»

113. Letter from Ambassador Alvaro Herran Medina, Alternate Representative from Columbia to the United Nations. Ambassador Medina pointed out not only Colombia's acceptance of compulsory jurisdiction, but also, the fact that Colombia was a party to the constitutional instruments of several international organizations (among them being the Intergovernmental Committee for European Migration and the International Atomic Energy Agency), which contain clauses by which settlement of disputes between the organization and its members is to be effected through the Court, at least as an alternative procedure.

114. For example, in a letter from Ambassador George J. Tomeh, Permanent Representative of Syria to the United Nations, the Ambassador stated that Syria and other countries would be more inclined to accept the jurisdiction of the Court when: (a) the progressive development and codification of international law is accentuated and (b) the composition

the air of «benign neglect» toward the Court. The brief Jamaican reply was classic in this regard:

The Government of Jamaica has not yet accepted the compulsory jurisdiction of the Court. This does not necessarily imply that there is no intention to do so. But at the present **there is no pressing need** . . .¹¹⁵

For many LDCs the case is that they are not antagonistic toward the Court, but rather, that they have no definite attitude. In response to a letter of inquiry asking for improvements that might cause the Government of Kuwait to accept the Court's jurisdiction, the Kuwaitian Government replied:

As for the second part of your question concerning the modifications in structure, composition, powers or procedure of the International Court of Justice, I should like to inform you that the Government of Kuwait has not so far found it necessary to take any action to this effect.¹¹⁶

of the Court is more representative of the major forms of civilization and the principal judicial systems of the world. He wrote:

«Cette apprehension de nombre d'Etats à accepter la juridiction obligatoire de la Cour disparaîtra, à notre avis, à mesure que s'accroît le processus de développement progressif du Droit International et sa codification conformément au paragraphe 1 (a) de l'art. 13 de la Charte et à mesure que la composition de la Cour sera plus représentative des formes de civilisation et des principaux systèmes juridiques de notre monde contemporain.»

Mohsen S. Esfandiary, Counsellor for the Iranian Mission to the United Nations, pointed out that in 1951, Iran had withdrawn its acceptance of the Court's compulsory jurisdiction, and that any review of that decision would entail study of questions, «relating to the structure, composition, powers or procedure of the International Court of Justice, in view of the increase in the membership in the World Organization».

115. Letter from L.M.H. Barnett, First Secretary of the Jamaican Mission to the United Nations. Emphasis added.

116. Letter from Ambassador Abdul-Aziz Al-Rashid, Permanent Representative of Kuwait to the United Nations.

Still other Governments, such as that of Trinidad and Tobago,¹¹⁷ replied that the question of accepting the compulsory jurisdiction of the Court simply had not been brought up for consideration.

These responses evidence not only a lack of any definite attitude concerning the Court and the acceptance of its jurisdiction, but also, perhaps, the reason behind that attitude. In the view of these states, it has not been necessary, there has been no urgency, to consider the matter. Implicit in this view is the opinion that the Court is not playing a meaningful role in the international affairs of States, or, to put the proposition differently, that States have not given a meaningful role to the Court.

XI. CONCLUSION

This article opened with the thesis that, just as with the developed States, the attitudes of the LDCs toward the Court vary, and that they do not respond as a bloc on the basis of their lack of development, new statehood status, or otherwise. We submit that the thesis has been borne out by the above analysis of various criteria demonstrating the attitudes of the LDCs toward the Court. Twenty-seven LDCs have accepted the compulsory jurisdiction of the Court. Although the Central and South American States accepting the Court's jurisdiction cannot be said to be «new» States, some of the Asian States and the bulk of the African States are of recent vintage. Other LDCs from the various geographic groupings indicate a positive attitude toward the Court. Some LDCs indicate, with or without reasons, their disinclination to accept the Court's compulsory jurisdiction. Still others demonstrate a «lack of attitude», failure to have given any consideration to the question. This may be a backhand way of saying that in the view of some LDCs, the Court is not playing a sufficiently meaningful role to merit consideration of the question of the acceptance of compulsory jurisdiction.

117. Letter from the Permanent Secretary, Ministry of External Affairs, for Trinidad and Tobago.

Thirty-one of the LDCs from all geographic groupings, are parties to bilateral agreements calling for jurisdiction of the Court over disputes that may arise under such agreements. Many of those States have not filed a general acceptance of the Court's jurisdiction (e. g., Ethiopia, Burma, Brazil and Lebanon). Many more LDCs are parties to significant multilateral agreements providing for the Court's jurisdiction over disputes arising thereunder. Reservations to such jurisdiction are sporadic. Nearly all LDCs are parties to agreements calling for the President of the Court to appoint an arbitrator, umpire, etc., if a dispute arises under such agreements. These facts indicate that the attitudes of the LDCs toward the Court cover the spectrum from strong approval to definite disapproval of its jurisdiction, a gradation of attitudes that is present in all geographic groupings.

Nor, in general, can the LDCs be said to be less favorably inclined toward the Court than are the developed States. Five out of twelve of the contentious cases filed before the Court since 1960, have been filed by LDCs. Other LDCs have suggested that advisory opinions from the Court be requested, and in matters affecting them. If the bulk of the bilateral agreements calling for jurisdiction of the Court over disputes arising out of such agreements, or for the appointment by the President of the Court of arbitrators, etc., deal with matters peripheral to the vital interests of LDCs, so also is the case with such agreements to which developed States only are parties. If some LDCs, such as the Sudan, the Philippines, and Mexico, have self-judging domestic jurisdiction reservations in their acceptances of the compulsory jurisdiction of the Court, so also does that champion of the rule of law, the United States. Although many of the LDCs' acceptances contain manifold reservations (e. g., India, Malta, Mauritius and El Salvador), some of the developed States' acceptances contain significant limitations (e. g., Canada, Israel and the United Kingdom). Many are the declarations of LDCs that are unsullied by reservations. No statements by Western political leaders or scholars could be more laudatory of the Court than those of Chief Adebayo of Nigeria, or Foda of Egypt. If certain LDCs have been loath to adjudicate certain disputes before the Court, so too have been various major developed States.

We have searched for, but not found, diatribe or antipathy against the Court by the LDCs. What has been found are constructive proposals for the continued improvement of the Court and international adjudication machinery in general. Some of those proposals are:¹¹⁸

- (1) Decentralization of international adjudication;
- (2) A balanced composition in the Court representing all principal judicial systems;
- (3) Increased development and codification of international law;
- (4) As a corollary to (3), above, development and codification of international law that more adequately represents the interests of lesser developed as well as developed States; and
- (5) A panel of eminent jurists to pass on the qualifications of candidates for the Court before they are considered for election by the Security Council and the General Assembly.

We predict that there will be acceptances of compulsory jurisdiction of the Court by other LDCs. However, implementation of the above proposals undoubtedly would promote an increased trend of acceptances. The recent increase in election of judges from LDCs may augur well for future adjustments in line with these proposals.¹¹⁹

This article has examined the attitudes of LDCs toward the Court. We would argue that the LDCs, like developed States, have this basic attitude: They would prefer to use the Court when an advantage could be gained, and would prefer to avoid its use when something could be lost. It is perhaps accurate that as long as

118. See *supra*, notes 112 and 114. See proposals in **Report of the 1966 Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States**, U. N. Doc. A/6230, 102-03, *et seq.* (June 27, 1966); 11 *Va. J. Int. L.* 291 (1971); 5 *Ga. J. Int. & Comp. L.* 314 (1975).

119. In 1975, three judges on the Court were from African LDCs.

truly compulsory jurisdiction is absent, the Court may not achieve major importance in the international activities of States. As a Pakistani writer has said:

The conclusion is inescapable that unless member states of the United Nations are prepared to shed their narrow and outmoded conceptions of sovereignty, the rule of law among the nations will remain an unattainable ideal.

However, if we consider the development of international organization, international law and international adjudication in the period of merely the last thirty years, **much** has transpired. The world community's optimum future development must to a great extent await the development of each of its members, as long as the community's development is based upon consensus, cooperation and consideration for the rights of member States, and not some new form of «Pax Roma». Therefore, the challenge of our times is to promote further development in the States of today, development both in a material sense and in attitudes toward international law and order. The exciting prospect for the Court is not what will be its role in 1980, or 1990, but in the Twenty-First Century, and it is today's leaders, and in a very real sense, concerned citizens of all States, who in large measure will brighten or dim the prospects for future, more constructive attitudes toward the International Court of Justice. As we began, so we end with Chief Adebó's words blazing a path for the future:

The International Court of Justice represents one of the symbols of man's belief in a world of law and order, a world in which might ceases to be right, and truth and justice prevail.