UNIT 12. THE PEACEFUL SETTLEMENT OF CONFLICTS IN INTERNATIONAL LAW

1. International disputes and their settlement by peaceful means.
2. The means of political settlement.
3. Peaceful settlement of disputes by the United Nations.
4. The jurisdictional settlement of international disputes: general aspects.

INTERNATIONAL DISPUTES AND THEIR SETTLEMENT BY PEACEFUL MEANS

A. The notion of controversy

B. The obligation of peaceful settlement

C. The freedom to choose the peaceful means of settlement

D. The types of peaceful means of settlement

A. THE NOTION OF CONTROVERSY

- Conflict situations often arise in international relations: "alarms", "tensions", "conflicts", "crises", etc.,
  - element of destabilization and can compromise the maintenance of international peace and security.
  - can also affect specific parties that are confronted with each other because of a divergence that has reached a critical point.
- Properly speaking, they are called international "controversies" (international disputes; *différends internationaux*).
- Classic definition:
  - PCIJ Judgment 26/3/1925, concerning the case of the Mavrommatis concessions in Palestine (Greece v. United Kingdom): "a dispute is a disagreement on a point of law or fact, a contradiction, an opposition of legal theses or interests between two persons."
- Currently: adding that the disagreement in question must arise between subjects of international law (states and international organizations) and be expressed in an objective and externalized form.
  - ICJ “for a dispute to exist it must be shown that the claim of one party is confronted by the manifest opposition of the other party”.
- Traditionally, doctrine has traditionally distinguished between:

- Legal disputes (Art. 36.2 ICJ Statute) “disputes concerning : a) the interpretation of a treaty; b) any question of IL; 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, which are capable of settlement "by application of the principles and rules of IL”.
  - legal disputes should be settled by jurisdictional means, i.e., by recourse to arbitration or judicial settlement.
- Non-legal (or political) disputes: disputes other than those listed above, i.e., those that cannot be settled by the application of international law. Resolution through recourse to political means of settlement (diplomatic negotiation, good offices, etc.).
  - Disputes in which what is sought is a change in the law in force.
  - Disputes in which the parties consider that their interests are not susceptible of being adequately protected by considering only the existing legal rules.

➢ In any case, the distinction between legal and non-legal or political disputes is essentially relative:

- All international disputes have legal aspects and political aspects.
- Decisive: attitude of the disputing states and their willingness to classify it in one way or another and thus to submit to a political or legal means of settlement.

B. THE OBLIGATION OF PEACEFUL SETTLEMENT

- End of nineteenth century: peace through law and limiting recourse to war.
  - The Hague Peace Conferences of 1899 and 1907: Convention for the Peaceful Settlement of International Disputes of 18 October 1907.
- End WWI: LoN
  - commitments for the peaceful settlement of disputes and the limitation of recourse to war.
  - 1928: General Treaty for the Renunciation of War (Briand-Kellog Pact) the settlement of their differences, whatever their origin or nature, should be sought only by peaceful means (Article 2)".
- End WW2 creation of UN 1945:
  - Article 1 of the charter: "to maintain international peace and security, and to that end ... to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".
  - Article 2: and the peaceful settlement of disputes (par. 3) prohibition of the use of force (par. 4)
  - Chapter VI of the Charter: scope of the obligation of peaceful settlement of disputes (Articles 33 to 37).
    - Further developed by:

- General Assembly Resolution 2625 (XXV) of 24 October 1970. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations;
- General Assembly Resolution A/37/10 of 15 November 1982, Manila Declaration on the Peaceful Settlement of International Disputes,
- General Assembly Resolution A/43/51 of 5 December 1988. Declaration on the Prevention and Elimination of Disputes and Situations Which May Endanger the Maintenance of International Peace and Security and on the Role of the United Nations in this Field.

- ICJ Case law:
  - The principle of the peaceful settlement of international disputes is complementary to the principle prohibiting the threat or use of force.
  - It is a rule of customary law whose observance is essential in today's world.
  - The obligations of the charter relating to the peaceful settlement of disputes are "manifestly peremptory" in character .
- Characteristics of the obligation:
  - It is limited to disputes "the continuance of which is likely to endanger the maintenance of international peace and security" (Art. 33.1 of the charter).
  - This obligation does not apply to purely internal conflicts in which no other subjects of international law are involved, insofar as they do not affect international peace and security.

- The obligation of peaceful settlement of international disputes constitutes an obligation of conduct and not an obligation of result
- In seeking such settlement, the state parties to the dispute must:
  - refrain "from any action which might aggravate the situation in a manner likely to endanger the maintenance of international peace and security and shall act in conformity with the purposes and principles of the United Nations". (Resolution 2625 (15).
  - “continue to respect in their mutual relations the obligations incumbent upon them by virtue of the fundamental principles of international law concerning the sovereignty, independence, and territorial integrity of states, as well as the other generally recognized principles and rules of international law". (Manila Declaration).
  - in the event of failure to reach a solution by one of the above-mentioned peaceful means, "to continue to seek settlement of the dispute by other peaceful means agreed upon by them”. (Resolution 2625 (25).
  - "neither the existence of a dispute nor the failure of a procedure for the peaceful settlement of a dispute authorizes the parties to the dispute to resort to the threat or use of force”. (Manila Declaration).

C. FREEDOM OF CHOICE OF THE PEACEFUL MEANS OF SETTLEMENT

- The obligation of peaceful settlement is counterbalanced by the principle of free choice of the means or procedures of settlement to be used in each case: corollary of the sovereign equality of states.
- Art. 33 UN Charter and GA Resolution 2625 (XXV) lists most of the procedures or means of peaceful settlement: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to regional bodies, agreements or systems or other peaceful means of their choice. The 1982 Manila Declaration also includes good offices.
- States are free to decide on the means to be applied in each case and may choose any of those listed in the above texts, combine them at their discretion, or choose any other peaceful means freely devised by them. BUT CONSENT is indispensable: it may occur either:
  - once the dispute has crystallized (ex post choice)
  - have been established beforehand by any means expressive of the consent of the parties thereto (ex ante choice) by the conclusion of general treaties of pacific settlement, or of regional and bilateral agreements.

D. TYPES OF PEACEFUL MEANS OF SETTLEMENT

- Traditional classification (Art. 33 charter-open list):
  - Political or diplomatic procedures: negotiation, good offices, mediation, investigation, conciliation, recourse to regional bodies, agreements, or systems, or any others that the parties accept.
    - Solutions need not be based exclusively on legal considerations.
    - Results are not in principle binding on the parties.
  - Legal or jurisdictional procedures: arbitration and judicial settlement.
    - Submission to an impartial third party who issues a binding decision based on law.
    - Solution based in IL (unless authorization of ex aequo et bono).
  - Other peaceful means.
- Practice shows that there may also be combinations of these or recourse to different procedures.

THE MEANS FOR POLITICAL SETTLEMENT

A. Diplomatic negotiations

B. Good offices and mediation

C. Inquiry

D. Conciliation

E. Resource to regional bodies or agreements

A. DIPLOMATIC NEGOTIATION

- Negotiation: essence of diplomacy.
  - Context of the peaceful settlement of disputes: flexible means of dispute settlement in which the settlement is attempted directly by the parties concerned without the intervention of a third party.
    - self-composition or self-settlement procedure.
    - discretion, flexibility, immediacy, and ability to be applied to any type of international dispute.
    - usually: first form of settlement. BUT: no rule of prior exhaustion as condition for applying other means.
- The Manila Declaration:
  - States must conduct themselves in such a way as to make the negotiation meaningful, so that a settlement acceptable to the parties can be reached rapidly: manifestation of the requirement of good faith.

B. GOOD OFFICES AND MEDIATION

- Procedures involving the intervention of a third party to facilitate the settlement of the dispute when relations between the parties are strained or have broken down.
- Very similar means: degree of intensity of the intervention.
- Good offices:
  - Action of a third party to bring the parties to the dispute closer together, but without providing its own point of view on the dispute.
  - Very modest intervention aimed at facilitating the parties to enter negotiations with a view to settling the dispute between them.
  - May be exercised by a friendly state, by an international organization (or a senior official or agent thereof) or by an eminent person, either on his own initiative or at the request of the parties to the dispute.
  - Informal.
- Mediation:
  - Action of a third party (state, international organization, personality of recognized authority) to conciliate the claims of the parties in conflict, assuming greater role than in good offices.

- Convention for the Pacific Settlement of International Disputes of 18 October 1907: role of the mediator consists of: "to reconcile opposing claims and to pacify resentments which may have arisen between the states in conflict" (Article 4).
- More direct and intense intervention between the parties, trying to bring their positions closer together, acting as a channel of communication between them, suggesting possible avenues of agreement and making efforts to accommodate the respective positions of both parties.
- May even present own proposals for a mutually acceptable compromise.

➢ Its results are not binding on parties.

C. INQUIRY OR INVESTIGATION

- Inquiry or "fact finding“: intervention of a third party to facilitate the settlement of the dispute when an international dispute results from a divergence of appreciation on points of fact.
  - Third party is usually not an individual person or entity but a collective body: the international commission of inquiry.
  - Intervention of a commission of inquiry, constituted with the agreement of the parties to the dispute, to clarify the factual issues by means of an impartial and conscientious examination.
    - conventions: list of experts usually regulate in some detail the procedure to be followed by the commission (adversarial examination of the data submitted to establish an impartial determination of the facts).
  - End of work: preparation of a report, limited to the ascertainment of the facts, which will be delivered to the parties.
    - the parties, in the light of the facts established in the report, shall agree on the measures to be adopted to resolve the dispute.
- Fact-finding of IO to gain a better understanding of a situation or conflict: outside the mechanisms of direct settlement between the parties.

D. CONCILIATION

- Intervention of a third party (conciliation commission) which is constituted with the agreement of the parties, to clarify the issues in dispute, drawing the attention of the parties to all measures likely to facilitate an amicable settlement of the dispute and making proposals to that end.
  - Carried out by a collective body: rules of procedure and scope of its functions are established in detail by the parties.
  - The conciliation commission will conduct an adversarial examination of the case, considering its factual and legal elements, and will endeavor to submit to the parties a report with recommendations containing the basic outlines of a settlement proposal.
  - The report of the commission and its recommendations are not binding but are submitted to the parties for their consideration to facilitate an amicable settlement of the dispute.

E. RESOURCE TO REGIONAL ORGANIZATIONS AND AGREEMENTS

- Most regional IO: mechanisms for the peaceful settlement of disputes, which include recourse to political and jurisdictional means of settlement. Important contribution to peacemaking in an area.
  - Ex: mechanisms for the peaceful settlement of disputes that have been established by both the Council of Europe (CE) and the Organization for Security and Cooperation in Europe (OSCE).
- Regional agencies or arrangements: Chapter VIII of the UN Charter.
  - Manila Declaration 1982: recourse to regional bodies or agreements is appropriate for the peaceful settlement of disputes of a local character.

PEACEFUL SETTLEMENT OF DISPUTES BY THE UNITED NATIONS

A. General considerations

B. Role of the General Assembly

C. Role of the Security Council

D. Role of the Secretary General

A. GENERAL CONSIDERATIONS

- UN Charter: Chapter VI (Articles 33 to 38).
  - Not only of "disputes" but also of "situations".
    - First, in practice, it is the state that brings the matter before the Security Council that in principle determines whether it should be registered as a "dispute" or as a "situation". Although the Security Council may modify this provisional qualification, in practice it is generally maintained.
    - Secondly, the imprecise nature of the term "situation" has allowed the Security Council to intervene in the peaceful settlement of various conflicts that could be considered "internal", despite the reservation of national authority of states established in Article 2.7 of the charter.
- Organization's own action for the peaceful settlement of the most serious international disputes, i.e., those "the continuance of which is likely to endanger the maintenance of international peace and security" (Article 33.1), as well as for situations "likely to lead to international friction or to give rise to a dispute" (Article 34).
- Authority of the SC, the GA, and the Secretary General, regardless of the role of the International Court of Justice in the judicial settlement of disputes.

B. ROLE OF THE GENERAL ASSEMBLY

- Article 10: the General Assembly may discuss any matters or questions within the limits of the charter and may make recommendations on such matters or questions to the members of the United Nations and Security Council.
- Initiative:
  - any member of the United Nations, a state which is not a member of the United Nations, or the Security Council, may bring before the General Assembly any question relating to the maintenance of international peace and security.
  - the General Assembly may make recommendations concerning such questions to the state or states concerned or to the Security Council or to both (Article 11.2).
- Limitations: while the Security Council is performing the functions assigned to it by the charter with respect to a dispute or situation, the General Assembly shall refrain from making any recommendation thereon unless requested to do so by the Security Council (Article 12.1). Furthermore, any question of that nature in respect of which action is required must be referred by the General Assembly to the Security Council, before or after discussion (Article 11.2).

C. ROLE OF THE SECURITY COUNCIL

- Article 24: "primary responsibility for the maintenance of international peace and security". Important role in the settlement of international disputes. Obligation in the case of a dispute whose continuance is likely to endanger the maintenance of international peace and security, and the parties to the dispute have not succeeded in settling it by the means indicated in Article 33.
- Initiative:
  - On its own initiative (ex officio) to "investigate any dispute or any situation likely to lead to international friction or give rise to a dispute" (Article 34).
  - At the request of either a member of the organization or a non-member (Article 35.1 & 2).
- Both the General Assembly (Article 11.3) and the Secretary-General (Article 99) may "bring to the attention" of the Security Council situations that are likely to endanger international peace and security .
- Modalities of action (operate in a gradual manner):
  - Investigate any dispute or situation.
  - “Urge" the parties to settle the dispute or situation by peaceful means.

- If this invitation is unsuccessful, direct action more be taken by "recommending such procedures or methods of adjustment as may be appropriate".
- If the Security Council considers that the dispute is likely to endanger the maintenance of international peace and security, it may "recommend such terms of settlement as it may deem appropriate" (Article 37.2) and, if so requested by all the parties to a dispute, make recommendations to them for the purpose of bringing about a peaceful settlement (Article 38).
- Chapter VII.

➢ Recommendations within the scope of Chapter VI have no binding force on the parties to the dispute.

D. ROLE OF THE SECRETARY GENERAL

- Not only administrative functions:
  - Article 98: shall perform such other functions as may be entrusted to him by other principal organs of the organization, and these may include functions in the field of the peaceful settlement of international disputes.
  - Article 99: may call the attention of the Security Council to any matter which in his opinion may endanger the maintenance of international peace and security.
  - Manila Declaration: assume the responsibilities entrusted by the charter.
- Such diplomatic functions include discussions and consultations with the parties, fact-finding activities, participation in or assistance with negotiations for the settlement of a dispute, participation in the implementation of an agreed settlement, etc.
- General Assembly Resolution 43/51 of 5 December 1988: Rules.

JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES

A. General aspects

B. International arbitration

b.1. Origins and evolution

b.2. Characteristics

b.3. Operation

C. The international judicial settlement: International Court of Justice

c.i. Organization

c.ii. Contentious function

c.iii. Advisory function

D. Other international tribunals

A. GENERAL ASPECTS

- The means of a jurisdictional nature: arbitration and judicial settlement.
  - The settlement of the dispute is entrusted to an impartial third party, the arbitrator or judge, who exercises his jurisdiction (*juris dictio*) by issuing a binding decision for the parties based on law.
  - Based on the will of the parties and, therefore, disputes arising between states cannot be submitted to arbitration or judicial settlement without their consent. It may precede or follow the origin of the dispute, but it is in any case necessary for the arbitral or judicial body to exercise its jurisdiction.
  - Malleable nature of the jurisdictional settlement is particularly notable in the case of arbitration, which is easily adaptable to the design that states may wish to configure.
  - The solution of the dispute, contained in the decision of the arbitral or judicial body, will be binding on the parties.
  - Appropriate for the settlement of legal disputes, but, given the relativity of the distinction between legal disputes and political disputes, what determines recourse to a judicial means of settlement is not the nature, legal, or political, of the dispute, but the willingness of the parties to submit it to arbitral or judicial settlement.

B. INTERNATIONAL ARBITRATION

B.1. ORIGINS AND EVOLUTION

- Jurisdictional means of dispute settlement between subjects of international law carried out by arbitrators chosen by the parties, based on international law, the result of which is expressed in a binding decision called a judgment or arbitral award.
- It is the oldest jurisdictional dispute settlement procedure.
- Over time, arbitration has been applied not only to disputes between states but also to disputes between states and other subjects of international law, in particular international organizations.
  - Agreement of 26 June 1947 concerning the Headquarters of the United Nations, concluded between the United States and the UN, which establishes, in Article 21, the obligation to have recourse to arbitration to settle disputes which may arise between the parties.
- Arbitration between states and other actors who do not have the status of subjects of international law, such individuals or legal entities, has also acquired a growing presence in international practice.
- Arbitration is currently undergoing a process of increasing revitalization, particularly in financial, territorial, and environmental disputes.

B.2. CHARACTERISTICS

- Recourse to arbitration is based exclusively on the will of the parties, so that the basis of arbitration is to be found in the agreement of the parties who establish it to settle a dispute existing between them.
- Consent: three typical modalities known respectively as: arbitration commitment; arbitration agreement; and arbitration clause.
  - **Arbitration commitment**: an ad hoc international agreement entered by the parties after a dispute has arisen between them, exclusively for the purpose of settling the dispute by arbitration.
  - **Arbitration agreement**: treaties, usually multilateral, whose purpose is precisely the peaceful settlement of disputes that may arise between the parties in the future, and which provide for compulsory recourse to arbitration.
  - **Arbitration clause**: many bilateral and multilateral treaties relating to various matters contain an "arbitration clause" providing for the submission to arbitration of some or all disputes that may arise in the future in connection with the interpretation or application of the treaty.
- The jurisdiction is based on the consent of the states parties to the dispute and is limited to the exercise of the functions assigned to it.

- Scope of the tribunal's jurisdiction will therefore be specified in the arbitration settlement treaty, in the arbitration clause of the applicable agreement or in the specific arbitration settlement agreement.
- Once the arbitration proceedings have been initiated, the arbitral tribunal is the sole judge of its own jurisdiction in the event of any question arising therefrom.

B.3. OPERATION

- First step: constitution of the arbitral tribunal
  - in accordance with the provisions of the treaty or agreement establishing the obligation to resort to arbitration or the commitment to submit to arbitration entered by the parties.
  - sole arbitrator (sole arbitrator) or a collegiate body (arbitral tribunal) is constituted for the specific case and is extinguished as soon as its functions are completed.
- The applicable law: determined by the parties.
- The arbitration procedure: fixed by the parties in the agreement or compromise by which arbitration is resorted to, or failing that, shall be established by the arbitration body itself.
  - in 1958, ILC model rules on arbitral procedure which are very detailed and have been used only to a limited extent.
  - general rule: a written and an oral phase. The treatment of procedural issues that may arise (preliminary objections, failure of one of the parties to appear, interim measures, counterclaims, etc.) are regulated along the usual lines of contentious jurisdictional proceedings.
- The arbitration award: decision adopted by the arbitrator or tribunal and is binding on the parties to the dispute, is final and must be immediately enforceable.
  - adopted by the vote of the sole arbitrator or, as the case may be, of the majority of the members of the tribunal.

- Must be in writing and legally reasoned.
- Possibility of "individual opinions" or "statements" explaining their vote, as well as "dissenting opinions" in which they express their disagreement with the award.
- Binding effect: on the parties and has the authority of *res judicata*;
  - Relative *res judicata* limited to the parties to the arbitration and in respect of the matter decided therein.
- The arbitral award resolves the dispute definitively without the possibility of further appeal to another arbitral or judicial instance.
- Interpretation (interpretation or correction of material errors) or review (new facts) before the same body that has issued the arbitration award, but this can only be done with the prior consent of the parties.
- Nullity of the arbitral award: limited grounds (excess of the court's power; corruption of a member of the court; failure to state reasons for the judgment, or key violation of a fundamental rule of procedure; nullity of the stipulation to resort to arbitration or of a compromise.
- Immediately enforceable.

C. INTERNATIONAL JUDICIAL SETTLEMENT. THE ICJ

C.1. ORGANIZATION

- Principal judicial organ of the UN and its statute is part of the UN Charter.
- It is the only international court with general jurisdiction to hear any case brought before it by the parties on any subject matter.
- It is a pre-constituted and permanent judicial institution that is ready to carry out its mission at any time in accordance with the provisions of its statute and rules of procedure.
- Organization and composition:
  - 15 members, elected by the SC and the GA, no two of whom may be of the same nationality. Always judges of the five permanent members of SC.
  - term of nine years from among persons of high moral character who possess the qualifications required for appointment to the highest judicial offices in their respective countries, or who are jurisconsults of recognized expertise in the field of international law.
  - since 1946 distribution of the number of members of the court as follows: Africa: 3; Latin America: 2; Asia: 3; Eastern Europe: 2; Western Europe; and other states: 5.
- Institution of the judge ad hoc (Article 31 of the statute):

- Since judges of the nationality of the litigating parties retain their right to participate in the proceedings, in cases where there is a judge of the nationality of one of the parties, any other party may designate a person of its choice to sit as a judge. Likewise, if the court does not include among the judges hearing the case any judge of the nationality of the parties, each of the parties may designate one.

- Sessions:
  - As a general rule: plenary session but it may also constitute chambers composed of three or more judges.
  - Chamber for summary proceedings composed of five judges.
  - Certain categories of cases (labor disputes, transit, and communications): chambers of three or more judges (practically no activity to date).
  - Ad hoc chambers: may be constituted at any time by the court at the request of the parties to hear a specific case.
- Assisted by a secretariat and headed by a secretary elected by the court.

C.2. CONTENTIOUS FUNCTION

- Contentious jurisdiction, the purpose of which is the settlement of legal disputes between states - Article 38(1) of the statute, which states that its function is "to decide disputes submitted to it in accordance with international law".
- Jurisdiction *ratione personae*: exclusively disputes between states (member states of the UN; non-members of the UN that become parties to the statute under the conditions established; and even to states that are neither members, under the conditions established by the SC (Art. 53.3 of the statute).
  - Subject-matter jurisdiction (*ratione materiae*): all disputes brought before it by the parties (Art. 36.1 of the statute). In principle, they concern legal questions (Article 36. 2 of the statute):
    - interpretation of a treaty;
    - any question of international law;
    - existence of any fact which, if established, would constitute a breach of an international obligation;
    - nature or extent of the reparation to be made for the breach of an international obligation.

    But the question of whether a dispute is or not a "legal dispute" must be decided by the court itself.

- Applicable law: must decide "in accordance with international law" (Art. 38.1 of the statute), although it also has the power to decide a dispute *ex aequo et bono*, if the parties so agree (Art. 38.2).
- Modalities of voluntary submission to the court: consent may be expressed in various ways:
  - by an **ad hoc commitment**: compromise after the dispute has arisen whereby, they decide to submit the solution to the court. It is itself an international agreement subject to the Vienna Convention (registration and notification).
  - by a **general dispute settlement treaty or by a judicial clause** provided for in a specific treaty concluded prior to the occurrence of the dispute.
  - by the "**optional clause of compulsory jurisdiction**" (Art. 36.2 of the statute): unilateral declarations (formulated in different times) generate a mutual encounter that serves as a basis for the court's jurisdiction over future disputes. PROBLEM: reservations and conditions formulated by states.
  - by the so-called **forum prorrogatum**: acceptance of its jurisdiction was derived from conclusive facts, deduced from the conduct of the states, by virtue of the institution called forum prorrogatum. In this case, submission to the jurisdiction of the court is produced by tacit acceptance, through conclusive facts, when the respondent state acts in such a way as to establish that it has accepted the jurisdiction of the court in the face of the application presented by another state.

- The contentious procedure:
  - Initiation: either jointly by the parties by means of a notice of commitment or unilaterally by the plaintiff by means of a written request or application addressed to the secretary of the court.
  - Indication of the subject matter of the dispute and the parties.
  - The parties are represented before the court by their respective agents and may also have counsel enjoying privileges and immunities.
  - Absolute respect for the equality of the parties.
  - Incidents: preliminary objections concerning the inadmissibility of the application or the lack of jurisdiction of the court to hear the case; provisional measures to be taken to safeguard the rights of each of the parties; where a party fails to appear before the court or refrains from defending its case, etc.).
  - End: judgment or sentence.
    - Must be reasoned and must mention the names of the judges who have taken part in it (Art. 56 of the statute).
    - Any of the judges has the right to have his/her individual opinion (agreement with the judgment, but not with the reasoning of the majority) or dissenting opinion (dissenting vote dissenting from the decision of the majority) added to the judgment (Art. 57 of the statute).

- Binding on the parties to the litigation and on the case that has been decided, i.e., it enjoys the relative authority of *res judicata* (Art. 59 of the statute).
- UN Charter: each member of the UN undertakes to comply with the decision of the court in any litigation to which it is a party.
- If one of the parties to a dispute fails to comply, Article 94 of the charter provides that the other party may refer the matter to the Security Council: if it deems it necessary, make recommendations, or take measures to enforce the judgment.
- It is final and not subject to appeal.
  - Possibility of filing an appeal for interpretation before the court, in case of disagreement on the meaning or scope of the judgment (Art. 60 of the statute), or for review, in case of discovery of a fact of such a nature as to be a decisive factor and which, when the judgment was rendered, was unknown to the court and to the party requesting review (Art. 61 of the statute).
- Each party shall bear its own costs, unless otherwise ordered by the court.

C.3. ADVISORY FUNCTION

- Give advisory opinions on any legal question at the request of any body authorized to do so by the Charter of the United Nations, or in accordance with the provisions thereof. The purpose is to provide legal advice to organs and institutions that request it.
- Organs and agencies authorized to request advisory opinions (Art. 96 Charter):
  - Directly authorized by the charter:
    - GA and SC on any legal question.
  - Authorized by the GA: other United Nations organs "within the scope of their activities".
    - ECOSOC, Trusteeship Council, Interim Commission of the GA.
    - 15 United Nations specialized agencies.
- Procedure:
  - the court must examine whether it can issue an AO.
  - it must satisfy itself that the question raised is of a legal nature: questions which are formulated in legal terms and which raise problems of international law are susceptible, by their very nature, to receiving an answer based on law".
  - that the requesting agency is duly authorized.
  - that the question raised has arisen within the sphere of activities of the requesting agency.

- The exercise of the court's advisory jurisdiction is discretionary. In practice, the court has never refused to give an advisory opinion.
- Initiation: submission of a written request by the authorized body or agency.
  - The written request must formulate in precise terms the question in respect of which consultation is sought and must be accompanied by all documents likely to throw light on the question.
  - The registrar shall notify all states entitled to appear before the court.
- Possibility of intervention of states and IO that in opinion of the court, may be able to provide any information relevant to the matter which is the subject of the request for an opinion.
- End: Advisory opinion.
  - Public hearing, after notification to the Secretary-General of the United Nations and to the representatives of the members of the United Nations, of the other states, and of the international organizations directly concerned.
  - It has no binding effect since its content constitutes an opinion rendered by the court for the knowledge and consideration of the organ or body of the organization that has requested it.

D. OTHER INTERNATIONAL TRIBUNALS

- Specialized tribunals:
  - there are various international tribunals, universal or regional in scope, whose purpose is the peaceful settlement of disputes by jurisdictional means: proliferation of international judicial instances is criticized based on problems of fragmenting jurisprudence.
  - Pre-established and permanent judicial bodies whose purpose is to settle under international law disputes that may arise in the future between the parties.
  - Their constitution, jurisdiction, and rules of procedure are determined by their respective statutes and developed in their rules of procedure.
  - Recourse to judicial settlement depends on the will of the parties, and exceptionally there are some cases of compulsory jurisdiction (ECHR).