

16 The International Court of Justice and Its Role in the Peaceful Settlement of Disputes in the 21st Century

From Quick Wins to Tectonic Shifts

Philippa Webb

Strong judicial institutions are vital to effective and legitimate forms of global governance. International law is generated by states (as customary international law or general principles) and agreed to by states (in treaties), but it is international courts that have the role of interpreting and applying such law. As Judge Lachs observed in the *Lockerbie* case (ICJ 1992), ‘In fact, the [International] Court is the guardian of legality for the international community as a whole, both within and without the United Nations’.

The International Court of Justice (ICJ) is both the principal judicial organ and one of the United Nations’ six main organs. It remains the ‘court of reference’ for identifying customary rules of international law. Until recently, its role in the peaceful settlement of disputes was largely in relation to territorial and maritime disputes—occasionally of marginal importance (*Pedra Branca* 2008), sometimes of existential importance to the states involved (*Guatemala v. Belize* 2008; *Guyana v. Venezuela* 2018), but rarely in relation to global catastrophic risks. However, in 2022, the Court had before it cases concerning the first war in Europe since World War II, characterised by shocking aggression and atrocities (*Ukraine v. Russian Federation* 2022), and a genocide unfolding in Asia (*The Gambia v. Myanmar* 2019), and it may soon be asked to pronounce on the question of state responsibility for climate change (United Nations 2023).

This chapter considers what aspects of the ICJ could be strengthened to make it an international court capable of meeting the demands of the 21st century. It proceeds from the easiest reforms—‘quick wins’ to be gained from updating procedures and broadening access—to more ambitious proposals that would require tectonic shifts in law and, just as importantly, the mindset of the Court and its constituents.

Updating Procedural Mechanisms

There are a series of ‘quick wins’ that may be achieved through updates to the ICJ’s procedure. This could be done relatively easily through amendments to the Rules of Procedure. As former ICJ President Rosalyn Higgins has explained, the Court entrusts its Rules Committee ‘with a “watching brief” on particular Rules that are proving problematic in the practice of the Court’, and the Committee makes proposals for their amendment (Higgins 2009a: 1123–24). Another option is for the Court to update its Practice Directions (updated 17 times since the Court’s adoption in 2001) (ICJ 2001a).

There has been an evolution in the ICJ’s caseload and in the parties coming before it. As of March 2023, the pending contentious cases concern eight parties from Latin America and the Caribbean, eight from Eastern Europe, six from Western Europe and others, three from Asia, and three from Africa. The steady stream of cases involving parties from

Latin America (28 as of September 2022; see, for example, ICJ 1949, 1986b, 2022i) is an example for the rest of the world, given the relatively small number of states which accept the compulsory jurisdiction of the Court. It leads to the logical conclusion that Spanish should be an official language of the Court, alongside French and English. To date, parties have had to organise their own Spanish translation and interpretation. For example, in *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* (ICJ 2018b: para. 18), the ICJ noted that documents relied upon ‘were drafted in Spanish, and have not always been translated by the Parties into an official language of the Court in an identical manner’. In these circumstances, ‘the Court will, for the sake of clarity, reproduce the Spanish original of those documents, and indicate which Party’s translation is being quoted as well as any material variation in the translations provided by the Parties’. However, Spanish, one of the six official UN languages, should be a standard option for interpretation of ICJ proceedings.

Many cases involve challenges to the Court’s jurisdiction, necessitating an exchange of written and oral pleadings on ‘preliminary objections’. In fact, as of September 2022, out of 140 contentious cases before the ICJ, 50 have involved preliminary objections. The Court has already sought to speed up the consideration of preliminary objections by dispensing with the need for judges to produce a ‘Note’ on their tentative view in advance of the deliberations (Higgins 2009b: 1084). But more can be done to fast-track this procedure. At present, a Respondent has to raise any preliminary objections within three months of the filing of the Memorial by the Applicant (ICJ 1978: Art. 79*bis*). However, the *Application*, the document filed to institute the proceedings, must ‘specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based’ (ICJ 1978: Art. 38(2)). There is, therefore, no need to wait for the Applicant to file its Memorial, a process that usually takes nine to 12 months. A Respondent should be required to lodge any preliminary objections within three months of the Application, leading to a time-saving of a year on average per case.

Increased use of technology would be another ‘quick win’ for the Court. The ICJ ‘is a place where formality reigns and time seems to stand still’ (Pinzauti and Webb 2021: 1). For the first seven decades of its operation, in-person meetings and hard-copy documents were standard practice. Some judges would exclaim, ‘If it’s not on paper, it doesn’t exist!’ (ibid.). E-mails were printed out and delivered by hand on a regular basis (Pinzauti and Webb 2021: 1). This changed in 2020 when the pandemic swept the world. The ICJ radically and rapidly changed its working methods and ‘produced perhaps the greatest change to the Court’s procedure in the shortest period of time’ (ibid.). Judges and legal officers worked from home or even from abroad. On April 23, 2020, the Court held the first remote plenary meeting in its history (ICJ 2020c). New arrangements were made for the electronic filing of certain documents, such as reports on the implementation of provisional measures and judges’ folders for oral pleadings (Pinzauti and Webb 2021: 3).

On June 25, 2020, the Court amended Arts. 59 and 94 of the Rules of Court to permit the holding of hearings and the reading of judgements ‘by video link’ in whole or in part, if health, security or other compelling reasons so demand (ICJ 2020d). Five days later, the Court held its first remote hearing in *Guyana v. Venezuela* (2018), followed by four other virtual hearings between August 2020 and June 2021 (see, for example, ICJ 2020b and ICJ 2021e). From October 2021 to April 2022, six hearings were conducted in a hybrid format (see, for example, ICJ 2021d and ICJ 2022e), and in September 2022, the Court returned to in-person hearings, with limited capacity in the Great Hall (ICJ 2022g).

On June 3, 2022, the ICJ announced ‘a return to in-person working methods for the Court’s public hearings and ... for its private meetings’ (ICJ 2022j). Despite hopes that the Court ‘will harness the wider benefits’ (Pinzauti and Webb 2021: 14) from the changes to its procedures that resulted from the pandemic, this announcement indicated a return to the status quo. However, the return to traditional ways of working will inevitably be partial instead of total. Judges, officials and parties are now much more familiar with technology, and it is likely that improvements in efficiency gained through remote hearings will become embedded in practice.

The Court should continue to embrace technology: filings and judges’ folders should be electronic unless otherwise agreed, and hybrid hearings and remote meetings should be offered to enable the participation of state officials who may not be able to travel to The Hague. One commentator has suggested the Court could use technology to increase public access to the Court: the President could try an #askmeanything! (BIICL 2020a).

Broadening Access to the ICJ to Non-state Actors

Art. 34(1) of the ICJ Statute provides that ‘[o]nly states may be parties in cases before the Court’. James Crawford, later an ICJ judge, observed that this rule restricts the capacity of the Court to directly articulate and fully pronounce on matters engaged in investor-state disputes, human rights cases based on individual communications and cases involving international organisations (Crawford 2017: 95). He also observed that the European Union cannot appear in proceedings before the ICJ but has routinely appeared before the World Trade Organization Dispute Settlement Body and also been a party to disputes before other bodies, such as the International Tribunal for the Law of the Sea (ITLOS) and arbitral bodies set up under Annex VII of the UN Convention on the Law of the Sea when parties have been unable to settle a dispute by negotiation, conciliation or other peaceful means (Crawford 2017: 107).

The idea of broadening access to the ICJ to non-state actors has been discussed for decades. Giving international organisations access to the ICJ was a popular idea in the 1950s, discussed by the Institut de Droit International and the International Law Association. Providing them access in contentious cases before the ICJ was discussed in 1975 by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation (Special Committee) (Karl 2019: 1889–90).

In 1976, the U.S. Department of State prepared a study entitled ‘Widening Access to the International Court of Justice’ for the Senate, which brought together proposals for ICJ reform made by jurists, scholars and practitioners, and centred on the question of whether international organisations, corporations and individuals should have access to the Court (Karl 2019: 1890–91). It did not gain traction.

In 1992, there was an extensive debate in the UN Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (Special Committee) on the issue. Consensus could not even be reached on the less ambitious idea of empowering the Secretary-General with the right to request advisory opinions from the Court (United Nations 1997: para. 102). In 1997, Guatemala proposed to the Special Committee that the Court’s jurisdiction be extended to contentious proceedings to encompass disputes between states and intergovernmental organisations, noting that ‘intergovernmental organisations played an ever-increasing role in international affairs and conducted extensive activities involving States and their Governments’ (ibid.). A discussion ensued in which it was rightly noted that amending Art. 34 of the ICJ

Statute would be extremely difficult, if not impossible. Running like a thread through these discussions is the state-centrism of the United Nations, abetted by the veto held by the permanent five members. The UN Charter affirms the relevance of international law on the one hand (see, for example, Arts. 1(1) and 13), but its operational mode of working and being amended indicates that the ‘state’ (indeed, a few chosen states) is at its centre.

In addition to the amendment issue, there are practical concerns. Kolb (2013) has observed,

The Court is already heavily laden with cases. ... The idea of burdening it with a great number of further cases lacks either foresight or wisdom. An overburdened court has insufficient time to address itself to really important questions; its procedures inevitably slow down, justice is delayed, and the pressures on the court’s time lead to a decline in the quality of its pronouncements.

(1208)

However, there are ways to broaden access to the Court to non-state actors that do not require amendment of the Statute and Charter. Three examples of non-state participation demonstrate the utility of this potential route.

First, in the *Wall* Advisory Opinion, the Court noted that the United Nations General Assembly had granted Palestine a special status of observer and that it was co-sponsor of the draft resolution requesting the advisory opinion. It, therefore, permitted Palestine to submit a written statement and take part in the hearings (*Legal Consequences of the Construction of a Wall* (ICJ 2004: paras. 4–5).

Second, in the *Kosovo* Advisory Opinion, because the subject of the question was a unilateral declaration of independence, the Court decided that the authors of the declaration were likely to be able to furnish information on the question and accordingly invited them to make written and oral contributions to the Court (ICJ 2010a: paras. 3–8).

Third, the European Union became involved with the proceedings in *Ukraine v. Russian Federation* (2022) by furnishing the Court with relevant information under Art. 32(2), ICJ Statute and Art. 69(2), Rules of the Court (ICJ 2022k).

Revitalising the Use of Chambers; Diversifying the Court’s Composition

The ICJ operates in nearly every case as a plenary—with all 15 judges and 1 to 2 judges *ad hoc* participating in all phases of the case. This results in thorough, learned judgements that reflect the status of the institution as the principal judicial organ of the United Nations. But it is also a fairly slow and often cumbersome process and naturally limits the number of cases that the Court can consider in parallel.

Other international courts use chambers to allocate and expedite their work. The European Court of Human Rights (ECtHR), for example, has five sections (administrative entities), within which a chamber is formed. The chambers are composed of the President of the Section to which the case was assigned, a judge elected by the state against which the application was lodged and five other judges designated by the Section President in rotation. Once a chamber judgement has been delivered, the parties may request referral of the case to the Grand Chamber, composed of the Court’s President and Vice-Presidents, the Section Presidents and the national judge, with other judges selected by drawing of lots. The Grand Chamber may also exceptionally hear a case relinquished by a chamber.

The possibility of using chambers is already in the ICJ Statute. Art. 26 provides that the Court may ‘form one or more chambers, composed of three or more judges as the

Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications'. The Court may also 'form a chamber for dealing with a particular case'. A judgement given by a chamber 'shall be considered as rendered by the Court' (Art. 27).

Over the decades, there have been various attempts to make greater use of the possibility of chambers at the ICJ. In the *Gulf Maine* (1981) case, for example, Canada and the United States agreed to submit to a special chamber of the Court a question as to the course of the single maritime boundary that divided the continental shelf and fisheries zones of the two parties in the Gulf Maine area. Chambers were also used in *Burkina Faso v. Mali* (1983), *El Salvador v. Honduras* (1986) and *Benin v. Niger* (2002), where the parties agreed to submit to a special chamber of the Court to resolve disputes concerning delimitation of their common frontiers. The United States and Italy also agreed to submit to a special chamber in *Elettronica Sicula* (1987), a dispute over alleged violations of the Treaty of Friendship, Commerce and Navigation 1948. Regarding formation of a chamber under Art. 26(1) of the Statute, in 1993, the Court created a Chamber for Environmental Matters. However, in the chambers' 13 years of existence, not one state ever requested that it deal with a case (it may be that states with disputes concerning environmental issues prefer to have the authority of the full Bench associated with the case), and the Court accordingly decided in 2006 not to hold elections for the Bench of the chamber, essentially terminating it (United Nations 2007).

Former ICJ judge, Judge Simma, has recommended that '[t]he ICJ should work with two chambers (having identical jurisdiction) and the number of ICJ judges increased to the extent that both chambers would fulfil the criteria of representativeness required by the Statute' (BIICL 2020b).

The composition of the Bench more generally has been the subject of reform proposals. Current Judge and former President Yusuf described the current method of electing judges as a form of 'polycentric governance', meaning the election process 'does not rely on a single organ alone to elect judges' and instead 'spreads the election process among multiple actors at different stages' in entrusting it to the General Assembly and Security Council, acting separately (Yusuf 2019: 4). In his view, this contributes to 'safeguarding the judicial independence and integrity of the Court's membership' (ibid.). However, others have been less certain. Former Judge ad hoc Dugard (2020c) has stated,

The appointing of judges to both the ICJ and ICC must be re-examined. The rules for independent nomination in the Statute of ICJ are ignored by most states. Instead, persons close to government are preferred. Trading votes between States is disgusting. Present practice ensures that few independent judges are appointed.

A frequent advocate before the Court, Professor Payam Akhavan has observed,

Geographical distribution in the election of judges ensures that the ICJ reflects the diverse post-colonial membership of the UN; but the bench is still far from achieving gender balance. The composition of the self-constituted ICJ bar is even less inclusive, with a notable absence of both women and persons of colour, replicating the same historical inequities that we claim to challenge through the legitimacy of international law. It is high time for our community of practitioners to open the doors and lead by example.

(BIICL 2020c)

The agenda of the 11th session of the UN General Assembly in 1956–57 included the question of amending the Statute of the ICJ to necessitate an increase in the number of judges (United Nations 1956–1957: 5). This proposal was, however, rejected (Karl 2019: 1889–1982). Kolb argues that an increase in the number of ICJ judges is not an adequate solution to the Court’s growing number of cases. He reasons that, for the Court to retain the ‘quality and unity’ of its jurisprudence, it must remain limited in size (Kolb 2013: 1208). He instead suggests that reinforcing the chambers would appear to be a precondition for expanding the ICJ’s competence (by, for example, giving it an appellate jurisdiction or having the Court decide questions of international law for the benefit of other tribunals) but also notes that this would risk fragmentation in the Court’s jurisprudence (Kolb 2013: 1208).

In my view, the ICJ’s way of working—in which judges deliberate carefully and are directly and intensely involved in the drafting of judgements—is a strength that should not be diluted by a larger number of judges. It may be interesting to compare the working methods of the ICJ with courts that have more judges, such as ITLOS (21 judges), the International Criminal Court (ICC) (18 judges) or the ECtHR (46 judges). It can be assumed that none of these courts have judges as closely involved in deliberations and drafting. The ICC and the ECtHR operate through sections or chambers, and ITLOS is increasingly exploring hearing cases in special chambers (ITLOS 2019). An option for the ICJ may, therefore, lie in the use of chambers, but this would have to be welcomed by the parties who use the Court. And there would need to be communication and coordination, facilitated by the Registry, to avoid the fragmentation risk that Kolb identifies.

Expanding Its Advisory Function

For Alter, although the ICJ has retained its ability to rule on diverse legal issues (Alter 2021: 20), the ICJ’s interstate nature is ‘the fundamental factor’ limiting the ICJ from self-expanding its advisory function. Although the UN General Assembly, over the years, may have referred controversial cases that states would likely not pursue to the ICJ, states remain likely to react poorly to efforts to use the Court’s advisory role in expansive ways. This, Alter argues, results in the ICJ being ‘hesitant to embrace legal efforts to cajole it beyond a narrow and fairly formalist interpretation of its advisory decision function’; what is required is ‘efforts to formally expand the ICJ’s advisory role’ (Alter 2021: 18–19). She submits that this could allow the ICJ to ‘play an administrative review and constitutional role if its advisory jurisdiction were actively engaged by UN bodies and specialised agencies’ and could result in the ICJ playing a larger role in enforcing and developing international law (Alter 2021: 21).

Another idea is that the Court’s advisory function could be expanded by giving ‘wider access to the advisory procedure to international organisations [...] on the basis of authorisation by the UN General Assembly’ (Kolb 2013: 1206). The African Union could, for example, be authorised by the United States to request an opinion on the scope of head-of-state immunity (Heller 2022). Another option is for there to be ‘a compulsory request for an advisory opinion whenever a Member State declares that a UN organ has exceeded its powers under the Charter’ (Kolb 2013: 1206). To resolve uncertainties in international law, Kolb suggests that the Court ought to be given the right to give declaratory judgements on points of law, unrestrained by the condition as to a ‘present interest in taking action’ (Kolb 2013: 1206).

These reforms may not be necessary given the recent flourishing of advisory proceedings before international courts and tribunals, including the ICJ. On December 30, 2022, the General Assembly adopted resolution 77/247, by which it decided, pursuant to Art. 65 of the Statute of the Court, to request the ICJ to render an advisory opinion on *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (United Nations 2023). On February 20, 2023, a coalition of states led by Vanuatu formally tabled a final draft resolution requesting an ICJ advisory opinion on the obligations of states in respect of climate change (ibid.). Meanwhile, the ITLOS has also been asked to provide an advisory opinion on climate change obligations, focused on obligations to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment in relation to climate change impacts (ITLOS 2022). On January 9, 2023, Chile and Colombia requested an advisory opinion from the Inter-American Court of Human Rights (IACtHR) on the scope of state obligations for responding to the climate emergency under international human rights law as well as the American Convention on Human Rights (Colombia Ministry of Foreign Affairs 2023).

The ICJ's response to the two advisory opinions before it will be a good indicator of whether formal expansion of its advisory role is necessary or desirable.

Becoming a Site for Strategic Litigation

A classic definition of strategic human rights litigation is legal action that 'seeks to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard' (Open Society Justice Initiative 2013: 5).

Until 2017, the ICJ was infrequently used for this type of litigation. There had been the *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* lodged in 2009 (with Belgium submitting that Senegal violated Art. 7 of the Convention against Torture (United Nations 1984) by failing to prosecute or extradite Mr. Hissène Habré, former President of Chad), and then a long pause. After that, a series of cases came in quick succession. In 2017, Mauritius gained sufficient support in the General Assembly for that principal organ to request an advisory opinion from the ICJ on, *inter alia*, whether the process of decolonisation of Mauritius was lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law. This brought to the Court a dispute that had been simmering for decades, an aspect of which had been heard by the ECtHR, an ad hoc international tribunal, and the English courts (Webb 2021). The question of sovereignty over the Chagos Archipelago was also an issue in the case before the International Tribunal for the Law of the Sea (2019) between Mauritius and the Maldives (*Delimitation of the Maritime Boundary between Mauritius and Maldives*).

In 2019, the Gambia instituted proceedings against Myanmar alleging violations of the Genocide Convention through 'acts adopted, taken and condoned by the Government of Myanmar against members of the Rohingya Group'. It referred to acts by the Myanmar military and other security forces that were

intended to destroy the Rohingya as a group, in whole or in part, by the use of mass murder, rape and other forms of sexual violence, as well as the systematic destruction by fire of their villages, often with inhabitants locked inside burning houses.

(*The Gambia v. Myanmar* (ICJ 2019))

Among other remedies, the Gambia asked for reparation ‘in the interest of the victims’, including safe return, respect for full citizenship and human rights. It also lodged a request for urgent provisional measures (*The Gambia v. Myanmar* (ibid.)).

What is the interest of the Gambia in the plight of Rohingya, 11,500 km away? The Vice-President of the Gambia said it is ‘a small country with a big voice on matters of human rights on the continent and beyond’ (United Nations 2019). The Attorney-General said he wanted ‘to send a clear message to Myanmar and to the rest of the international community that the world must not stand by and do nothing in the face of terrible atrocities’. The Application states the Gambia is acting on behalf of the 57 member states of the Organization of Islamic Cooperation (Dutch News 2019). Since 2019, the Maldives, the Netherlands, Canada, Germany, and the United Kingdom have announced their intention to intervene in the case in support of the Gambia under Art. 63, ICJ Statute.

On February 26, 2022, two days after the Russian invasion of Ukraine, Ukraine filed an application instituting proceedings against the Russian Federation concerning ‘a dispute ... relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide’ (ICJ 2022m). It contends that ‘the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognised the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, and then declared and implemented a “special military operation” against Ukraine’. Ukraine ‘emphatically denies’ that such genocide has occurred and explains that it submitted the Application ‘to establish that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide’ (ibid.).

In its Provisional Measures Order of March 16, 2022, the Court used direct language and went ‘out of its way to make points that it was not legally required to make but were required by the necessity of the moment’ (Milanovic 2022):

The Court is profoundly concerned about the use of force by the Russian Federation in Ukraine, which raises very serious issues of international law. The Court is mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of international peace and security as well as in the peaceful settlement of disputes under the Charter and the Statute of the Court. It deems it necessary to emphasize that all States must act in conformity with their obligations under the United Nations Charter and other rules of international law, including international humanitarian law.

(ICJ 2022c: para. 18)

Ukraine had requested a measure linked to the Genocide Convention, given that it formed the jurisdictional basis for the case (ICJ 2022c: para. 5). Interestingly, the Court reformulated the measure so that no link to the Convention was required, making it an even broader call for Russia stop its aggression (ICJ 2022c: para. 86(2)). A record number of states have declared their intention to intervene in the case in support of Ukraine (19 states as of September 2022) (ICJ 2022a).

From a practical perspective, there are various constraints on using the ICJ as a site of strategic litigation. Only states may bring contentious disputes. Its jurisdiction requires

consent, which is often on a piecemeal and limited basis (Ukraine's case, for example, may be said to be really about aggression and war crimes rather than genocide per se). There are remote prospects for substantial compensation, and it can take decades to achieve—in *Armed Activities on the Territory of the Congo (DRC v. Uganda)* (ICJ 2022f), the ICJ awarded the DRC a total amount of US\$325,000,000. Ukraine estimates its losses amount to over USD\$1 trillion (Tsyrennikov 2022).

Moreover, the ICJ is a traditional, permanent, interstate court of general jurisdiction. It is not known for being nimble, innovative or activist. As the most prominent counsel before the Court, Professor Alain Pellet has observed,

[No!] Salvation does not lie in the compulsory jurisdiction of the Court but in the patient learning by States of the virtues of settling disputes by judicial means. It is not major and politically sensitive disputes that should be submitted to the Court, but the 'lambda' disputes that poison bilateral relations [without threatening international peace and security].

(BIICL 2020b)

However, the momentum at the ICJ defies Professor Pellet's observation. As noted earlier, Vanuatu has been spearheading a movement to request an advisory opinion on climate change (Vanuatu ICJ Initiative n.d.). The initiative has been motivated by the potential role of general international law in complementing and plugging gaps in ambition, accountability and fairness in the climate regime (Rajamani *et al.* 2021). Specifically, general principles of international law may help in determining fair shares in state efforts to combat climate change and reduce emissions (Rajamani *et al.* 2021). At an event on the sidelines of COP26, Professor Rajamani explained that an advisory opinion could clarify the 'nature and extent' of states' obligations on climate change in the wider context of international environmental law, bringing cohesiveness to states' fragmented international obligations in this area. In other words, an advisory opinion could 'concretize' state obligations by 'identifying benchmarks to assess state actions and giving national courts tools to scrutinise those activities' (CISDL Secretariat 2022).

The climate change resolution's language draws on a huge range of international law instruments and principles, referring to

Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognised in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment, and the duty to protect and preserve the marine environment.

(United Nations 2023)

It represents a new type of case for the Court—a grassroots movement growing into a diverse coalition, a question affecting every state and people, a major and politically sensitive issue, and one on which Court may either dodge the difficult questions (*Nuclear Weapons* (ICJ 1996)) or lay out a road map for future generations.

Introducing Mandatory Jurisdiction

Professor Makane Moïse Mbengue has observed,

A Court without Justice to entertain, is like a tree without roots. Consent is the invasive species that harms the ecosystems of the Forest of the common concerns of humankind. Here is the path to the sustainable restoration of these ecosystems: consent as the default rule; non-consent as the exception.

(BIICL 2020c)

Calls for the ICJ to have mandatory jurisdiction over disputes between UN member states have been made for decades, albeit less poetically.

The call to accept the Court's jurisdiction under the Optional Clause has been issued regularly by UN Secretaries-General. For example, in 2008, Ban-ki Moon noted,

Violations of international law are still too frequent, means of accountability too few and the political will to ensure compliance with international law too weak. To advance the rule of law at the international level, the work of the International Court of Justice and other international dispute resolution mechanisms must be strengthened.

(United Nations 2008: para. 30)

He stated,

With a view to achieving that goal, I recommend that Member States and other rule of law stakeholders, where appropriate: ... Accept the jurisdiction of the International Court of Justice, in accordance with its Statute, and strengthen the work of the Court and other international dispute resolution mechanisms.

(United Nations 2008: para. 76)

The number of states that have heeded the call has remained stable at around 70 (73 as of September 2022) (ICJ 2022i), amounting to just over one-third of member states. And many of their declarations under the Optional Clause are carefully circumscribed by reservations.

Introducing mandatory ICJ jurisdiction would not be possible to achieve without a seismic shift in the attitude of states and, to a lesser extent and as a consequence, in the working methods of the Court. We can contrast the ICJ with the ECtHR, a court with mandatory jurisdiction over all states parties to the European Convention on Human Rights. The ECtHR has a complex case processing system whereby applications can be decided by a single judge, a committee of three judges, a chamber of seven judges, or, by referral or relinquishment, by the Grand Chamber of 17 judges (ECtHR 2022). Its 46 judges never sit as a plenary, and it relies heavily on a Registry composed of 640 staff members (European Council n.d.). In 2021, it had a backlog of 65,000 cases, and this represented a reduction from 160,000 cases in 2011 (ECtHR 2021).

For the ICJ, a change in mindset would also be required. D'Aspremont has observed that regional courts 'have found that the idea of an international legal system carries some benefits, can preserve their autonomy, and can improve the persuasiveness of their decisions'; they are therefore interested in 'system-building' (D'Aspremont 2017: 375). In his view, the ICJ has no such interest; it

feels that it is not only the central magistrate of the UN dispute settlement mechanism but also the central plumber of the international legal order. Yet, the ICJ does not go as far as claiming some monopoly on the design of the systemic features of international law.

(D'Aspremont 2017: 374)

Hernandez, writing in 2013, argued that the ICJ also took a limited view of its status and role: it sees itself as 'merely a creature of its Statute that settles disputes and issues advisory opinions' and expresses 'great ambivalence in respect of jus cogens norms and obligations erga omnes ... [and] has resisted arrogating for itself a centralised interpretative role in articulating these controversial concepts' (Hernandez 2013: 58).

The rise in strategic litigation, especially of an advisory nature, and the ICJ's robust response to date to the Russian invasion indicates that a shift may be taking place within the Court and in the interaction between the Court, the parties and the general public. This shift—while far from seismic—is tangible. The greater interest in the Court, its role in the headline stories of the time and the multiple interventions in support of Gambia and Ukraine may foreshadow a higher uptake of the Optional Clause by states wanting the ICJ to play a bolder role in the settlement of their disputes.

Revolutionising the Court's Role under Chapter VI of the Charter

On paper, the ICJ is the linchpin of Chapter VI of the UN Charter dedicated to the peaceful settlement of disputes. Under Art. 33(1), it is part of the 'judicial settlement' that parties may use to seek a solution to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security. Under Art. 33(2), the Security Council 'shall, when it deems necessary' call upon the parties to settle their dispute by means, including judicial settlement by the ICJ. More specifically, under Art. 36(3), in making recommendations for the procedures of methods for settling a dispute, the Security Council 'should also take into consideration that legal disputes should *as a general rule* be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court' (emphasis added).

However, in practice, Art. 36(3) has 'never been expressly invoked', although implicit reference has very occasionally been made in UNSC resolutions (Higgins *et al.* 2017: 1112; see, for example, United Nations 1945a–1954: 321–23; United Nations 1947: para. 2; United Nations 1955–1959: 399–400; United Nations 1976: para. 4; United Nations 1980a, 1980b, 1980c). There has been only one occasion in which the UNSC asked the ICJ for an advisory opinion on an issue related to the peaceful settlement of disputes in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (ICJ 1971).

Calls to enhance the ICJ should be put in the context of broader, longer-term reforms aimed at strengthening Chapter VI and overcoming the veto in Chapter VII. The revitalisation of Chapter VI can also be used to buttress Art. 94(2) of the chapter on implementation of ICJ judgements. As Almeida and Sorel point out, 'Art. 94 (2) UNC is not the only means of recourse to the Security Council for reaching the implementation of a judgement'. The creditor of the judgement could also proceed under Chapter VI, which relates to disputes 'the continuance of which is likely to endanger the maintenance of international peace and security' (Art. 33 UNC) or 'which might lead to international friction' (Art. 34 UNC) (Almeida and Sorel 2017: 138).

Taking its rightful place at the heart of Chapter VI may also encourage the ICJ to engage, where relevant, in judicial review of decisions of other principal organs—there is currently ‘no general procedure by which the legality of decisions of the UN or its organs can be subjected to judicial scrutiny’ (Higgins *et al.* 2017: 352; see also Alvarez 1996; Brownlie 1994; Franck 1992; Gill 1995; Gowlland-Debbas 1994; MacDonald 1993; Martenczuk 1999; Reisman 1993; Watson, 1993).

The ICJ is the ‘guardian of legality’ under the UN Charter, with an influence that extends across borders and transcends jurisdictions. It can play—and should play—a central role in post-crisis rethinking of the global governance architecture. International law has been invoked by all sides of current conflicts, often in a self-serving manner. Russia, for example, has invoked the obligation to prevent genocide to justify the invasion of Ukraine (ICJ 2022b), and China has condemned European Union sanctions related to human rights abuses in Xinjiang as violations of international law (Ministry of Foreign Affairs of the PRC 2021). We need strong judicial institutions to interpret, apply and develop the law with credibility and independence. The ICJ can gain some ‘quick wins’ in terms of efficiency from updating its procedures and learning lessons from the technological adaptations required by the pandemic. But it is more ambitious thinking that is needed: embracing its role under Chapter VI of the Charter, expanding access and advisory functions, diversifying the Bench, and heeding the call—that is already being made in the climate change litigation—for the Court to be a beacon in dark times, guiding present and future generations to a more stable and cooperative future.

Bibliography

- Almeida, Paula W. and Jean-Marc Sorel. 2017. *Latin America and the International Court of Justice*. London: Routledge.
- Alter, Karen. 2021. ‘The International Court of Justice in Comparison: Understanding the Court’s Limited Influence’, *Melbourne Journal of International Law*, 21(3): 676–697.
- Alvarez, José E. 1996. ‘Judging the Security Council’, *American Journal of International Law*, 90:1.
- Bedjaoui, Mohammed. 1994. *The New World Order and the Security Council—Testing the Legality of its Acts*. Dordrecht: Martinus Nijhoff.
- British Institute of International and Comparative Law (BIICL). 2020a. ‘Reimagining International Courts and Tribunals Round Up’, 11 December, <https://www.biicl.org/reimagining/44/reimagining-international-courts-and-tribunals-round-up> (accessed on 16 March 2023).
- British Institute of International and Comparative Law (BIICL). 2020b. ‘Reimagining the International Court of Justice’, 8 December, <https://www.biicl.org/reimagining/41/reimagining-the-international-court-of-justice-8-december> (accessed on 16 March 2023).
- British Institute of International and Comparative Law (BIICL). 2020c. ‘Reimagining the International Court of Justice’, 7 December, <https://www.biicl.org/reimagining/40/reimagining-the-international-court-of-justice-7-december> (accessed on 16 March 2023).
- Brownlie, Ian. 1994. ‘The Decisions of Political Organs of the United Nations and the Rule of Law’ in Ronald St. J. Macdonald (ed), *Essays in Honour of Wang Tieya*. Dordrecht: Brill.
- Centre for International Sustainable Development Law (CISDL) Secretariat. 2022. ‘Topic: XII. Experts Panel: Advancing Climate Justice through the World’s Hights Court (Rio)’, *YouTube*, <https://www.youtube.com/watch?v=JUI-0pEly3M> (accessed on 16 March 2023).
- Climate Change Litigation Database. 2023. ‘Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency’, <http://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/> (accessed on 16 March 2023).

- Crawford, James. 2017. 'The Place of the International Court in International Dispute Settlement', in James Crawford, Abdul Koroma, Said Mahmoudi, and Alain Pellet (eds), *The International Legal Order: Current Needs and Possible Responses: Essays in Honour of Djamchid Momtaz*, pp. 95–116. Leiden, the Netherlands: Brill.
- D'Aspremont, Jean. 2017. 'The International Court of Justice and the Irony of System-Design', *Journal of International Dispute Settlement*, 8(2): 366–387.
- Dutch News. 2019. 'Foley Hoag Leads The Gambia's Legal Team in Historic Case to Stop Myanmar's Genocide Against the Rohingya', *Dutch News*, 11 November, <https://www.dutchnews.nl/news/businesswire/foley-hoag-leads-the-gambias-legal-team-in-historic-case-to-stop-myanmars-genocide-against-the-rohingya/> (accessed on 16 March 2023).
- European Council. n.d. 'ECHR Registry', https://www.echr.coe.int/Documents/Registry_ENG.pdf (accessed on 16 March 2023).
- European Court of Human Rights. 2021. 'The European Court of Human Rights Is Launching a New Case Processing Strategy', press release ECHR 092, https://www.google.com/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjB1P79hK3_AhUygv0HHVikAZkQFnoECBUQAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrary%3DECHR%26id%3D003-6966913-9378085%26filename%3DECHR%2520launches%2520new%2520case-processing%2520strategy.pdf&usq=AOvVaw2TAgnH7-w2toaN9kiswqIE (accessed on 05 June 2023).
- European Court of Human Rights. 2022. 'Simplified Case-Processing Flow Chart by Judicial Formation', https://www.echr.coe.int/Documents/Case_processing_Court_ENG.pdf (accessed on 05 June 2023).
- Franck, Thomas. 1992. 'The "Powers of Appreciation": Who is the Ultimate Guardian of UN Legality?', *American Journal of International Law*, 86: 519.
- Gill, Terry. 1995. 'Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter', *Netherlands Yearbook of International Law*, 26:33.
- Gowlland-Debbas, Vera. 1994. 'The Relationship between the International Court of Justice and the Security Council in light of the *Lockerbie* Case', *American Journal of International Law*, 88:643.
- Heller, Kevin J. 2022. 'The AU's Position on Personal Immunity: A Response to Coracini & Trahan', *Opinio Juris*, <https://opiniojuris.org/2022/11/09/the-aus-position-on-personal-immunity-a-response-to-trahan/> (accessed on 16 March 2023).
- Hernandez, Gleider I. 2013. 'A Reluctant Guardian: The International Court of Justice and the Concept of "International Community"', *British Yearbook of International Law*, 83: 13–60.
- Higgins, Rosalyn. 2009a. 'Reflections from the International Court', in Rosalyn Higgins (ed), *Themes and Theories*, pp. 1122–1126. New York: Oxford University Press.
- Higgins, Rosalyn. 2009b. 'Respecting Sovereign States and Running a Tight Courtroom', in Rosalyn Higgins (ed), *Themes and Theories*, pp. 1081–1093. New York: Oxford University Press.
- Higgins, Rosalyn, Philippa Webb, Dapo Akande, Sandesh Sivakumaran, and James Sloan. 2017. *Oppenheim's International Law: United Nations*. New York: Oxford University Press.
- International Court of Justice. 1949. 'Asylum (Colombia v. Peru)', <https://www.icj-cij.org/case/7> (accessed on 05 June 2023).
- International Court of Justice. 1950a. 'Haya de la Torre (Colombia v. Peru)', <https://www.icj-cij.org/case/14> (accessed on 05 June 2023).
- International Court of Justice. 1950b. 'Request for Interpretation of the Judgement of 20 November 1950 in the Asylum Case (Colombia v. Peru)', <https://www.icj-cij.org/case/13/institution-proceedings> (accessed on 05 June 2023).
- International Court of Justice. 1951. 'Nottebohm' (Liechtenstein v. Guatemala)', <https://www.icj-cij.org/case/18> (accessed on 05 June 2023).
- International Court of Justice. 1955a. 'Antarctica (United Kingdom v. Argentina)', <https://www.icj-cij.org/case/26> (accessed on 05 June 2023).

- International Court of Justice. 1955b. 'Antarctica (United Kingdom v. Chile)', <https://www.icj-cij.org/case/27> (accessed on 05 June 2023).
- International Court of Justice. 1958. 'Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)', <https://www.icj-cij.org/case/39> (accessed on 05 June 2023).
- International Court of Justice. 1971. 'Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)', ICJ Rep 16, <https://www.icj-cij.org/case/53> (accessed on 30 May 2023).
- International Court of Justice. 1978. 'ICJ Rules of Court (1978)', <https://icj-cij.org/rules> (accessed on 30 May 2023).
- International Court of Justice. 1981. 'Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/ United States of America)', <https://icj-cij.org/case/67> (accessed on 31 May 2023).
- International Court of Justice. 1983. 'Frontier Dispute (Burkina Faso/ Republic of Mali)', <https://www.icj-cij.org/case/69> (accessed on 31 May 2023).
- International Court of Justice. 1984. 'Military and Parliamentary Activities in and Against Nicaragua (Nicaragua v. United States of America)', <https://www.icj-cij.org/case/70> (accessed on 05 June 2023).
- International Court of Justice. 1986a. 'Border and Transborder Armed Actions (Nicaragua v. Costa Rica)', <https://www.icj-cij.org/case/73> (accessed on 05 June 2023).
- International Court of Justice. 1986b. 'Land, Island and Maritime Boundary Dispute (El Salvador v. Honduras: Nicaragua intervening)', <https://www.icj-cij.org/case/75> (accessed on 30 May 2023).
- International Court of Justice. 1987. 'Elettronica Sicula (ELSI) (USA v. Italy)', <https://www.icj-cij.org/case/76> (accessed on 31 May 2023).
- International Court of Justice. 1992. 'Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) (Request for the Indication of Provisional Measures) (Separate Opinion of Judge Lachs)', ICJ Rep 138, <https://icj-cij.org/case/88> (accessed on 30 May 2023).
- International Court of Justice. 1996. 'Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)', ICJ Rep 226, <https://www.icj-cij.org/case/95> (accessed on 30 May 2023).
- International Court of Justice. 1998. 'Vienna Convention on Consular Relations (Paraguay v. United States of America)', <https://www.icj-cij.org/case/99> (accessed on 05 June 2023).
- International Court of Justice. 1999. 'Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)', <https://www.icj-cij.org/case/120> (accessed on 05 June 2023).
- International Court of Justice. 2001a. 'Practice Directions', <https://www.icj-cij.org/practice-directions#fn1> (accessed on 05 June 2023).
- International Court of Justice. 2001b. 'Territorial and Maritime Dispute (Nicaragua v. Colombia)', <https://www.icj-cij.org/case/124> (accessed on 05 June 2023).
- International Court of Justice. 2002a. 'Application for Revision of the Judgement of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras)', <https://www.icj-cij.org/case/127> (accessed on 05 June 2023).
- International Court of Justice. 2002b. 'Frontier Dispute (Benin v. Niger)', <https://icj-cij.org/case/125> (accessed on 31 May 2023).
- International Court of Justice. 2004. 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)', ICJ Rep 136, <https://www.icj-cij.org/case/131> (accessed on 30 May 2023).
- International Court of Justice. 2005. 'Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)', <https://www.icj-cij.org/case/133> (accessed on 05 June 2023).
- International Court of Justice. 2006. 'Pulp Mills on the River Uruguay (Argentina v. Uruguay)', <https://www.icj-cij.org/case/135> (accessed on 05 June 2023).
- International Court of Justice. 2008a. 'Aerial Herbicide Spraying (Ecuador v. Colombia)', <https://www.icj-cij.org/case/138> (accessed on 05 June 2023).

- International Court of Justice. 2008b. 'Guatemala's Territorial, Insular and Maritime Claim (Guatemala v. Belize)', <https://icj-cij.org/case/177> (accessed on 31 May 2023).
- International Court of Justice. 2008c. 'Maritime Dispute (Peru v. Chile)', <https://www.icj-cij.org/case/137> (accessed on 05 June 2023).
- International Court of Justice. 2008d. 'Request for Interpretation of the Judgement of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)', <https://www.icj-cij.org/case/139> (accessed on 05 June 2023).
- International Court of Justice. 2008e. 'Sovereignty over Pedra Branca/ Pulau Batu Pateh, Middle Rocks and South Ledge (Malaysia v. Singapore) (Merits)', ICJ Rep 12, <https://icj-cij.org/case/130> (accessed on 30 May 2023).
- International Court of Justice. 2009. 'Certain Questions concerning Diplomatic Relations (Honduras v. Brazil)', <https://www.icj-cij.org/case/147> (accessed on 05 June 2023).
- International Court of Justice. 2010a. 'Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)', ICJ Rep 403, <https://www.icj-cij.org/case/141> (accessed on 30 May 2023).
- International Court of Justice. 2010b. 'Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)', <https://www.icj-cij.org/case/150> (accessed on 05 June 2023).
- International Court of Justice. 2010c. 'Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)', <https://www.icj-cij.org/case/152> (accessed on 05 June 2023).
- International Court of Justice. 2010d. 'Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)', <https://www.icj-cij.org/case/165> (accessed on 05 June 2023).
- International Court of Justice. 2013. 'Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)', <https://www.icj-cij.org/case/153> (accessed on 05 June 2023).
- International Court of Justice. 2014. 'Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)', <https://www.icj-cij.org/case/157> (accessed on 05 June 2023).
- International Court of Justice. 2018a. 'Arbitral Award of 3 October 1899 (Guyana/ Venezuela)', <https://icj-cij.org/case/171> (accessed on 30 May 2023).
- International Court of Justice. 2018b. 'Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile) (Judgement)', ICJ Rep 507, <https://www.icj-cij.org/case/153/judgments> (accessed on 05 June 2023).
- International Court of Justice. 2019. 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)', <https://icj-cij.org/case/178> (accessed on 30 May 2023).
- International Court of Justice. 2020a. 'Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America) (Preliminary Objections) (14-21 September 2020)', <https://www.icj-cij.org/case/175/preliminary-objections> (accessed on 05 June 2023).
- International Court of Justice. 2020b. 'Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates) (Preliminary Objections) (31 August-07 September 2020)', <https://www.icj-cij.org/case/172/preliminary-objections> (accessed on 05 June 2023).
- International Court of Justice. 2020c. 'ICJ Press Release No. 2020/11, 23 April 2020', <https://www.icj-cij.org/sites/default/files/press-releases/0/000-20200423-PRE-01-00-EN.pdf> (accessed on 16 March 2023).
- International Court of Justice. 2020d. 'ICJ Press Release No. 2020/16, 25 June 2020', <https://www.icj-cij.org/sites/default/files/press-releases/0/000-20200625-PRE-01-00-EN.pdf> (accessed on 16 March 2023).
- International Court of Justice. 2021a. 'Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia) (Provisional Measures) (18-19 October 2021)', <https://www.icj-cij.org/case/181/oral-proceedings> (accessed on 05 June 2023).

- International Court of Justice. 2021b. 'Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (20–30 April 2021)', <https://www.icj-cij.org/case/116> (accessed on 05 June 2023).
- International Court of Justice. 2021c. 'Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)', <https://www.icj-cij.org/case/155> (accessed on 05 June 2023).
- International Court of Justice. 2021d. 'Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia) (20 September–01 October 2021)', <https://www.icj-cij.org/case/155/oral-proceedings> (accessed on 05 June 2023).
- International Court of Justice. 2021e. 'Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) (15–18 March 2021)', <https://www.icj-cij.org/case/161/oral-proceedings> (accessed on 05 June 2023).
- International Court of Justice. 2022a. 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)', <https://www.icj-cij.org/case/182> (accessed 07 June 2023).
- International Court of Justice. 2022b. 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) (Application Instituting Proceedings)', General List No. 182, <https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf> (accessed on 05 June 2023).
- International Court of Justice. 2022c. 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) (Provisional Measures Order)', General List No. 182, <https://www.icj-cij.org/case/182> (accessed on 30 May 2023).
- International Court of Justice. 2022d. 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) (Provisional Measures) (07 March 2022)', <https://www.icj-cij.org/case/182/oral-proceedings> (accessed on 05 June 2023).
- International Court of Justice. 2022e. 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar) (Preliminary Objections) (21–28 February 2022)', <https://www.icj-cij.org/case/178/oral-proceedings> (accessed on 05 June 2023).
- International Court of Justice. 2022f. 'Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Reparations)', General List No. 116, <https://www.icj-cij.org/sites/default/files/case-related/116/116-20220209-JUD-01-00-EN.pdf> (accessed on 05 June 2023).
- International Court of Justice. 2022g. 'Certain Iranian Assets (Iran v. USA)', Oral Pleadings, Verbatim Records 19–23 September 2022, <https://www.icj-cij.org/node/106194> (accessed on 31 May 2023).
- International Court of Justice. 2022h. 'Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia) (01–14 June 2022)', <https://www.icj-cij.org/case/162/oral-proceedings> (accessed on 05 June 2023).
- International Court of Justice. 2022i. 'Declarations recognizing the jurisdiction of the Court as Compulsory', <https://www.icj-cij.org/declarations#:~:text=There%20are%20now%20six%20such,of%20the%20League%20of%20Nations.> (accessed on 05 June 2023).
- International Court of Justice. 2022j. 'Easing of the Measures Adopted by the International Court of Justice in Response to the COVID-19 Pandemic', ICJ Press Release No. 2022/20, <https://www.icj-cij.org/sites/default/files/press-releases/0/000-20220603-PRE-01-00-EN.pdf> (accessed on 16 March 2023).
- International Court of Justice. 2022k. 'ICJ Press Release No. 2022/29, 18 Aug 2022', <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220818-PRE-01-00-EN.pdf> (accessed on 16 March 2023).
- International Court of Justice. 2022l. 'Sovereignty over the Sapodilla Cayes (Belize v. Honduras)', <https://www.icj-cij.org/case/185> (accessed on 05 June 2023).
- International Court of Justice. 2022m. 'Ukraine Institutes Proceedings Against the Russian Federation and Requests the Court to Indicate Provisional Measures', ICJ Press Release No. 2022/4, <https://www.icj-cij.org/public/files/case-related/182/182-20220227-PRE-01-00-EN.pdf> (accessed on 16 March 2023).

- International Court of Justice. 2023. 'Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Request for Advisory Opinion)', <https://www.icj-cij.org/case/186> (accessed on 30 May 2023).
- International Tribunal for the Law of the Sea. 2019. 'Dispute Concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius v. Maldives)', Special Agreement and Notification (2019), ITLOS Case No. 28.
- International Tribunal for the Law of the Sea. 2022. 'Press Release No. 327 12 December 2022', https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_327_EN.pdf (accessed on 23 March 2023).
- Karl, Wolfram. 2019. 'Amendment', in Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, and Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed.). Oxford: Oxford University Press.
- Kolb, Robert. 2013. *The International Court of Justice*. Portland, OR: Hart.
- MacDonald, Ronald St. J. 1993. 'Changing Relations between the International Court of Justice and the Security Council of the United Nations', *Canadian Yearbook of International Law*, 31: 3.
- Martenczuk, Bernd. 1999. 'The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie?', *European Journal of International Law*, 10: 517.
- Milanovic, Marko. 2022. 'ICJ Indicates Provisional Measures Against Russia, in a Near Total Win for Ukraine; Russia Expelled from the Council of Europe', *EJIL:Talk!*, <https://www.ejiltalk.org/icj-indicates-provisional-measures-against-russia-in-a-near-total-win-for-ukraine-russia-expelled-from-the-council-of-europe/> (accessed on 16 March 2023).
- Ministry of Foreign Affairs of the People's Republic of China. 2021. 'Foreign Ministry Spokesperson Announces Sanctions on Relevant EU Entities and Personnel', https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/202103/t20210322_9170814.html (accessed on 05 June 2023).
- Open Society Justice Initiative. 2013. 'Global Human Rights Litigation: Litigation Report', *Refworld*, <https://www.refworld.org/pdfid/52fb35414.pdf> (accessed on 16 March 2023).
- Pinzauti, Guilia and Philippa Webb. 2021. 'Litigation before the International Court of Justice During the Pandemic', *Leiden Journal of International Law*, 34(4): 787–800.
- Rajamani, Lavanya, Louise Jeffery, Niklas Höhne, Frederic Hans, Alyssa Glass, Gaurav Ganti, and Andreas Geiges. 2021. 'National "Fair Shares" in Reducing Greenhouse Gas Emissions within the Principled Framework of International Environmental Law', *Climate Policy*, 21(8): 983–1004.
- Reisman, W. Michael. 1993. 'The Constitutional Crisis in the United Nations', *American Journal of International Law*, 87: 83.
- Tsyrennikov, Viktor. 2022. 'A trillion-dollar question: How much does Russia owe Ukraine?', <https://cepr.org/voxeu/columns/trillion-dollar-question-what-russia-owes-ukraine> (accessed on 05 June 2023).
- United Nations. 1945a. 'Charter of the United Nations and the Statute of the International Court of Justice', <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (accessed on 05 June 2023).
- United Nations. 1945b–1954. 'Article 36', Repertory of Practice of United Nations Organs, Vol II, https://legal.un.org/repertory/dtSearch/Search_Forms/dtSearch.html (accessed on 05 June 2023).
- United Nations. 1947. 'Resolution 22 (1947) [adopted by the Security Council at its 127th meeting] of 9 April 1947', <https://digitallibrary.un.org/record/111975?ln=en#record-files-collapse-header> (accessed on 05 June 2023) (recommending Governments of the UK and Albania immediately to refer their dispute over the Corfu Channel incidents to the ICJ).
- United Nations. 1955–1959. 'Article 36', Repertory of Practice of United Nations Organs, Vol II Supp. 2', https://legal.un.org/repertory/dtSearch/Search_Forms/dtSearch.html (accessed on 05 June 2023).
- United Nations. 1956–1957. 'Official Records of the General Assembly Eleventh Session, Annexes Volume II', <https://digitallibrary.un.org/record/850299> (accessed on 31 May 2023).
- United Nations. 1976. 'Resolution 395 (1976) [adopted by the Security Council at its 1953rd Meeting] of 25 August 1976', <https://digitallibrary.un.org/record/93723?ln=en> (accessed on 05 June 2023).

- United Nations. 1980a. 'Letter dated 17 October 1980 from the Secretary-General addressed to the President of the Security Council', UN Doc. S/14228, <https://digitallibrary.un.org/record/17801?ln=en> (accessed on 05 June 2023).
- United Nations. 1980b. 'Letter dated 22 October 1980 from the President of the Security Council addressed to the Secretary General', UN Doc. S/14229, <https://digitallibrary.un.org/record/17802?ln=en> (accessed on 05 June 2023).
- United Nations. 1980c. 'Report by the Secretary-General on the Mission of his Special Representative to Malta and the Libyan Arab Jamahiriya', UN Doc. S/14256, <https://digitallibrary.un.org/record/18616?ln=en> (accessed on 05 June 2023).
- United Nations. 1984. 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (accessed on 05 June 2023).
- United Nations. 1997. 'Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization', UN Doc. A/52/33, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N97/087/40/PDF/N9708740.pdf?OpenElement> (accessed on 31 May 2023).
- United Nations. 2007. 'Report of the International Court of Justice', UN Doc. A/62/4, <https://www.icj-cij.org/public/files/annual-reports/2006-2007-en.pdf> (accessed on 05 June 2023).
- United Nations. 2008. 'Report of the Secretary-General, Strengthening and Coordinating United Nations Rule of Law Activities', UN Doc. A/63/226, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/452/71/PDF/N0845271.pdf?OpenElement> (accessed on 31 May 2023).
- United Nations. 2019. 'Gambia—Vice-President Addresses General Debate, 74th Session', *UN Media*, <https://media.un.org/en/asset/k1m/k1mmriserp> (accessed on 16 March 2023).
- United Nations. 2023. 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change', UN Doc A/77/L.58, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/063/82/PDF/N2306382.pdf?OpenElement> (accessed on 16 March 2023).
- Vanuatu ICJ Initiative. n.d. 'Pursuing an Advisory Opinion on Climate Change from the International Court of Justice', <https://www.vanuatuicj.com> (accessed on 16 March 2023).
- Watson, Geoffrey R. 1993. 'Constitutionalism, Judicial Review, and the World Court', *Harvard International Law Journal*, 34: 1.
- Webb, Philippa. 2021. 'The United Kingdom and the Chagos Archipelago Advisory Opinion: Engagement and Resistance', *Melbourne Journal of International Law*, 21(3): 726–748.
- Yusuf, Abdulqawi A. 2019. 'The Governance of the International Court of Justice', Speech given at the University of Leiden, International Court of Justice, 20–21 September, <https://www.icj-cij.org/public/files/press-releases/0/000-20190920-STA-01-00-EN.pdf> (accessed 16 June 2023).