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THE INTERNATIONAL COURT OF JUSTICE

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The International Court of Justice
(HillStudies)

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EXECUTIVE SUMMARY

Established in 1946, the International Court of Justice (ICJ or the Court) became the principal judicial organ of the United Nations (UN). It assumed the mandate of its predecessor, the Permanent Court of International Justice and is therefore responsible for settling legal disputes between states in accordance with the principles of international law. It also issues advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies.

The ICJ's operations to this day are grounded in its Statute – annexed to the *Charter of the United Nations* – and its Rules, which govern, among other things, its rules of procedure. The ICJ is composed of 15 elected judges and has jurisdiction over legal disputes concerning the interpretation of a treaty; a question of international law; the existence of a fact which, if established, would constitute a breach of an international obligation; or the nature or extent of the reparation to be made for the breach of an international obligation. Only states may institute proceedings before the Court in respect of contentious cases. The ICJ also has advisory jurisdiction; in that context, it may issue an opinion on any legal questions at the request of any organ or agency authorized to submit such a request under the *Charter of the United Nations*. With regard to the enforcement of its decisions – which has drawn criticism in the international legal community – it is governed by the *Charter of the United Nations* and depends on either the goodwill of states or recourse to the United Nations Security Council.

The Court's operations have not changed over its 80-year history, and Canada has appeared before it on more than one occasion. Canada's most recent declaration recognizing the compulsory jurisdiction of the ICJ was filed in August 2023 and includes six reservations. At present, Canada is a party to four pending contentious cases before the Court.

Despite this stable operation and the fact that states, including Canada, have made use of this international court since 1946, a number of concerns have been raised over the years with respect to the Court, at times casting doubt on its judicial independence. In this regard, the Court has been criticized not only for the absence of effective enforcement mechanisms, but also for a lack of representativeness within the judiciary, due in part, according to many legal experts, to the almost automatic election of judges from the five permanent members of the United Nations Security Council. Indeed, judges who are nationals of the five permanent members of the United Nations Security Council have enjoyed an almost uninterrupted presence on the Court since its establishment, resulting in a clear and significant disparity compared with judges from other UN member states.

Notwithstanding this criticism, the ICJ remains a symbol of international law and a well-established legal forum. Over the years, it has demonstrated that international law can serve as a tool to address power dynamics on the global political stage, thereby allowing otherwise marginalized voices to be heard.

THE INTERNATIONAL COURT OF JUSTICE

1 INTRODUCTION

The International Court of Justice (the Court or ICJ) was established with the creation of the United Nations (UN), following the San Francisco Conference in June 1945.[1] Member states adopted the *Charter of the United Nations* (UN Charter) and agreed to provide the new international organization with a principal judicial organ: the ICJ. Drawing on arbitration as a method of dispute resolution, the ICJ thus became the primary international legal mechanism for resolving disputes between subjects of international law. Its mission was – and remains –

> to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized [UN] organs and specialized agencies.[2]

The first case brought before the new UN judicial body was the dispute between the United Kingdom and Albania over the Corfu Channel, filed on 22 May 1947.[3] As a result, the Court heard its first cases at the outset of the Cold War, that is, within an international geopolitical context marked by extreme division. This polarization of the world led the various geopolitical regions of the time to develop their own – often unfavourable – views of the new international tribunal. Thus, the Court found itself criticized from all sides: the socialist countries of the Eastern Bloc accused the Court of being "too bourgeois," while the countries of the Western Bloc believed that the Court displayed "a certain Third World orientation," particularly because of the selection of judges.[4] For their part, "Third World"[5] countries, in line with what would become the "Non-Aligned Movement" in the 1950s,[6] criticized the Court's "overly Western" foundations.[7] Today, despite these initial divisions, the Court remains in place and, since its establishment in 1946, more than 195 cases have been placed on its docket.

This HillStudy begins by examining the origins of the ICJ and outlining the main features of its work. Next, it focuses on the relationship between Canada and the ICJ, in particular by analyzing the various reservations attached over the years to Canada's declarations recognizing the ICJ's compulsory jurisdiction and by providing an overview of the cases in which Canada is a party. The paper concludes by examining certain criticisms that have been levelled at the UN judicial body since its establishment.

2 CREATING AN INTERNATIONAL JUDICIAL TRIBUNAL

Deliberations on the creation of international bodies to ensure the peaceful settlement of international disputes first emerged at the Hague Peace Conferences of 1899 and 1907. These discussions focused on the establishment of international legal mechanisms, including the creation of an international judicial body.

In 1919, the League of Nations, the predecessor of the United Nations, established at the end of the First World War by the Treaty of Versailles, entrusted its Council with the task of creating the Permanent Court of International Justice (PCIJ), pursuant to Article 14 of the *Covenant of the League of Nations*.[8] Founded in 1922, the PCIJ became the "first permanent international tribunal with general jurisdiction."[9] Its mandate was to rule on "any dispute of an international character which the parties thereto submit to it," as well as to give "an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly [of the League of Nations]."[10] Ultimately, the failure of the League of Nations and the outbreak of the Second World War led to the dissolution of the PCIJ in 1946.

In April 1946, a new permanent international court with universal and general jurisdiction came into being. This new court, the ICJ, was established not only as the main court for handling international law, but also as the principal judicial organ of the UN, which represented a major difference from the PCIJ, whose Statute was independent of the *Covenant of the League of Nations*. By contrast, the *Statute of the International Court of Justice* (ICJ Statute), although said to be annexed to the UN Charter, forms an integral part of it, pursuant to Article 92.[11] The ICJ thus became one of the six main UN bodies, alongside the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat (only five of which remain today).[12] In accordance with Article 22 of its Statute, the seat of the ICJ is located in The Hague, Netherlands, within the Peace Palace.

3 FUNCTIONING OF THE INTERNATIONAL COURT OF JUSTICE

The functioning of the Court rests on three main pillars: its composition, its jurisdiction and its procedures, all of which are governed by its Statute and Rules adopted in 1978.[13]

3.1 ORGANIZATION OF THE COURT

As the principal judicial organ of the United Nations, the ICJ must reflect the diversity of UN member states. Therefore, to ensure impartiality, no two judges of the Court may be nationals of the same state. The Court consists of 15 judges, all of whom are elected for nine-year terms and are eligible for re-election.[14] The Court also elects a president and vice-president, who each serve a three-year term and may be re-elected.[15]

The process for selecting judges of the Court is governed by its Statute. First, to be eligible, a candidate must possess the individual qualities set out in Article 2 of the ICJ Statute, namely, a character likely to foster or ensure the independence of the judiciary, the highest moral standing and recognized competence in international law. The national groups of the Permanent Court of Arbitration then submit a list of eligible persons who have the aforementioned individual qualities.[16] Lastly, the UN General Assembly and the Security Council proceed independently of each other to elect the judges, who must obtain an absolute majority of votes. The individuals selected must individually possess the qualifications specified and, in the body as a whole, represent "the main forms of civilization and of the principal legal systems of the world."[17]

Furthermore, under Article 31 of the ICJ Statute, when a case is brought before the Court, judges of the nationality of each of the parties retain their right to sit. Conversely, where one or both of the parties do not have a judge of their nationality sitting on the Court, that party – or each of them – may choose a judge, known as a "judge *ad hoc*," who takes part in the decision on equal terms with the other judges.[18] This practice is a departure from the rule, in both common law and civil law, according to which a judge who is a party to a case, or whose impartiality might reasonably be questioned, is ordinarily required to recuse themselves.

3.2 COMPETENCE OF THE COURT

As a judicial organ of the United Nations, the ICJ may hear only cases brought by states and is directly open to the states parties to its Statute, namely, the member states of the United Nations.[19] Although international organizations are fully recognized subjects of international law, they cannot be parties to cases before the Court.[20]

The jurisdiction of the ICJ extends to all legal disputes concerning, as the case may be, the following:

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

The Court may rule on a dispute between states only if the states concerned have accepted its jurisdiction. Article 36 of the ICJ Statute provides for three ways in which a case may be brought before the Court.[21]

- A case may be referred to the Court on the basis of a special agreement between the parties, whereby the parties agree to accept the jurisdiction of the ICJ and to submit their dispute to it.
- The ICJ may also be referred to directly through a "jurisdictional clause" included in a convention or a bilateral or multilateral treaty providing for the ICJ's jurisdiction in the event of legal disputes.[22]
- States may unilaterally submit declarations recognizing the compulsory jurisdiction of the ICJ. These declarations attest that a state recognizes as "compulsory *ipso facto* and without special agreement, in relation to any other [s]tate accepting the same obligation, the jurisdiction of the Court."[23] Furthermore, pursuant to Article 36(3) of the ICJ Statute, these declarations recognizing the jurisdiction of the ICJ as compulsory may be made unconditionally or may be accompanied by conditions that may limit the scope of the Court's jurisdiction for the declaring state.

In its deliberations, the Court applies the sources of international law set out in Article 38(1) of its Statute, namely, treaties and conventions, custom, the general principles of international law and the teachings of the most highly qualified legal experts in the field of international law. However, pursuant to Article 38(2) of the same Statute, if the parties agree thereto, the Court also has the jurisdiction to decide a case under the principles of equity, rather than basing its judgment on the aforementioned sources of international law.

Lastly, the ICJ also has advisory jurisdiction, through which it has the authority to give advisory opinions. Accordingly, Article 65 of the ICJ Statute provides that the Court may give an opinion on "any legal question at the request of whatever body may be authorized by … the Charter of the United Nations to make such a request," specifically by its Article 96.[24]

3.3 PROCEDURES OF THE COURT

French and English are the two official languages of the ICJ, for both the written and oral parts of the proceedings and for judgments delivered by the Court.[25] In this regard, the ICJ is the only principal organ of the UN whose constituent instrument determines its official languages (Article 39 of the ICJ Statute).[26] As for the rules governing procedure, the Court has powers similar to those of most Canadian courts. Broadly speaking, the Court's operations depend on the type of proceedings initiated, namely, contentious or advisory.

3.3.1 Contentious Proceedings

The ICJ has contentious jurisdiction, meaning that it "settles disputes of a legal nature that are submitted to it by States in accordance with international law."[27] The proceedings are divided into two parts: written and oral. "The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support," whereas "[t]he oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates."[28] Hearings before the Court are public, with some exceptions, while deliberations take place in private. The parties, that is, the states, are represented before the Court by agents who may have the assistance of counsel or advocates.[29]

Under Article 41 of the ICJ Statute, before proceeding to consider the merits of a case, the Court may indicate provisional measures to be taken if such measures are requested and if it considers that circumstances so require. The indication provisional measures "has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof."[30] In order for such measures to be indicated, the following four conditions, as established in the Court's jurisprudence, must be met:

- The provisions relied on by the applicant state appear, *prima facie* (at first glance), to fall within the Court's jurisdiction.
- A link exists between the provisional measures being requested and the rights for which the applicant state is seeking protection.
- Irreparable prejudice could be caused to the rights that are the subject of legal proceedings or when the alleged disregard of such rights may entail irreparable consequences.
- The situation is urgent, "in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision."[31]

Otherwise, if provisional measures have not been requested or if the Court determines that such measures are not warranted, the proceedings follow their course. The Court first establishes its jurisdiction pursuant to Article 36 of its Statute and, if it has the jurisdiction to hear the dispute, proceeds to consider the parties' written and oral arguments. Following the oral phase, the Court renders a decision by a majority of the judges present.[32] The decisions of the ICJ in contentious cases are delivered in the form of judgments, which must state the reasons on which they are based. In addition, the judges present may attach individual opinions to the judgments, whether dissenting or not, in accordance with Article 57 of the ICJ Statute and Article 95(2) of its Rules.

The ICJ has no mechanism of appeal; in other words, its judgments are final and without appeal, pursuant to Article 60 of its Statute.[33] Article 61 of the ICJ Statute nevertheless provides that an application for revision of a judgment may be made, but only in cases where a fact is discovered which was, when the judgment was given, unknown to the Court and to the party claiming revision, and which was of such nature as to be a decisive factor.

3.3.2 Advisory Proceedings

Under the advisory proceedings, which allow the ICJ to issue advisory opinions, Article 66 of the ICJ Statute serves as the provision governing the exchange of information among the parties concerned. Specifically, Article 66(2) sets out the procedure whereby the Court may invite states entitled to appear before it or international organizations to submit written statements on the question before it, where the Court considers that they are "likely to be able to furnish information on the question."[34] In practice, the Court has tended to give this provision a relatively broad scope, issuing flexible invitations to both states and international organizations.[35]

In addition, Article 67 of the ICJ Statute specifies that advisory opinions are delivered in open court, "notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned," who are invited to attend prior to publication.[36]

With respect to the court's procedures, the same rules apply, broadly speaking, in advisory cases as in contentious cases, to the extent that the Court considers them applicable in the particular case.[37] In all cases, judges are entitled to attach individual opinions to advisory opinions.[38]

3.4 ENFORCEMENT OF THE COURT'S DECISIONS

The decisions of the ICJ are determinations that are binding on the parties. Advisory opinions have no binding force. Although it is noted that they tend to be largely endorsed in one form or another by the UN institutions or other authorized bodies that have requested them, they are not considered decisions of the Court.[39] Since they are not binding, advisory opinions therefore do not fall within the scope of Article 94 of the UN Charter, which expressly affirms the enforceability of the ICJ's decisions.

Article 94(1) of the UN Charter provides that each state party to the ICJ Statute must comply with any decision of the ICJ rendered in any case to which it is a party. Accordingly, this obligation applies both to judgments on the merits and to orders indicating provisional measures, which the Court recognizes as decisions having binding force on the parties to a dispute within the meaning of Article 59 of its Statute. Indeed, since its judgment in *LaGrand (Germany v. United States)* in 2001, the ICJ has confirmed the mandatory effect of provisional measures.[40] More recently,

the ICJ recalled in one of its orders on provisional measures in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* "that its orders on provisional measures under Article 41 of the Statute have binding effect and thus create international legal obligations for any party to whom the provisional measures are addressed."[41]

However, the situation under Article 94(1) with respect to provisional measures may be different in the context of enforcement under Article 94(2) of the UN Charter. That article provides that

> [i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Accordingly, with respect to the enforceability of ICJ decisions, a literal reading of Article 94 would suggest that only judgments are covered by the enforcement mechanisms set out in Article 94(2) of the UN Charter, unlike Article 94(1), which refers to the term "decision." Nevertheless, some scholars have advanced a different interpretation, according to which provisional measures, like judgments, are enforceable, including under the terms of Article 94(2) of the UN Charter.[42]

4 CANADA AND THE INTERNATIONAL COURT OF JUSTICE

Since Canada ratified the UN Charter, it is a member of the United Nations and, as such, a party to the ICJ Statute, in accordance with Article 93 of the UN Charter. Canada is therefore entitled to appear before the ICJ pursuant to Articles 34 and 35 of the ICJ Statute.

4.1 RECOGNITION OF THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

At the time of the establishment of the ICJ, Canada's formal recognition of the compulsory jurisdiction of the PCIJ, made in September 1929, was deemed applicable to the jurisdiction of the ICJ under Article 36(5) of its Statute.[43] However, on 7 April 1970, Canada deposited, for the first time, a declaration of acceptance of the compulsory jurisdiction of the ICJ under Article 36(2) of the ICJ Statute. Canada's recognition of the Court's compulsory jurisdiction was accompanied by four reservations:

- disputes for which recourse to some other method of peaceful settlement is already provided for;
- disputes between Canada and other Commonwealth countries, which shall instead be settled in such a manner as the parties have agreed;

- disputes with regard to questions falling exclusively within Canada's objective national jurisdiction; and
- disputes relating to Canada's fisheries jurisdiction, which at the time read as

> disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada.[44]

Some authors have argued that two of the reservations listed above – which are frequently used in declarations of acceptance of compulsory jurisdiction – are in fact "false reservations," insofar as they contain superfluous content.[45] Thus, the aforementioned reservation concerning recourse to another method of dispute settlement if the parties so desire would be considered superfluous since Article 36(1) of the ICJ Statute specifies that the Court has jurisdiction over disputes submitted by the parties. If the contesting states decide to settle their dispute by other means, they would therefore fall outside the Court's jurisdiction. The same applies to the aforementioned reservation relating to Canada's exclusive jurisdiction over national issues, as it is implicitly an integral part of Article 36(2) of the ICJ Statute.[46] That provision lists the categories of disputes that may be submitted to the Court, and disputes falling exclusively within the national jurisdiction of a state party to the ICJ Statute are not included. The Court would therefore simply lack jurisdiction to hear such a dispute from the outset.

In 1985, Canada filed a new declaration recognizing the compulsory jurisdiction of the ICJ, retaining all the reservations set out in the 1970 declaration, with the exception of the reservation relating to Canada's fisheries jurisdiction.[47]

In 1994, Canada filed a new declaration of acceptance of the compulsory jurisdiction of the ICJ, retaining the three reservations contained in the 1985 Canadian declaration and once again adding a reservation concerning its jurisdiction in matters of fisheries. Through this new reservation, Canada specifically excludes the jurisdiction of the ICJ on matters concerning "conservation and management measures taken by Canada with respect to vessels fishing in the [Northwest Atlantic Fisheries Organization (NAFO)] Regulatory Area … and the enforcement of such measures."[48]

This last reservation, as added in 1994, was invoked in a dispute between Spain and Canada before the ICJ, in which Spain alleged, among other things, that in 1995, Canada had boarded on the high seas a vessel flying the Spanish flag pursuant to Canada's *Coastal Fisheries Protection Act*, as amended on 12 May 1994, and its implementing regulations. Spain argued that the actions of Canada's navy contravened the provisions of the *Convention on the Future Multilateral Cooperation in the Northwest Atlantic Fisheries* of 1978, along with the norms and principles of

international law.[49] For its part, Canada maintained that the ICJ lacked jurisdiction to hear the dispute in accordance with its reservation concerning fisheries jurisdiction contained in its 1994 declaration of acceptance of the compulsory jurisdiction of the ICJ. In a judgment of 4 December 1998, the Court concluded, following an interpretation of the Canadian reservation, that it lacked jurisdiction to adjudicate the dispute between Spain and Canada. It held that the dispute between the two states arose from "management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and from "the enforcement of such measures," and that, consequently, it was directly covered by one of the reservations contained in Canada's declaration of acceptance of the compulsory jurisdiction of the ICJ.[50]

In 2023, Canada filed its most recent declaration of acceptance of the compulsory jurisdiction of the ICJ, replacing the declaration of 10 May 1994. The 2023 declaration retains the four reservations from the previous declaration while amending the wording of the reservation relating to Canada's fisheries jurisdiction in the French version – mostly likely for the purpose of clarification – and adding two new reservations.[51]

One of the two new reservations added to the 2023 declaration concerns the declaration of acceptance of the compulsory jurisdiction of the ICJ by another party to a dispute with Canada, and it is divided into two parts. First, it specifies that Canada does not accept as compulsory *ipso facto* and without special convention the jurisdiction of the Court where the declaration of acceptance of the state intervening against Canada in a dispute relates only to the dispute in question or was deposited solely for the purposes of that dispute. Second, it states that Canada does not recognize the jurisdiction of the ICJ where the state or states parties to the dispute deposited their declaration of acceptance of the compulsory jurisdiction of the ICJ less than 12 months prior to the filing of the application bringing the dispute before the Court.

The other reservation added to the 2023 declaration provides that Canada does not accept as compulsory *ipso facto* and without special convention the jurisdiction of the ICJ in cases where it has not been notified by the state or states concerned in writing at lease six months in advance of the submission of the dispute or claim to the ICJ, indicating an intention to submit the dispute to the Court. This reservation may be interpreted in different ways. Some see in the reservation a risk of delaying or complicating the judicial process and ultimately constituting an obstacle to access to international justice by adding this procedural element. Others, by contrast, view it as an incentive to avoid recourse to an international tribunal and to encourage states to engage in discussion, negotiation and perhaps to settle the dispute among themselves. It was this latter interpretation that a representative of Global Affairs Canada advanced in February 2024 before the Standing Senate Committee on Foreign Affairs

and International Trade. According to the representative, the reservation was added precisely to protect the integrity of the Court's jurisdiction by "[encouraging] states to sit down and have a period of time to discuss the object of the dispute before going to the [ICJ] immediately," and that several other states, such as Australia and the United Kingdom, had similar reservations.[52]

4.2 PENDING CONTENTIOUS CASES BEFORE THE INTERNATIONAL COURT OF JUSTICE INVOLVING CANADA

In the past, Canada has been a party to three contentious cases before the ICJ: a case concerning the delimitation of the maritime boundary in the Gulf of Maine area (Canada/United States) in 1984; a case concerning Canada's fisheries jurisdiction (Spain v. Canada) in 1998; and a case relating to the legality of the use of force in Yugoslavia (Serbia and Montenegro v. Canada) in 2004.[53] At the time of writing, Canada was a party to four cases pending before the ICJ, which are presented in greater detail below.

4.2.1 *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic)*

On 8 June 2023, Canada and the Netherlands filed a joint application instituting proceedings against the Syrian Arab Republic concerning its alleged use of torture and other cruel, inhuman or degrading treatment or punishment, notably within the Syrian detention system, against, among others, human rights defenders, dissidents and other activists on Syrian soil. The application thus alleges numerous violations of the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention against Torture).[54]

The Court has not yet ruled on the merits of the case. It is currently awaiting the submission of the parties' written pleadings in accordance with its order of 1 February 2024.[55] However, in its order of 16 November 2023, the Court granted the joint request of Canada and the Netherlands for the indication of provisional measures and specified that Syria, in accordance with its obligations under the Convention against Torture, must not only

> take all measures within its power to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and ensure that its officials, as well as any organizations or persons which may be subject to its control, direction or influence, do not commit [such] acts,

but also "take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of the Convention against Torture."[56]

4.2.2 *Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada)*

On 27 June 2023, Iran filed an application instituting proceedings against Canada before the ICJ, alleging that Canada has adopted a series of executive, legislative and judicial measures against Iran and its property since 2012, in violation of sovereign immunities from jurisdiction and from enforcement under customary international law.[57]

The Court has not yet ruled on the merits of the case. It received Iran's Memorial and Canada's Counter-Memorial within the time limits set out in the order of 16 October 2023.[58] It is now awaiting the submission of Iran's Reply and Canada's Rejoinder, as authorized in its order of 9 December 2025.[59]

4.2.3 *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran)*

On 4 July 2023, Canada, the United Kingdom, Sweden and Ukraine filed a joint application instituting proceedings against the Islamic Republic of Iran before the ICJ in connection with the shooting down on 8 January 2020 of Ukraine International Airlines flight PS752, a civil aircraft in service, by military personnel of Iran's Islamic Revolutionary Guard Corps. All 176 passengers and crew on board, many of whom were nationals and residents of the applicants, were killed.[60] In this context, the applicants allege that Iran violated a series of obligations owed to them under the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, which in particular requires state parties to "prohibit, prevent and punish certain offences against civil aviation, including the unlawful and intentional destruction of an aircraft in service."[61]

The Court has not yet ruled on the merits of the case. On 16 January 2025, Iran filed preliminary objections to the jurisdiction of the Court and to the admissibility of the Application. In its order of 17 January 2025, the ICJ reserved the subsequent procedure for further decision pending the presentation by the applicants of a written statement of their observations and submissions on the preliminary objections raised by Iran. These documents will enable the Court to render a decision on the admissibility of the application before determining whether to proceed to the merits of the dispute.[62]

4.2.4 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar; seven intervening states)*

On 11 November 2019, The Gambia filed an application instituting proceedings against Myanmar for acts allegedly perpetrated in violation of the *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) by the

Government of Myanmar against the Rohingya group.[63] On 15 November 2023, Canada, together with Germany, Denmark, France, the Netherlands and the United Kingdom, submitted a joint declaration of intervention in which they requested that the Court, pursuant to Article 63 of its Statute, grant them intervenor status in the case, given "their common interest in the accomplishment of the high purposes of the [Genocide] Convention, as well as their consequent interest in its construction."[64] By an order rendered on 3 July 2024, the joint declaration of intervention was found to be admissible insofar as it concerns the construction of provisions of the Genocide Convention.[65] Canada is therefore formally an intervening state in this case.

The Court has not yet ruled on the merits of the case. However, at The Gambia's request, it indicated provisional measures on 23 January 2020, requiring Myanmar to comply with its obligations under the Genocide Convention. On 22 July 2022, the Court also rendered a judgment on the preliminary objections to its jurisdiction raised by Myanmar, in which it confirmed its jurisdiction under its Statute and the Genocide Convention.[66] Public hearings on the merits of the case were held from 12 to 29 January 2026.[67]

5 SOME CRITICISMS OF THE INTERNATIONAL COURT OF JUSTICE

The principal judicial organ of the UN is often accused of being politicized. In particular, critics point to the absence of effective enforcement mechanisms and to a lack of representativeness among its judges, given the nature of the process by which they are selected.

One of the biggest criticisms raised by opponents of international law is what they see as a lack of effective enforcement mechanisms.[68] As explained in section 3.4 of this HillStudy, Article 94 of the UN Charter provides for the enforcement of ICJ decisions. However, considerable uncertainty still exists today regarding the practical application of this article. Article 94(1) relies on the goodwill of states, while Article 94(2) is subject to certain limitations as it allows for recourse to the United Nations Security Council, which is not a separate and independent body like the Court, which enjoys judicial independence. The Security Council is, above all, a fundamentally political body.

Although over the years the Court's judgments have for the most part been enforced – either directly or through negotiation – this has not always been the case, as illustrated by the case concerning *Military and Paramilitary Activities in and against Nicaragua*, which pitted Nicaragua against the United States in 1984. This is perhaps the best-known example of the challenges that parties may encounter when seeking to enforce the Court's decisions.

In this case, Nicaragua alleged that the United States

> [was] using military force against Nicaragua and intervening in Nicaragua's internal affairs, in violation of Nicaragua's sovereignty, territorial integrity and political independence and of the most fundamental and universally accepted principles of international law.[69]

After taking part in the proceedings to determine the Court's jurisdiction and the admissibility of Nicaragua's application, and following the indication by the Court of provisional measures in favour of Nicaragua on 18 January 1985, the United States announced that it no longer intended to participate in the proceedings related to the case. The Court therefore proceeded to hear the case in the absence of one of the parties concerned. In a judgment rendered on 27 June 1986, the ICJ held that

> the United States had violated the obligations imposed by customary international law not to intervene in the affairs of another State, not to use force against another State, not to infringe the sovereignty of another State, and not to interrupt peaceful maritime commerce,

thus "[rejecting] the justification of collective self-defence advanced by the United States concerning the military or paramilitary activities in or against Nicaragua."[70]

The United States chose not to comply with Article 94(1) of the UN Charter and did not give effect to the ICJ's judgment. Nicaragua then brought the matter before the Security Council pursuant to Article 94(2) of the UN Charter. It submitted several draft resolutions to the Security Council seeking enforcement of the judgment but without success: they were all blocked by the U.S. veto.[71]

This case shows the risk that the Security Council may be instrumentalized in ways that can make the enforcement of ICJ judgments difficult or even impossible, at least where a permanent member of the Council is involved. Such a risk could have repercussions on the Court's effectiveness and on the principle of equality of the parties before it, since in this specific situation, several legal experts have observed that the equality required between the parties for a fair trial "does not necessarily coincide with the reality of power within the UN."[72]

Another criticism levelled at the Court is that judges do not adequately reflect the diversity of the population. This issue appears to stem directly from the process of selecting judges, which continues to be criticized as highly politicized.

Article 9 of the ICJ Statute provides that the nomination of candidates for the Court must be carried out in good faith and with due regard for the obligation to assure "the representation of the main forms of civilization and of the principal legal systems of the world." However, legal experts have contended that, over the years,

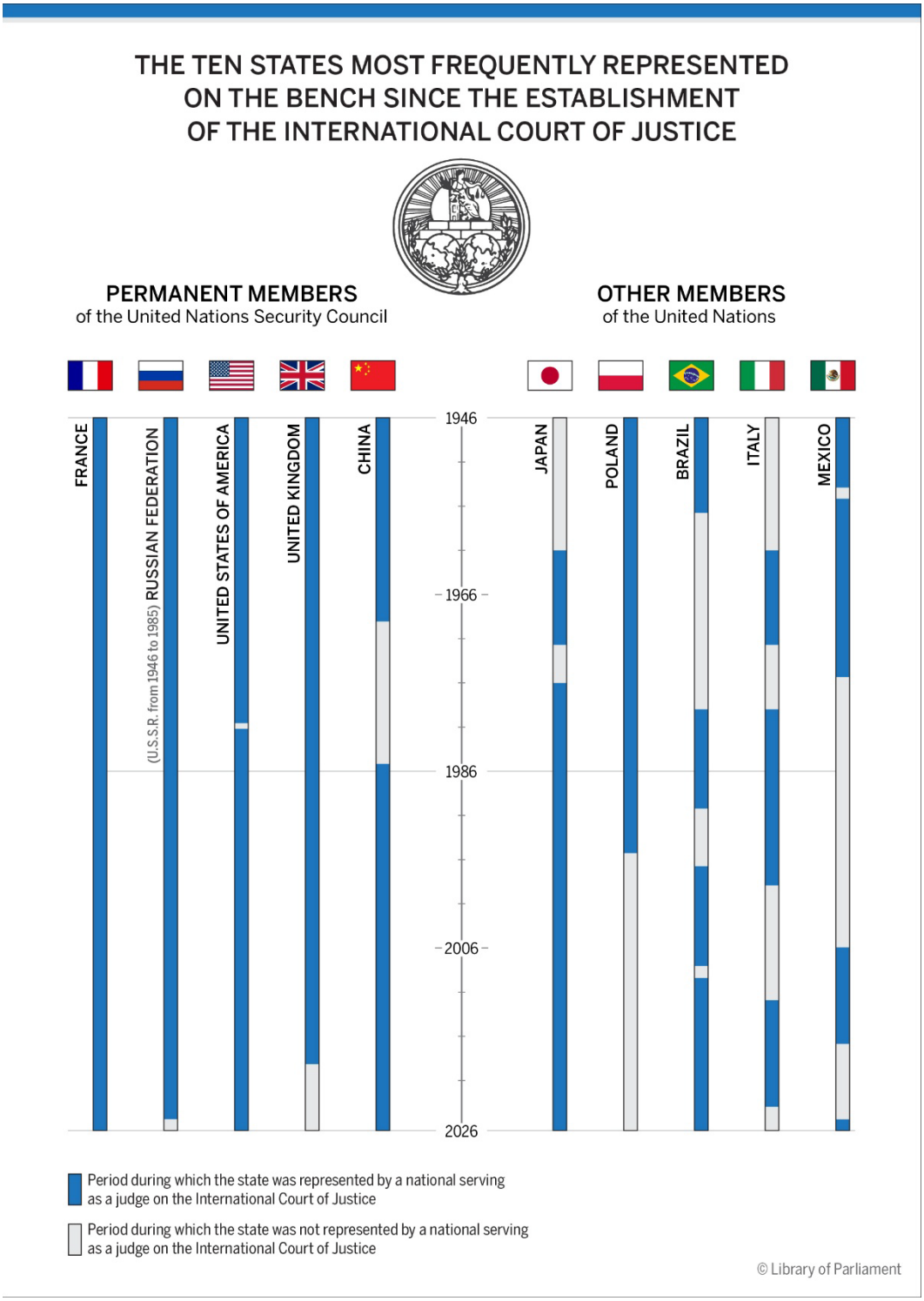
the composition of the Court's bench has closely mirrored that of the Security Council.[73] Indeed, the permanent members of the Security Council have almost invariably had a judge of their nationality sitting on the principal judicial organ.[74] Some legal experts have even gone so far as to suggest that this practice is an "unwritten rule of law" under the UN Charter and the ICJ Statute.[75]

The composition of the Court's bench suggests that the UN understands the expression "main forms of civilization" in Article 9 of the ICJ Statute as being equivalent to the principle of "equitable geographical distribution."[76] Indeed, the allocation of seats on the ICJ appears to correspond broadly to the regional groups already represented within the UN. However, some authors have argued that this so-called balanced or equitable representation has the effect of sidelining a number of culturally distinct sub-regions.[77]

Thus, despite diversification in the Court's composition in recent years, some legal experts maintain that the most powerful states on the international stage – most notably the permanent members of the Security Council – continue to dominate the judge selection process.[78] These experts argue that the Security Council exerts a clear influence over the appointment of judges to the ICJ, particularly given that candidates put forward by permanent members of the Security Council are almost automatically assured of being elected.[79] Some commentators go further, suggesting that because the process for selecting judges is, in their view, subject to a significant degree of politicization, it is therefore somewhat utopian to expect the ICJ to ultimately function as a wholly apolitical body.[80]

Figure 1 shows the 10 states that have been most frequently represented on the ICJ bench since the Court's establishment. It highlights the dominant presence of judges who are nationals of the five permanent members of the UN Security Council. These countries have been represented on the United Nations' principal judicial organ almost without interruption since 1946.

Figure 1 – The 10 States Most Frequently Represented on the Bench Since the Establishment of the International Court of Justice



Source: Figure prepared by the Library of Parliament using data obtained from International Court of Justice, *All Members*.

The politicization of the ICJ identified by some legal experts reveals underlying power dynamics that could undermine the independence of the United Nations' principal judicial organ. More vulnerable states on the international stage may therefore find themselves not only without meaningful representation within the international judiciary, but also without any truly effective law enforcement mechanism.

6 CONCLUSION

Despite the criticism directed at the principal judicial organ of the UN regarding its politicization, the ICJ remains a tribunal composed of judges who uphold the principles of impartiality and judicial independence and whose judgments have been complied with in the overwhelming majority of cases.[81]

It is important to note that, over the years, as part of its dual mandate to hear cases on contentious and advisory matters, the ICJ has effectively enabled states with less influence on the global political stage to have their voice heard, with a view to protecting their often more vulnerable populations. Between 22 May 1947 and 18 September 2025, 201 cases were entered in the General List of the Court.[82] A significant number of these cases, both advisory and contentious in nature, have enabled states to use international law as a tool to articulate their claims, for example regarding issues of colonial domination or the application of the principle of self-determination of a people.[83]

NOTES

1. United Nations (UN), *United Nations Charter*, 26 June 1945, Chapter XIV.
2. International Court of Justice (ICJ), *The Court*. See also ICJ, *Statute of the International Court of Justice*, arts. 38 and 65.
3. ICJ, *The Corfu Channel Case*, 9 April 1949.
4. Catherine Colard-Fabregoule, Anne Muxart and Sonia Parayre, "Le procès équitable devant la Cour internationale de Justice," in Hélène Ruiz Fabri, ed., *Procès équitable et enchevêtrement des espaces normatifs*, 2003 [TRANSLATION].
5. The term "Third World" is used conceptually to refer to geographical – but above all political – positioning, unlike other terms that could have been used, such as developing countries, underdeveloped countries or the Global South, as it highlights the systemic phenomena of domination and exploitation inherent in colonization and imperialism. See Rémi Bachand, *Les subalternes et le droit international : une critique politique*, pp. 23–25 [TRANSLATION].
6. The 1955 Bandung Conference, which brought together representatives from African and Asian countries, is said by some experts to have marked the emergence of ideas of neutralism and non-alignment in the East–West rivalry that shaped the Cold War. See, in particular, Luis Eslava, Michael Fakhri and Vasuki Nesiah, eds., *Bandung, Global History, and International Law: Critical Pasts and Pending Futures*, 2017.
7. Catherine Colard-Fabregoule, Anne Muxart and Sonia Parayre, "Le procès équitable devant la Cour internationale de Justice," in Hélène Ruiz Fabri, ed., *Procès équitable et enchevêtrement des espaces normatifs*, 2003 [TRANSLATION].

8. UN, "The Covenant of the League of Nations," *League of Nations: Official Journal*, February 1920, art. 14.

9. ICJ, *Permanent Court of International Justice*.

10. UN, "The Covenant of the League of Nations," *League of Nations: Official Journal*, February 1920, art. 14.

11. ICJ, *Statute of the International Court of Justice*, 26 June 1945; and UN, *United Nations Charter*, 26 June 1945.

12. The Trusteeship Council ceased its activities in 1994 as all trust territories had by then attained independence or self-government. UN, *Main Bodies*.

13. ICJ, *Rules of the Court (1978)*, 14 April 1978.

14. ICJ, *Statute of the International Court of Justice*, 26 June 1945, arts. 3(1) and 13(1).

15. Ibid., art. 21.

16. Ibid., arts. 4–5.

17. Ibid., arts. 8–10.

18. ICJ, *Judges ad hoc*.

19. ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 34. However, other states that are not members of the UN may be entitled to appear before the ICJ, subject to certain conditions and in accordance with the provisions of the UN Charter and ICJ Statute. See UN, *United Nations Charter*, 26 June 1945, art. 93(2); and ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 35(2).

20. ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 34(3).

21. See ICJ, *Basis of the Court's jurisdiction*.

22. A jurisdictional clause is a clause by which the parties to a contract or an international treaty, for example, agree in advance to submit any possible disputes to arbitration or to a court such as the ICJ. A complete list of treaties containing jurisdictional clauses is available on the ICJ website. See ICJ, *Treaties*.

23. ICJ, *Declarations recognizing the jurisdiction of the Court as compulsory*; and ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 36(2). It should be noted that a case may be brought before the ICJ under the "*forum prorogatum*" rule, according to which a state that "has not recognized the jurisdiction of the Court at the time when an application instituting proceedings is filed against it," has the possibility of accepting such jurisdiction to enable the Court to consider the case. See ICJ, *Basis of the Court's jurisdiction*.

24. ICJ, *Advisory Jurisdiction*; and UN, *United Nations Charter*, 26 June 1945, art. 96. The list of UN organs and specialized agencies authorized to request advisory opinions from the ICJ is available on the ICJ website. See ICJ, *Organs and agencies authorized to request advisory opinions*.

25. ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 39.

26. Andreas Zimmermann et al., *The Statute of the International Court of Justice: A Commentary*, 2012, p. 910.

27. ICJ, *Contentious Jurisdiction*.

28. ICJ, *Statute of the International Court of Justice*, 26 June 1945, arts. 43(2) and 43(5).

29. Ibid., arts. 46, 54 and 42.

30. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel): Provisional Measures: Order of 26 January 2024*, para. 35.

31. Ibid., paras. 15, 36, 60 and 61.

32. ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 55.

33. Ibid., art. 60. "In the event of a dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

34. Furthermore, pursuant to Article 66(3) of the ICJ Statute, should a "state entitled to appear before the Court have failed to receive the special communication referred to [in art. 66(2)], such state may express a desire to submit a written statement or to be heard; and the Court will decide." ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 66(3).

35. Andreas Zimmermann et al., *The Statute of the International Court of Justice: A Commentary*, 2012, p. 1645.

36. Ibid., pp. 1664–1665.

37. ICJ, *Statute of the International Court of Justice*, 26 June 1945, art. 68; and ICJ, *Rules of Court (1978)*, 14 April 1978, art. 102(2).

38. ICJ, *Rules of Court (1978)*, 14 April 1978, art. 107(3).

39. Andreas Zimmermann et al., *The Statute of the International Court of Justice: A Commentary*, 2012, p. 1621.

40. ICJ, *LaGrand Case (Germany v. United States of America): Judgment of 27 June 2001*.

41. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel): Order of 28 March 2024*, para. 48.

42. See, in particular, Fitz Robert Saint-Paul, *L'exécution des décisions de la Cour internationale de Justice : faiblesses et malentendus*, Master's thesis, Université de Montréal, 2007, pp. 36–45.

43. Canada's first declaration of acceptance of the compulsory jurisdiction of the Permanent Court of International Justice was made on 20 September 1929. See Fakhri Gharbi, "Le déclin des déclarations d'acceptation de la juridiction obligatoire de la Cour internationale de justice," *Les Cahiers de droit*, Vol. 43, No. 3, 2002, p. 494.

44. UN, *Canada: Declaration recognizing as compulsory the jurisdiction of the International Court of Justice, in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice*, 7 April 1970.

45. See Fakhri Gharbi, "Le déclin des déclarations d'acceptation de la juridiction obligatoire de la Cour internationale de justice," *Les Cahiers de droit*, Vol. 43, No. 3, 2002, pp. 445–448.

46. Manley O. Hudson, *The Permanent Court of International Justice*, 1934, p. 471.

47. Government of Canada, *Declaration of Acceptance by Canada of the Compulsory Jurisdiction of the International Court of Justice*, 10 September 1985.

48. Government of Canada, *Declaration of Acceptance by Canada of the Compulsory Jurisdiction of the International Court*,10 May 1994.

49. ICJ, *Fisheries Jurisdiction (Spain v. Canada): Application Instituting Proceedings*, 28 March 1995.

50. ICJ, *Fisheries Jurisdiction (Spain v. Canada): Overview of the Case*.

51. ICJ, *Declarations recognizing the jurisdiction of the Court as compulsory: Canada*, 28 August 2023.

52. Senate, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 15 February 2024 (Louis-Martin Aumais, Acting Assistant Deputy Minister, Legal Affairs, Global Affairs Canada).

53. See ICJ, *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America): Judgment of 12 October 1984*; ICJ, *Fisheries Jurisdiction Case (Spain v. Canada): Judgment of 4 December 1998*; and ICJ, *Case Concerning the Legality of the Use of Force (Serbia and Montenegro v. Canada): Judgment of 15 December 2004*.

54. ICJ, *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic): Joint Application Instituting Proceedings*, 8 June 2023.

55. ICJ, *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic): Order of 1 February 2024*.

56. ICJ, *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic): Order of 16 November 2023*, paras. 79 and 83.

57. ICJ, *Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada): Application Instituting Proceedings*, 27 June 2023.

58. ICJ, *Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada): Order of 16 October 2023*.

59. ICJ, *Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada): Order of 9 December 2025*.

60. ICJ, *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran): Joint Application Instituting Proceedings*, 4 July 2023.

61. Global Affairs Canada, *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, Backgrounder.

62. ICJ, *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran): Order of 17 January 2025*.

63. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Application Instituting Proceedings and Request for Provisional Measures*, 11 November 2019.

64. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Joint Declaration of Intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland*, 15 November 2023.

65. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Admissibility of the declarations of intervention*, 3 July 2024.

66. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Provisional Measures – Order of 23 January 2020*, p. 3; and ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): Preliminary Objections – Judgment of 22 July 2022*.

67. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar; 11 States intervening): Conclusion of the public hearings on the merits held from Monday 12 to Thursday 29 January 2026*, 29 January 2026.

68. See, in particular, Fritz Robert Saint-Paul, *L'exécution des décisions de la Cour internationale de Justice : faiblesses et malentendus*, Master's thesis, Université de Montréal, December 2006.

69. ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America): Application Introducing Proceedings*, 9 April 1984, para. 1.

70. ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America): Overview of the case*.

71. Fritz Robert Saint-Paul, *L'exécution des décisions de la Cour internationale de Justice : faiblesses et malentendus*, Master's thesis, Université de Montréal, December 2006, pp. 70 to 75.

72. Catherine Colard-Fabregoule, Anne Muxart and Sonia Parayre, "Le procès équitable devant la Cour internationale de Justice," in Hélène Ruiz Fabri, ed., *Procès équitable et enchevêtrement des espaces normatifs*, 2003 [TRANSLATION].

73. Robert Kolb, *International Court of Justice*, 2013, p. 132. At the time of writing, the permanent members of the Security Council with a national serving as judge on the ICJ are France, China and the United States. The United Kingdom was represented on the Court until 2018, while Russia was represented until 2024. See ICJ, *All Members*.

74. Robert Kolb, *International Court of Justice*, 2013, p. 132; and Mita Manouvel, *Les opinions séparées à la Cour internationale : Un instrument de contrôle du droit international prétorien par les États*, 2005, p. 170.

75. Antonio Remiro Brotons, "Nomination et élection des juges à la Cour internationale de Justice," *Unité et diversité du droit international*, 2014, p. 650 [TRANSLATION].

76. As is the case in the following instruments: *Rome Statute of the International Criminal Court*, 17 July 1998, art. 36(8); and *Statute of the International Tribunal for the Law of the Sea*, 10 December 1982, art. 2(2).

77. Robert Kolb, *International Court of Justice*, 2013, p. 132; and Antonio Remiro Brotons, "Nomination et élection des juges à la Cour internationale de Justice," *Unité et diversité du droit international*, 2014, p. 652.

78. Ibid.

79. Antonio Remiro Brotons, "Nomination et élection des juges à la Cour internationale de Justice," *Unité et diversité du droit international*, 2014, p. 645.

80. Ibid., p. 649.

81. Gilbert Guillaume, "L'organisation des Nations Unies et ses juges," *Pouvoirs*, No. 106, April 2004, p. 95.

82. ICJ, *Cases*.

83. See also Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance*, 2003.