

The ICJ and disputes between states: How cases work?

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Abstract:

“The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. The seat of the court is located in the Netherlands, its role is to settle legal disputes and provide advisory legal opinions inquired by the UN organs and specialized agencies, and it is composed of 15 judges who serve for a term of 9 years. For a contentious case to commence, the state must accept the jurisdiction of the court through entering into a special agreement to submit the dispute to the Court, by virtue of a jurisdictional clause, or through the reciprocal effect of declarations made by them under the Statute, and to put a procedure into motion a state can either submit an application where there is an applicant and respondent state, or through notification of special agreement between the two states where they are of equal positions in court. The legal proceedings go through a written phase, followed by an oral phase before judges conduct a private meeting, and pass the judgement publicly, if one of the parties does not comply with the decision of the court, the matter can be referred to the UNSC. There are a number of special incidental procedures that differ from the standard contentious cases procedures, they include: preliminary objections, provisional measures, third party intervention, joinder of cases, and states refusing to appear before the court. Cases may end early if there is settlement, withdrawal of the claim, or agreement between the two parties to close the case.

Introduction:

“The Corfu Channel filed on 22nd May 1947 was the first ICJ case. The case concerned an incident in which British warships were damaged by mines in the Corfu Channel, an international waterway. The UK argued that Albania was responsible for the mining and failed to warn about the danger. The ICJ held that Albania was liable for the damages because it had knowledge of the mines but did not notify other states. This case established the principle that states have an obligation not to knowingly allow their territory to be used for harmful acts against other states.” *By Arjun Mehta Published on 26 Mar 2025*

“The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America). The Court’s role is 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 United Nations organs and specialized agencies. The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, its administrative organ. Its official languages are English and French.” *By icj-cij.org*

“ Current members of the court, as of 2026 are: President IWASAWA Yuji (Japan), Vice-President Julia SEBUTINDE

(Uganda), Judge Peter TOMKA (Slovakia), Judge Ronny ABRAHAM (France), Judge XUE Hanqin (China), Judge Dalveer BHANDARI (India), Judge Georg NOLTE (Germany), Judge Hilary CHARLESWORTH (Australia), Judge Leonardo Nemer Caldeira BRANT (Brazil), Judge Juan Manuel GÓMEZ ROBLEDO (Mexico), Judge Sarah H. CLEVELAND (United States of America), Judge Bogdan-Lucian AURESCU (Romania), Judge Dire TLADI (South Africa), Judge Mahmoud Daifallah Hmoud (Jordan), Judge Phoebe N. Okowa (Kenya).” *By icj-cij.org.*

So how do cases work?

How does the Court operate?

There are two types of cases that can be handled by the ICJ, first are legal disputes submitted to the court, these are referred to as contentious cases; only states that are members of the UN, parties to the charter of the court, or have accepted the ICJ's jurisdiction under certain circumstances may be parties in this type of cases. The second type are legal inquiries, or request for consultative advice by specialized agencies and UN organs, this research focuses on contentious cases.

Contentious cases:

There are a number of ways in which a state must accept the jurisdiction of the court in order for the ICJ to entertain disputes in which that state is a party; these include:

- “By entering into a special agreement to submit the dispute to the Court;
- by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court;
- through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of dispute.”

The channel of communication between states and the court is generally the Ministry of Foreign Affairs of that state to the registrar, or through the ambassador of that state accredited to the Netherlands as there are no permanent representatives of states to the court. When a state is a party in an ongoing case, it is represented by an agent which plays the same role, rights, and obligations as a solicitor or avoué in a national court, since in the context of a dispute between states, diplomatic relations are at stake, the agent acts as head of a special diplomatic mission with powers to commit a sovereign State, and it represents the government of the state he/she represents in any formal acts done, and in public hearings. Proceedings may be put in motion through one of the following ways:

1. Through the notification of a special agreement: this is a bilateral agreement between two states that have an ongoing issue in which they agree to request that the court settle the dispute, the names of the two states are listed using a slash (/) in these cases to indicate that there is no applicant nor respondent, but both states are equal in this situation. The document can be lodged either by both states, or by one of them, and it must state the subject of the dispute, and the names of the two parties involved. Examples of such cases include the Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge case between Malaysia and Singapore in 2003, where the two countries submitted a request to the court to “determine whether sovereignty over: (a) Pedra Branca/Pulau Batu Puteh; (b) Middle Rocks; and (c) South Ledge belongs to Malaysia or the Republic of Singapore”. And they agreed in advance to accept the judgment of the court.

2. By means of an application: this is a unilateral document that is submitted by the applicant state that wishes to sue the respondent state, unlike the first method the agreement of the other state is not required, the respondent state is made aware of the case and details are communicated to it through the court. The names of the state listed in the document are separated by (v) (which is derived from the Latin phrase “verses” meaning against” indicating that unlike the first method the two countries are not of equal status. The document submitted by the applicant state must include the name of the respondent state, state the nature of the dispute and what it is about, basis of jurisdiction that proves that the state acknowledges the jurisdiction of the court, this can be in the form of a declaration where the state accepted the authority of the court, or a treaty between the applicant and respondent state that previously agreed that their disputes can be taken to the court, lastly the applicant state must provide basis for its claim supported by facts and evidence. Examples of such cases include the recent application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip from South Africa against Israel in 2023, the Republic of South Africa filed the case without agreement from the State of Israel.

How do cases proceed?

A case officially commences after a special agreement by two countries is submitted, or an application to sue a country is submitted by another country. The proceedings go through two main phases:

- The **written phase**, is where the two countries submit their pleadings in which they state the facts of the case, the legal points and defenses, and the evidence that backs up their stance. The document presented by each state is visible to the other, and each may provide responses to the written document submitted by the other, however they are not available to be viewed by the public at this stage. Seeing as the official languages adopted by the court are English and French, the documents are translated into these two languages.
- Following that is the **oral phase**, this is when the public hearings are held, and normal court procedures of presenting and defending arguments (done by lawyers and representatives of the government), and delivering questions by the judges to the parties involved take place, the documents that have been prepared and submitted by the two states involved in the written phase can be made public at this stage on the condition that both parties agree to release them.

After that, the judges hold a private meeting to discuss, (this is referred to as deliberating in camera), then the final judgment is announced and delivered in a public session; the judgments passed by the judges in the ICJ are final, binding, and there is no chance for an appeal, but revisions and interpretations are possible in certain cases. In the event that one of the parties refuses to comply with the judgement of the court, the other party may bring the issue before the United Nations Security Council, and the UNSC can recommend or decide on courses of action to enforce the judgment of the ICJ.

There may be disruptions to the flow of normal procedure mentioned above in cases **special incidental procedures** such as:

- **Preliminary objections**, which may arise due to respondent states questioning the jurisdiction of the court, or challenging the admissibility of the case. After assessing the claims, the court can either ratify the objection, which may lead to closure of the case, reject it which will allow the case to move

on to the merits, or it can declare that the objection lacks an exclusively preliminary character. Examples include the preliminary objection submitted by France on 31 March 2017 regarding the jurisdiction of the court and the admissibility of the Republic of Equatorial Guinea's application regarding the dispute of "the immunity from criminal jurisdiction of the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security [Mr. Teodoro Nguema Obiang Mangue], and the legal status of the building which houses the Embassy of Equatorial Guinea in France".

- **Provisional measures**, these are interim measures that are requested by the applicant state urgently in circumstances where the rights that form the basis of the application are under immediate danger, and due to the urgency of their nature they take priority over other cases, a recent example was the 2024 orders for Israel to take measures to prevent acts of genocide in Gaza and ensure humanitarian access.
- **Intervention**, this occurs when a third state is allowed to partake in the procedures of an ongoing case in order to protect its legal interests, there are two types of intervention, the first one under article 62 is the "interest of legal nature", this is where a state joins a case if the judgement passed and decision being made has an effect on their legal interests. The second type under article 63 is the "Construction of a Convention", where the third country has the right to join a case where a certain convention or treaty to which it is a party in is in question, an example includes the Gambia v. Myanmar (2019-Present), where several states intervened in this case as it relates to the Genocide Convention in Myanmar.
- **If a state refuses to appear before the court**, the court proceedings may continue normally without it, however the court is required to verify and confirm its jurisdiction before the case continues an example of this is, Russia alerting the court that it will not be appearing in the oral proceedings of Ukraine's request for provisional measures in March of 2022.
- **Joinder of cases**, in the event that there are two pending cases that revolve around the same issue, and are against the same respondent state, the court may combine the two cases together. The primary example of this is the (Nicaragua v. Costa Rica) and (Costa Rica v. Nicaragua) case, as the subject was identical in nature.

Contentious cases may end early before a judgment is passed in three circumstances, either the parties settle the dispute, the applicant state withdraws their claim, or both states agree to cease the case.

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