

The ICJ: Its Origins, Role, Relevant Cases and the Record of Compliance with its Judgments

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Overview

I – THE COURT

II – RELEVANT CASES

III – RECORD OF COMPLIANCE

IV- Conclusion

Origins

- The Permanent Court of International Justice (PCIJ) was established in 1920. After WWII, it was dissolved on 18 April 1946 and replaced by the International Court of Justice (ICJ).

The ICJ settled its first case (*The Corfu Channel case, UK/Albania*) in 1949.

- Guatemala declared that it accepted the compulsory jurisdiction ... but the declaration would only cover the dispute concerning "the restoration of the territory of Belize, if the case were decided *ex aequo et bono*, in accordance with Article 38(2) of the Court's Statute."

In addition to being a principal organ of the UN under Art. 7, para. 1 of the Charter, the Court under Article 92 of the Charter is also the principal judicial organ of the UN (Article 1 of the Statute)

- In the Namibia case the Court noted:“that it acts only on the basis of law, independently of all outside influences or interventions whatever in the exercise of the judicial function entrusted to it by the Charter and its Statute: a court functioning as a court of law can act in no other way.”
- Despite the absence of a hierarchy of international courts, the Court is considered to be “situated at the apex of international tribunals” (Judge Weeramantry, 1995).

The Court: Principal Judicial Organ of the UN

H.E. Judge
Peter Tomka
(2013)

In carrying out its work ...the Court must remain guided by the purposes and principles enshrined in Articles 1 and 2 of the UN Charter. The key principle in Article 1 is intimately connected with the Court's mission, namely "to bring about by peaceful means, and in conformity with the principles of justice, and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace."

Statute (70 articles)

The Statute of the ICJ is essentially the same as the PCIJ (See Art. 92 of the UN Charter).

Article 36 (2) requires that the matter brought before the Court should be a legal dispute.

- The Court in *Nicaragua/Colombia* (2007) noted that "The claim of one side, over certain maritime features, is positively opposed to the other." In *Nicaragua/Colombia* (2012) "the two sides have clearly opposite views concerning the question of the performance or the non-performance of certain treaty obligations" so that "an international dispute has arisen."

Judges

Art. 2 of the Statute, the Court is composed of 15 members elected by the GA and SC voting separately from a list of qualified persons drawn up by the national groups of the PCA.



Parties to a dispute may choose a judge *ad hoc* where they do not have a judge of their nationality sitting on the Court (Role– to ensure that every relevant argument in favor of the party appointing him/her has been fully ventilated in the course of judicial deliberation)

- Art 26 provides for Chambers of three or more judges to deal with a case (e.g., *Land, Island and Maritime FD (El Salvador/Honduras)*).

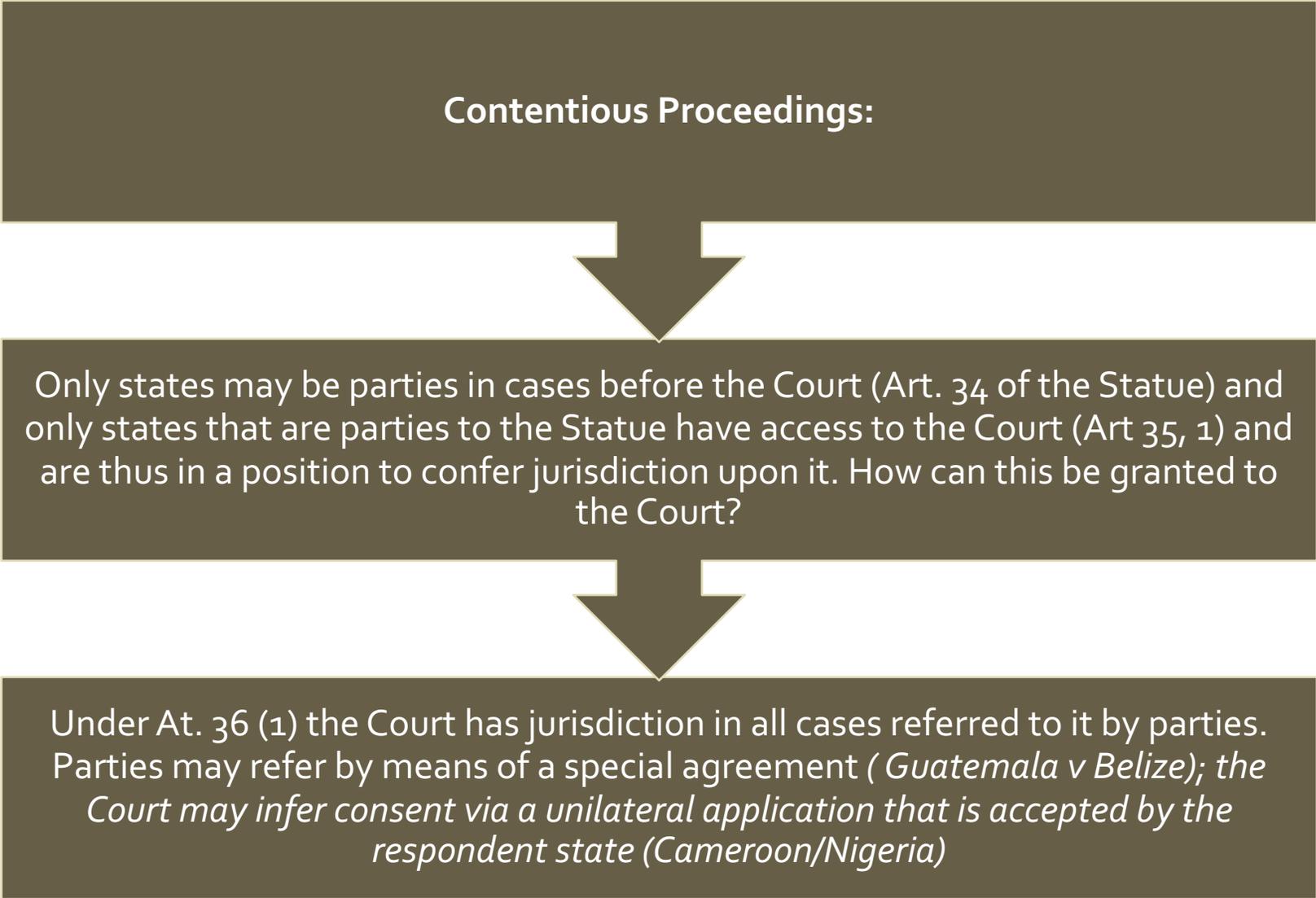
Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are juriconsuls of recognized competence in international law.



Court's jurisdiction

Contentious Proceedings:



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graph TD; A[Contentious Proceedings:] --> B[Only states may be parties in cases before the Court (Art. 34 of the Statue) and only states that are parties to the Statue have access to the Court (Art 35, 1) and are thus in a position to confer jurisdiction upon it. How can this be granted to the Court?]; B --> C[Under At. 36 (1) the Court has jurisdiction in all cases referred to it by parties. Parties may refer by means of a special agreement ( Guatemala v Belize); the Court may infer consent via a unilateral application that is accepted by the respondent state (Cameroon/Nigeria)];
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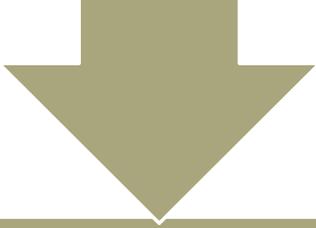
Compromissory
Clause -Grants
ICJ jurisdiction
under Article 36
(2)-

- **Article XXXI of the Pact of Bogota, 1948** “.... Recognizes, in relation to any other American state, the jurisdiction of the Court *as compulsory and ipso facto* ... in all disputes of a juridical nature that arise among them” concerning the interpretation of a treaty, any question of international law, the existence of a fact which if established would constitute the breach of an international obligation ...”

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. ***international conventions, whether general or, establishing rules expressly recognized by the contesting states;***
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general principles of law recognized by civilized nations;
 - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Advisory Opinions – The Court may give advisory opinions at the request of other organs of the UN under Article 65, (1,2). Article 96 of the Charter provides for the GA and SC to request AOs with a an excess of 2/3 majority (Art. 18)



The goal is not to settle disputes but to “offer legal advice to the organs and institutions requesting the opinion.”

An AO is non-binding even to the party that requested it. Belize has participated in two AOs.

17 Pending
Cases

6

Sovereignty
disputes



Arbitral
Award of
1899
(Guyana v
Venezuela)

PART III – COMPLIANCE
WITH ICJ
JUDGMENTS



Introduction

"Once the Court's final decision is made, the parties are faced with the problem of its implementation, which alone bring the dispute to its end... A major feature of international litigation is that unlike national courts, international law has no standing machinery available ... for the enforcement of decisions ...The International Court of Justice is no exception."

Rosenne's Law and Practice of the ICJ(2016)

The Legal Framework

- **The Relevant provisions are:**
 - **Article 94(1) of the UN Charter** (the Charter): “Each Member of the UN undertakes to comply with the decision of the International Court in any case to which it is party.”
 - **Article 59 of the Statute of the Court:** “The decision of the Court has no binding force except between the parties and in respect of that particular case.”
 - **Article 60 of the Statute of the Court:** “The judgement is final and without appeal.”
 - **Article 94 (2) of the Rules of the Court:** “The judgment shall be read at a public sitting of the Court and shall become binding on the day of reading.”
 - **Article 61(3) of the Statute of the Court:** The Court may require previous compliance...before it admit proceedings in revision.

VCLT 1969

- Article 31 (1) [A General Rule of Interpretation]
- A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
- ***What does the title and preamble of the 1859 Treaty indicate about what the parties were undertaking?***

Compliance Mechanisms

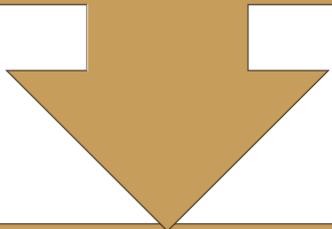
Article 94(2) of the Charter:



“If a 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 it necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

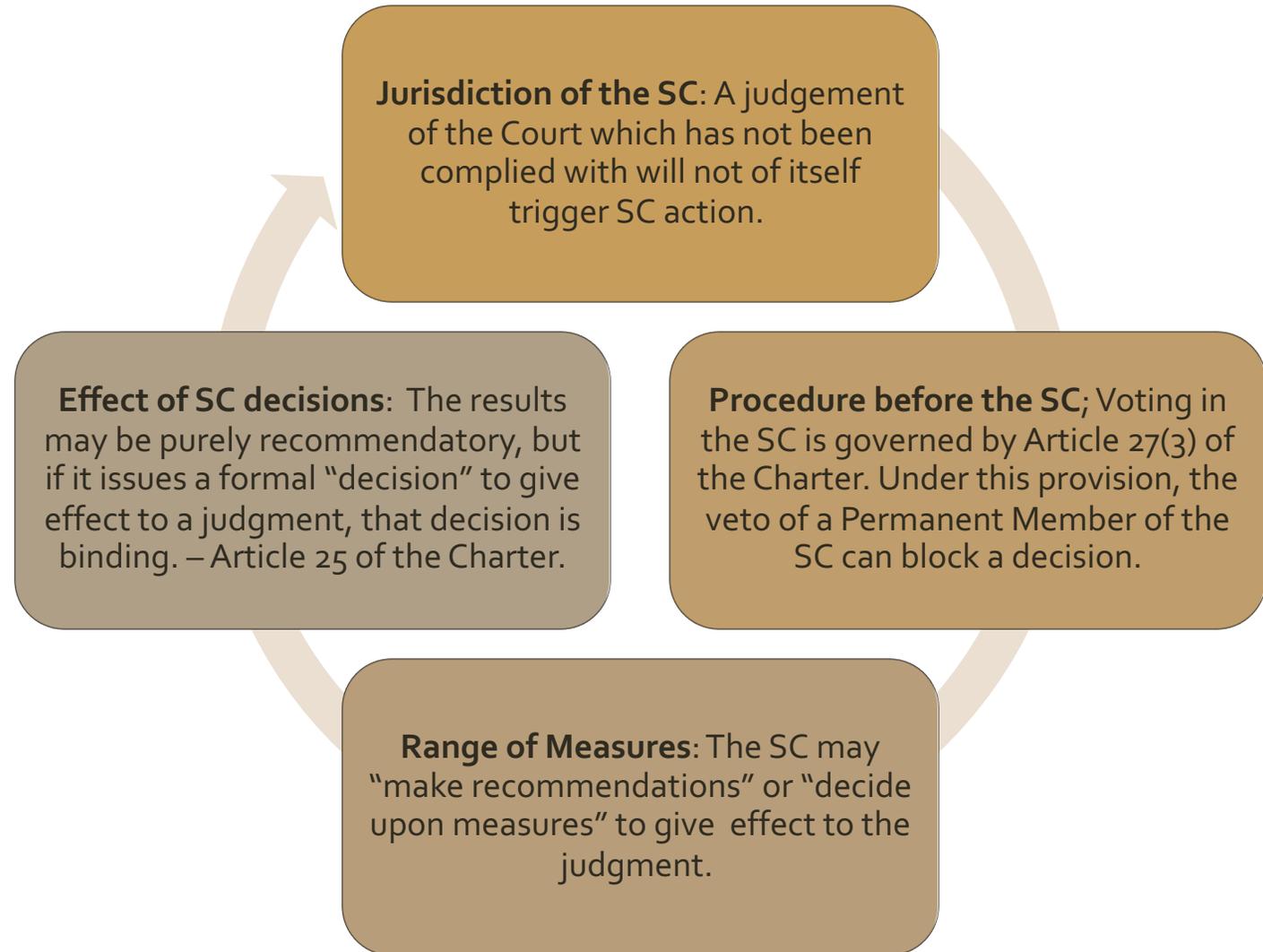
Art. 94 (2) UN Charter

Only the judgment creditor can invoke Article 94. The Security Council is not placed in the artificial position of being designated in the Charter as the Court's automatic law-enforcement agency, but is rather at the dispositions of the parties if required.



*M Shaw (Ed.), *Rosenne's Law and Practice of the International Court of Justice*, Vol I., p. 246.*

ACTION AT THE UN SECURITY COUNCIL



The Record

Between 1951- May 2018, the Court gave 32 decisions on the merits concerning sovereignty over territory and/or delimitation of land or maritime boundaries. All have been complied with or are in the process of being complied with.

Cases in which the parties faced difficulties

*Land, Island and Frontier
Dispute (El
Salvador/Honduras,
Nicaragua Intervening)*

*Territorial Dispute
(Libya/Chad)*

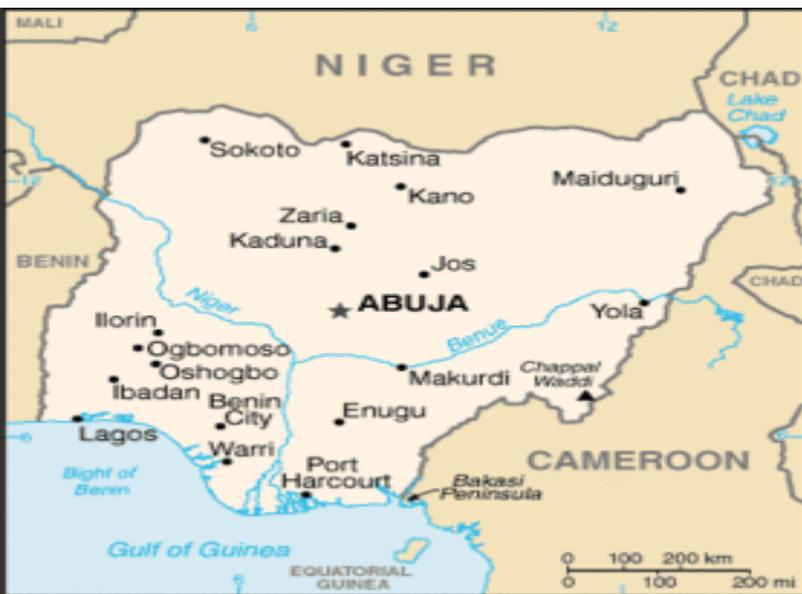
*Gabcikovo-Nagymaros
Project (Hungary/Slovakia)*

*Avena and Other Mexican
Nationals (Mexico/U.S.).*

*Land, Maritime and
Boundary Dispute between
Cameroon/Nigeria
(Equatorial Guinea
Intervening)*

*SPECIAL
SKYPE INPUT*

- Challenges in complying with the ICJ's ruling – a presentation by the UN Team managing the CNMC at the United Nations Office for West Africa and the Sahel (UNOWAS), Dakar, Senegal.



Cameroon/
Nigeria (2002)
- compliance
via the CNMC

- As of December 2017:
- 2,100km BOUNDARY AGREED
- MARITIME BOUNDARY DELIMITED
- TRANSFER IN LAKE CHAD AND BAKASSI
- OUTSTANDING TASKS
- DEMARCATION (PILLAR CONSTRUCTION & EMPLACEMENT)
- CARTOGRAPHIC MAPPING AND FORMAL DECLARATION
- MAIN PROBLEMS

Have States complied?

In the majority of cases, states voluntarily comply with the decisions of the Court

Every judgment of the Court concerning sovereignty over territory or delimitation of land or maritime boundaries has been complied with or is in the process of being implemented.

None of the circumstances that existed in the few cases where compliance was not achieved would exist if the dispute between Guatemala and Belize were submitted to the Court; and



Every decision given by the Court in a case brought by special agreement (as will be the case between Belize and Guatemala) has been complied with or is in the process of being complied with.

"No State wants to be in breach of an ICJ ruling for too long."
- Ben Juratowitch

Thank You

