The International Court of Justice and the Future of the Global Rule of Law

La Corte Internacional de Justicia y el futuro del Estado de derecho a nivel global

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Abstract
The International Court of Justice has established itself as the most effective of the principal organs of the United Nations, playing a central role in the peaceful settlement of disputes and the progressive development of international law. The authors of this article analyze three ways in which its contribution to the preservation and strengthening of the global rule of law could be further enhanced: expanding its contentious jurisdiction, encouraging greater recourse to its advisory function and fostering closer cooperation with the U.N. Secretary-General.

Resumen
La Corte Internacional de Justicia se ha consolidado como el más eficaz de los órganos principales de las Naciones Unidas, desempeñando un papel central en la solución pacífica de controversias y el desarrollo progresivo del derecho internacional. Los autores de este artículo reflexionan sobre cómo podría fortalecerse, aún más, su contribución a la preservación y fortalecimiento del Estado de derecho global, para lo cual analizan tres posibilidades: expandir la jurisdicción contenciosa de la Corte Internacional de Justicia, aumentar el recurso a su función consultiva e incrementar la cooperación con el secretario general de la ONU.

Keywords
International Court of Justice, international law, United Nations, rule of law

Palabras clave
Corte Internacional de Justicia, derecho internacional, Organización de las Naciones Unidas, Estado de derecho

The International Court of Justice and the Future of the Global Rule of Law*

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Introduction

Never before in the history of international relations have we reached the level of regulation and institutionalization as we have today. Over the course of the 19th and 20th centuries and right up to the present day, the international community has developed regulations that cover virtually every aspect of relations between States and mechanisms to settle disputes arising from their enforcement, namely arbitration and, of course, courts of law. Even more noteworthy is the fact that States are no longer the only subjects of international law: aside from the international organizations created at the end of the 19th century, and especially in the wake of the two world wars, contemporary international law now recognizes the individual as having international rights and obligations, as a consequence of processes that have resulted in peoples freeing themselves from State tutelage and major changes in the areas of human rights, and international humanitarian and environmental law, to name just a few.

In the second half of the 20th century, the number of international legal institutions increased and their jurisdictions became more specialized, with

* English translation by Alison Stewart.

more States coming to recognize their compulsory jurisdiction. As a result, the International Court of Justice (the Court, ICJ) now coexists on the international arena with the Permanent Court of Arbitration, the International Tribunal for the Law of the Sea, the International Criminal Court, regional human rights courts, the Court of Justice of the European Union, the International Residual Mechanism for Criminal Tribunals of the former Yugoslavia and Rwanda, the Residual Mechanism for the Special Tribunal for Lebanon, the Extraordinary Chambers in the Courts of Cambodia, and countless ad hoc and hybrid courts that combine elements of domestic and international law, formed by national and international magistrates. Today there is debate, mainly in European circles, on the possible creation of a special court to prosecute crimes of aggression against Ukraine, since the International Criminal Court, which is already investigating the possible commission of war crimes and crimes against humanity,[1] does not have jurisdiction over the crime of aggression in the context of the war in this country.

Within this network of courts and jurisdictions, the ICJ has established itself as a supreme—albeit not constitutional—court of sorts for the international community. As mentioned previously,[2] the ICJ is the most effective of the main organs of the United Nations, due to the predictability and coherence of its jurisprudence and the apoliticality with which it has always operated. While the decisions of other bodies, most notably the General Assembly and the Security Council, are frequently disregarded, failure to comply with the judgments rendered by the ICJ has been the exception as opposed to the rule. Furthermore, the ICJ has made valuable contributions to the progressive development of international law with its decisions and advisory opinions, and the interpretation of various laws of paramount importance.

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1 Although it is not a State party to the Statute of Rome that established the International Criminal Court, pursuant to Article 12 of said Statute, in 2014 Ukraine consented to the International Criminal Court exercising its jurisdiction in its territory regarding such crimes. This allowed the prosecutor of the International Criminal Court to open an investigation after the Russian invasion, which led to the issuing of warrants for the arrest of Russian President Vladimir Putin and the Russian Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova, for alleged war crimes related to the forced transfer of children.

2 Juan Manuel Gómez-Robledo Verduzco, "The International Court of Justice: A Bright Light in Dark Times," in Just Security, October 24, 2022, at *https://www.justsecurity.org/83723/the-international-court-of-justice-a-bright-light-in-dark-times/* (date consulted: March 13, 2023).

Given this eminently positive assessment and taking into account the forward-looking nature of this issue of the *Revista Mexicana de Política Exterior*, it behooves us to ask what avenues the international community could explore with a view to enhancing the contribution the Court already makes to the peaceful settlement of disputes and the preservation and strengthening of the global rule of law. The following is a summary of three ways in which this could be achieved: expanding the Court's contentious jurisdiction, exploiting the potential of its advisory function and encouraging closer cooperation with the U.N. Secretary-General.

The frontiers of the possible: expanding the Court's contentious jurisdiction

One of the main criticisms often levelled at the ICJ has to do with the limits of its jurisdiction, which requires the consent of the States involved in a specific case. This criticism is based on the fact that only 73 States have issued declarations recognizing the jurisdiction of the Court as compulsory,[3] which is equivalent to just over one third of the member States of the United Nations. Some countries, like the United States and France, have withdrawn their declarations, while others have conditioned them to a series of reservations.[4] However, States that have made these declarations are just part of the reality. Suffice to say that, as of the date of this article,[5] 108 States have been party to contentious proceedings before the ICJ —almost 50% more than the 73 that have issued declarations accepting the Court's compulsory jurisdiction.

This is because the Court's jurisdiction has benefited enormously from the adjudication of disputes via special agreements and, in particular, the inclusion of jurisdictional clauses in bilateral and multilateral

[3] Statute of the ICJ, Article 36, Paragraph. 2.

[4] Recognition of the jurisdiction of the ICJ as compulsory is not an obstacle to conditioning it by drafting reservations when accepting it or at any time thereafter. A good many countries have used this recourse.

[5] This article shall be deemed to have been written on March 21, 2023.

arrangements of all kinds. A review of the cases that have appeared on the docket of the ICJ over the last decade reveals the extent to which these mechanisms have contributed to the gradual expansion of its jurisdiction, allowing it to settle disputes related to territorial conflicts, maritime boundaries, the interpretation of laws on discrimination, genocide, the financing of terrorism, consular and other matters that often involve States that have not issued the aforementioned declarations or that have withdrawn them.

For example, the four States that instituted contentious proceedings with the ICJ in 2022—Ukraine, Germany, Equatorial Guinea and Belize—used conventional clauses as grounds for the Court's jurisdiction. On February 26, Ukraine instituted proceedings against Russia based on the Convention on the Prevention and Punishment of the Crime of Genocide;[6] on April 29, Germany instituted proceedings against Italy based on the European Convention for the Peaceful Settlement of Disputes;[7] on September 29, Equatorial Guinea instituted proceedings against France based on the United Nations Convention against Corruption;[8] and on November 16, Belize instituted proceedings against Honduras based on the American Treaty on Pacific Settlement, also known as the Pact of Bogotá.[9] It is worth mentioning that Latin American countries have turned more and more frequently to the ICJ as a result of this Pact.

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6 ICJ, "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine *v.* Russian Federation) Application Instituting Proceedings. Filed in the Registry of the Court on 26 February 2022," at *https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-APP-01-00-EN.pdf* (date consulted: March 13, 2023).

7 ICJ, "Questions of Jurisdictional Immunities of the State and Measures of Constraint against State-owned Property (Germany *v.* Italy). Application Instituting Proceedings. Containing a Request for Provisional Measures. Filed in the Registry of the Court on 29 April 2022," at *https://www.icj-cij.org/sites/default/files/case-related/183/183-20220429-APP-01-00-EN.pdf* (date consulted: March 13, 2023).

8 ICJ, "Request Relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea *v.* France). Application Instituting Proceedings. Filed in the Registry of the Court on 29 September 2022," at *https://www.icj-cij.org/sites/default/files/case-related/184/184-20220929-APP-01-00-EN.pdf* (date consulted: March 13, 2023).

9 ICJ, "Sovereignty over the Sapodilla Cayes (Belize *v.* Honduras). Application Instituting Proceedings. Filed in the Registry of the Court on 16 November 2022," at *https://www.icj-cij.org/sites/default/files/case-related/185/185-20221116-APP-01-00-EN.pdf* (date consulted: March 13, 2023).

Equally relevant, albeit less common, are cases that come before the Court via special agreements. These are agreements under which the parties jointly and voluntarily submit a specific dispute to the ICJ and request that it settle it pursuant to certain terms of reference set forth in the agreement itself. Three cases filed using this recourse are currently *sub iudice* with the ICJ. These involve six countries: Hungary/Slovakia, Guatemala/Belize and Gabon/Equatorial Guinea, of which only three have made declarations recognizing the compulsory jurisdiction of the ICJ (Equatorial Guinea, Hungary and Slovakia), making the agreement with the other party necessary to activate the jurisdiction of the Court.

The Court can also hear a dispute under the *forum prorogatum* doctrine contained in Article 38, Paragraph 5, of Rules of Court, which stipulates that a State may unilaterally institute proceedings even when the other party has not declared that it recognizes the jurisdiction of the ICJ for the matter in question. However, the Court may not take action or include the case on its docket until the State the proceeding is being brought against consents to the jurisdiction of the ICJ.

In light of the above, one of the main ways of shoring up the work of the Court in the future would clearly be to expand its jurisdiction, be it through the issuing of new declarations accepting its compulsory jurisdiction, the withdrawal of reservations to existing ones, the inclusion of jurisdictional clauses in the negotiation of international treaties or by encouraging more parties to make use of the recourse to special agreements. In this regard, initiatives like the "Declaration on Promoting the Jurisdiction of the International Court of Justice" have great merit. Launched by a group of countries (one of which is Mexico) led by Rumania, the initiative already has the support of 33 States[10] and seeks to achieve precisely this—contribute to the expansion of the Court's jurisdiction.

To sum up, the Court has proven to be an extremely efficient legal body in the sense that its judgments are generally effected, which, in turn,

[10] "The List of States supporting the Declaration on Promoting the Jurisdiction of the International Court of Justice," in Ministry of Foreign Affairs of the Government of Romania, at *https://www.mae.ro/en/node/57146* (date consulted: March 22, 2023).

has translated into a growing level of trust in this tribunal. As we will see, the same can also be said of its advisory function.

The potential of the Court's advisory function

Although the history of the ICJ has been dominated by its contentious function, it has also made some extremely valuable contributions to the development of international law and the maintenance of international peace and security in its advisory capacity. Aware of the importance of this aspect of its duties, the Court tends to give priority to advisory proceedings over contentious ones in the understanding that it is doing a service to the international community as a whole. Furthermore, it has never refused a request for an advisory opinion, even though it has the power to do so.

Nonetheless, as we will discuss next, the full potential of the Court's advisory function has yet to be exploited and could be of significant benefit to the international community, as well as helping strengthen the rule of law worldwide.

From 1947 through March 2023, 29 requests for advisory opinions were filed with the IJC,[11] 18 of which were made by the General Assembly, one by the Security Council, two by the Economic and Social Council (ECOSOC), five by one of the 15 specialized bodies entitled to do so, and three by the United Nations Committee on Applications for Review of Administrative Tribunal Judgments. In other words, the ICJ received a request for an advisory opinion once every 2.5 years on average, almost 60% of which were filed by the same body: the General Assembly.

[11] It should be noted that while States alone are entitled to recourse to the contentious jurisdiction of the ICJ, the advisory procedure is available to organs of the United Nations and specialized agencies. The General Assembly, the Security Council, ECOSOC, the Trusteeship Council and the Interim Committee of the General Assembly are all entitled to request advisory opinions, as are 15 specialized agencies, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the International Monetary Fund (IMF) and the International Atomic Energy Agency (IAEA), even though, strictly speaking, it is not one of the aforementioned specialized bodies.

Although it is true that an assessment of the periodicity with which applications for advisory opinions are filed is subjective, evidently an important area of opportunity for the promotion of international law is being overlooked if we consider how seldom—if at all—the entities entitled to this recourse make use of it. The example of the Security Council, the organ par excellence entrusted with maintaining international peace and security, is particularly striking. This body has requested the ICJ for an advisory opinion on just one occasion, on resolution 284 (1970) pertaining to South Africa's continued presence in Namibia.[12] Likewise, 12 agencies authorized by the General Assembly to request advisory opinions have never done so, perhaps because they have never needed to, or it could also be that they are not fully aware of the benefits of such an opinion. Fortunately, this is changing and some interesting trends have been observed.

Firstly, the matters on which requests for advisory opinions have been filed with the ICJ have evolved over time. During the early years of the Court, there was greater emphasis on issues related to the work, organization and legal status of international organizations. For example, in 1947, 1948 and 1949 advisory proceedings were initiated that culminated in opinions on the "Conditions of Admission of a State to Membership in the United Nations (art. 4 of the Charter),"[13] "Reparations for Injuries Suffered in the Service of the United Nations"[14] and "Competence of Assembly Regarding Admission to the United Nations,"[15] respectively. Over the following decades, applications were received for advisory opinions on diverse matters of international law in general, like "Reservations to the

[12] United Nations Security Council, "Resolution 284 (1970)," S/RES/284(1970), 29 July 1970, at *https://digitallibrary.un.org/record/90778?ln=es* (date consulted: March 22, 2023).

[13] ICJ, *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion, ICJ Reports 1948*, p. 57.

[14] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949*, p. 174.

[15] ICJ, *Competence of Assembly Regarding Admission to the United Nations, Advisory Opinion, ICJ Reports 1950*, p. 4.

Convention on the Prevention and Punishment of the Crime of Genocide,"[16] introduced in 1950.

This trend toward greater diversification has continued in recent decades, revealing the disposition of the Court to render advisory opinions on issues of interest to certain States and, in a broader sense, the international community as a whole. Examples of these are proceedings on the legality of the threat or use of nuclear weapons initiated in the Nineties,[17] and, at the turn of the century, opinions on the building of a wall in the occupied Palestinian territory,[18] Kosovo's unilateral declaration of independence[19] and the situation of the Chagos archipelago.[20] Likewise, the General Assembly recently approved two resolutions requesting ICJ opinions on matters of the utmost importance: one relating to the Palestinian question[21] and another on the obligations of States regarding climate change.[22]

While advisory opinions are not binding, it should be remembered that the hearing procedure the Court follows[23] for these is very similar to the one it employs for contentious cases in that it includes written arguments and oral hearings. Also, States and international organizations are allowed to participate, meaning the proceedings are not limited to evidence

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16 ICJ, *Reservations to the Convention on Genocide, Advisory Opinion, ICJ Reports 1951*, p. 15.

17 ICJ, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996,* p. 226.

18 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004*, p. 136.

19 ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010,* p. 403.

20 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, ICJ Reports 2019*, p. 95.

21 U.N. General Assembly, "Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem," A/RES/77/247, January 9, 2023.

22 U.N. General Assembly, "Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change," A/RES/77/276, April 4, 2023.

23 This matter is regulated by Articles 66, 67 and 68 of the Statute of the International Court of Justice and section IV of Rules of Court.

submitted by the body requesting the opinion, but are enriched by the positions and legal interpretations of diverse actors.

More importantly, however, is that every advisory opinion of the Court has had an undeniable influence on the matter in question. For instance, its opinion on the separation of the Chagos archipelago from Mauricio, delivered in 2019, was a factor in resurrecting political dialogue between the United Kingdom and Mauritius on the Chagos question.[24] Similarly, the 1996 advisory opinion on the legality of the threat or the use of nuclear weapons has not only reshaped debate and negotiations at the various disarmament forums, but was the final impetus for the conclusion of negotiations on the Comprehensive Nuclear-Test-Ban Treaty that same year. Of particular relevance is the Court's *dictum* on what it calls the "cardinal principles" of international humanitarian law, which are mandatory for all States because these are opposable obligations *erga omnes* derived from customary international law.[25] These pronouncements and others contained in this advisory opinion enriched and guided debate on the issue of the humanitarian consequences of any nuclear explosion that came to form part of the review process of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which eventually gave rise to the Humanitarian Initiative underpinning the Treaty on the Prohibition of Nuclear Weapons (TPAN), which is currently in force and moving toward universality.[26]

Taking all this into consideration, it is evident that, given how limited the use of its advisory function has been, the ICJ still has enormous unexplored potential that could contribute to the strengthening of the global

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[24] Patrick Wintour, "U.K. Agrees to Negotiate with Mauritius over Handover of Chagos Islands," *The Guardian*, 4 November 2022, at *https://www.theguardian.com/world/2022/nov/03/uk-agrees-to-negotiate-with-mauritius-over-handover-of-chagos-islands* (date consulted: March 22, 2023).

[25] ICJ, *Legality of the Threat*..., para. 78-79; Juan Manuel Gómez Robledo Verduzco, "Introducción," in Sergio González Gálvez (comp.), *Alegato de México en la Corte Internacional de Justicia. Opinión consultiva sobre la ilegalidad de la amenaza o el uso de las armas nucleares* (Arguments put forward by Mexico to the International Court of Justice. Advisory opinion on the legality of the threat or use of nuclear weapons), Mexico, Ministry of Foreign Affairs, 1997, pp. 9-21.

[26] "Treaty on the Prohibition of Nuclear Weapons," in United Nations Treaty Collection, at *https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-9&chapter=26* (date consulted: April 9, 2023).

rule of law. The fact that diverse organs and entities are entitled to request advisory opinions, the effectiveness these have proven to have and the willingness the Court has shown to reply to and give priority to applications for advisory opinions, despite the political burden many of these entail, holds promise for greater recourse to this mechanism in cases where it could help clarify the content and scope of certain legal obligations. In this regard, the words of Javier Pérez de Cuéllar are especially eloquent. In 1991, the then Secretary-General (1982-1991) said that "the rule of law in international affairs should also be promoted by a greater recourse to the International Court of Justice in not only adjudicating disputes of a legal nature, but also in rendering advisory opinion on the legal aspects of a dispute."[27]

This potential has been noticed by several actors, prompting greater recourse to the advisory jurisdictions of several international tribunals, the ICJ included. To give just a few examples of the momentum this has created, we have already mentioned the request for an advisory opinion on the obligations of States with regard to climate change, approved by the General Assembly on March 29, 2023.[28] By the same token, the International Tribunal for the Law of the Sea has received an application for an advisory opinion on climate change in the context of the obligations set forth in the United Nations Convention on the Law of the Sea.[29] In the regional domain, Chile and Colombia have requested an advisory opinion from the Inter-American Court of Human Rights on the relationship between climate change and human rights.[30]

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27 *Report of the Secretary-General on the Work of the Organization*, New York, United Nations (General Assembly. Official Records Forty-Fifth Session Supplement No. 1 [A/45/1]), 1991, p. 7, at *https://digitallibrary.un.org/record/98421* (date consulted: 22 March 2023).

28 See note 22.

29 "Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion Submitted to the Tribunal)," in International Tribunal for the Law of the Sea, at *https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/* (date consulted: April 9, 2023).

30 "Colombia y Chile pidieron a Corte IDH aclarar el alcance de las obligaciones estatales en el ámbito de los derechos humanos para responder con urgencia a la emergencia

This unprecedented situation where we have three different jurisdictions dealing with the same matter could be extremely positive in terms of promoting dialogue between international tribunals and ensuring uniformity in the interpretation of international law. Indubitably, the ICJ, whose jurisdiction *ratione materiae* has no limits, will have a decisive influence on future processes in this area and we will also have to consider the contributions of the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights to the study of this matter within their respective spheres of jurisdiction.

The Court and the U.N. Secretary-General

Finally, a third alternative for enhancing the contribution of the ICJ to the global rule of law involves closer collaboration with the U.N. Secretary-General, who could help facilitate international justice on two main fronts.

Firstly, as regards the advisory jurisdiction of the Court. In 1991, Javier Pérez de Cuellar proposed that the Secretary-General be granted the power to request the advisory opinion of the ICJ:

> I believe that the extension of this authority [to request advisory opinions] to the Secretary-General would greatly add to the means of peaceful solutions to international crisis situations. The suggestion is prompted by the complementary relationship between the Security Council and the Secretary-General and by the consideration that almost all situations bearing upon international peace and security require the strenuous exercise of the good offices of the Secretary-General.[31]

climática," in Presidencia de la República [Colombia], January 9, 2023, at *https://petro.presidencia.gov.co/prensa/Paginas/Colombia-y-Chile-pidieron-a-Corte-IDH-aclarar-el-alcance-de-obligaciones-es-230109.aspx* (date consulted: April 9, 2023).

[31] *Report of the Secretary-General*..., p. 7.

This suggestion, picked up by Boutros Boutros-Ghali (1992-1996) when he took over from Pérez de Cuéllar as head of the Organization, is rooted in an inescapable reality: there is a legal aspect to virtually all international conflicts. This means that even in the extreme situation of an armed conflict, the claims or grievances of States tend to translate into terms of rights and obligations and, as such, are liable to prosecution by international legal institutions. Consequently, when faced with the potential escalation of a conflict and before it degenerates into violence, the Secretary-General could submit a request for an advisory opinion to the ICJ so as to lend the dispute in question legal substance, thereby contributing to compliance with the preventive diplomacy responsibilities referred to in Article 99 of the U.N. Charter. It should be emphasized that this would allow the Secretary-General to act independently without a request having to be approved by the General Assembly or the Security Council, which would free it of the unavoidably political nature of the decisions made by these organs.

A second avenue of collaboration between the ICJ and the Secretary-General is related to the implementation of the Court's decisions. Occasionally, even when the parties have the best of intent to comply with a judgment, technical, financial or political variables can get in the way[32] and this is where the Secretary-General could play a decisive role. On referring to this matter at a meeting of the Security Council in November 2021, when the presidency was held by Mexico, ICJ President Judge Joan Donoghue said that, "The principal organs of the United Nations can play a positive role in that regard. I would like to draw attention, for example, to the fundamental role played by Secretary-General Kofi Annan in bringing about the implementation of the Court's 2012 judgment in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria.*"[33]

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[32] It should be noted that the ICJ does not have the power to coactively enforce a decision and even though Article 94, Paragraph 2 of the United Nations Charter stipulates the option of recourse to the Security Council in the event of failure to comply with a judgment, in practice, for obvious reasons of a political nature, this mechanism has proven ineffective.

[33] U.N. Security Council, "8906th meeting. Tuesday, 16 November 2021, 10:00 a.m. New York," S/PV.8906, November 16, 2021, p. 9, at *digitallibrary.un.org/record/3948723* (date consulted: March 22, 2023).

In effect, in September 2002, a week before the reading of the judgment, Kofi Annan met in Paris with the presidents of Nigeria and Cameroon, who agreed to respect the decision of the Court no matter what the outcome. In November, both presidents asked the Secretary-General to set up a mixed commission with representatives of both countries to mark out the boundaries established in the Court's judgment and perform related tasks.[34] Presided over by the special representative of the Secretary-General for West Africa, this commission, which operated on scant human and financial resources, managed to negotiate an agreement that was signed by both presidents in 2006 and that concluded with the full implementation of the ICJ judgment.[35]

This case has become a prime example of cooperation between the Secretary-General and the ICJ, and illustrates the huge potential of this practice as we look to the future.

Conclusion

Despite the watershed that has been the Russian invasion of Ukraine, serious as this may be, not least because it constitutes a flagrant breach of the guiding principles of the U.N. Charter and even more so because the perpetrator of this act is a permanent member of the Security Council that, as such, has a special duty to maintain international peace and security, this does not herald the defeat of international law. On the contrary, new agreements, like the recently concluded text on the protection of marine biodiversity in areas beyond national jurisdiction,[36] reveal that it is

[34] Pieter H. F. Bekker, "Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria; Equatorial Guinea Intervening)," in *The American Journal of International Law*, vol. 97, no. 2, April 2003, pp. 387-398.

[35] United Nations, "Nigeria, Cameroon Sign Agreement Ending Decades-Old Border Dispute; Sets Procedures for Nigerian Withdrawal from Bakassi Peninsula," press release, AFR/1397, June 12, 2006, at *https://press.un.org/en/2006/afr1397.doc.htm* (date consulted: March 22, 2023).

[36] United Nations, "'The Ship Has Reached the Shore', President Announces, as Intergovernmental Conference Concludes Historic New Maritime Biodiversity Treaty," press release,

very much alive and kicking, as do ongoing negotiations on issues like the pollution caused by plastics under the auspices of the United Nations Environment Programme (UNEP)[37] and measures to prevent pandemics within the framework of the World Health Organization (WHO).[38] The General Assembly is also in the midst of negotiations on a legally binding instrument on cybercrime.[39] If approved, these regulations could give rise to new disputes that could be taken to the ICJ.

Close to 80 years of patiently serving justice bear out the work of the Court. During this time it has proven capable of adapting and responding to changes in the dynamics and concerns of international relations, while it follows that the kinds of disputes brought to the Court by States have also changed. It is therefore logical to assume that, at some point in time, the ICJ will have to hear cases related to these new developments in international law that imply greater challenges due to the level of technical specialization they involve, which, in turn, is related to the scientific evidence submitted. But no one has accused the ICJ of not doing its job or proposed that it be reformed.

The Court has proven, judgment after judgment, that it is effective—as borne out by the high level of compliance with its decisions—and completely respectful and consistent as regards its own jurisprudence. This has conferred it a high degree of predictability, garnering it the trust of the international community. As is to be expected, there are challenges to be addressed, namely the persistent, albeit small number of cases of failure

SEA/2175, March 4, 2023, at *https://press.un.org/en/2023/sea2175.doc.htm* (date consulted: April 9, 2023).

37 U. N. Environment Assembly of the United Nations Environment Programme, "End Plastic Pollution: Towards an International Legally Binding Instrument," UNEP/EA.5/Res.14, March 7, 2022.

38 WHO, "Pandemic, Prevention, Preparedness and Response Accord," in Newroom, February 24, 2023, at *https://www.who.int/news-room/questions-and-answers/item/pandemic-prevention--preparedness-and-response-accord* (date consulted: April 9, 2023).

39 U.N. Office on Drugs and Crime, "Ad hoc committee to elaborate an international convention on countering the use of ICTs for criminal purposes," at *https://www.unodc.org/unodc/en/cybercrime/ad_hoc_committee/home* (date consulted: April 9, 2023).

to comply with some of its decisions, as regards both the substance of disputes and provisional measures.[40]

As we have already mentioned, in such event, the parties have recourse to the Security Council, which may, if it deems necessary, decide upon measures to be taken to give effect to judgments.[41] This mechanism, predictably limited due to the use or threat of the use of the veto power by a permanent member involved either directly or indirectly in compliance with the judgment, has been used on only a handful of occasions. Yet the option of turning to the General Assembly to secure the backing of the international community is a recourse, perhaps not coercive, but definitely political, whose efficacy should not be underestimated, as we saw in the case of Mexico and General Assembly resolution 73/257 that called for full and immediate compliance with the ICJ judgment of 2004 in the Avena case.[42]

As with any human creation, there is always room for improvement, the ICJ and international law included. In light of the uncertain future of international relations, this article seeks to make a modest contribution by exploring some of the avenues that could strengthen the Court. Yet there can be no doubt that, in the face of uncertainty, and as its track record indicates, the ICJ will continue to be a quintessential guardian of the global rule of law.

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[40] One example is Russia's failure to comply with the provisional measures delivered by the ICJ on March 16, 2022 in which it was ordered, *inter alia,* to suspend the military operations initiated on February 24, 2022 in Ukrainian territory. This is part of the case "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine *v.* Russian Federation)".

[41] U.N. Charter, Article 94, Paragraph 2.

[42] ICJ, *Avena and Other Mexican Nationals (Mexico v. United States of America)*, *Judgment, ICJ Reports 2004*, p. 12. This case was about failure by the United States to meet its obligation to notify Mexican citizens arrested and sentenced to death in the United States of their right to consular assistance, as stipulated in Article 36 of the 1963 Vienna Convention on Consular Relations.