

The Hague- International Court of Justice: How the Court Works

The Court may entertain two types of cases: legal disputes between States submitted to it by them (contentious cases) and requests for advisory opinions on legal questions referred to it by United Nations organs and specialized agencies (advisory proceedings).

Contentious cases

Only States (States Members of the United Nations and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions) may be parties to contentious cases.

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- 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.

States have no permanent representatives accredited to the Court. They normally communicate with the Registrar through the medium of their Minister for Foreign Affairs or their ambassador accredited to the Netherlands. Where they are parties to a case before the Court they are represented by an agent. An agent plays the same role, and has the same rights and obligations, as a solicitor or *avoué* with respect to a national court. But we are dealing here with international relations, and the agent is also as it were the head of a special diplomatic mission with powers to commit a sovereign State. He/she receives communications from the Registrar concerning the case and forwards to the Registrar all correspondence and pleadings duly signed or certified. In public hearings the agent opens the argument on behalf of the government he/she represents and lodges the submissions. In general, whenever a formal act is to be done by the government represented, it is done by the agent. Agents are sometimes assisted by co-agents, deputy agents or assistant agents and always have counsel or advocates, whose work they co-ordinate, to assist them in the preparation of the pleadings and the delivery of oral argument. Since there is no special International Court of Justice Bar, there are no conditions that have to be fulfilled for counsel or advocates to enjoy the right of arguing before it except only that they must have been appointed by a government to do so.

Proceedings may be instituted in one of two ways:

- through the notification of a special agreement: this document, which is of a bilateral nature, can be lodged with the Court by either of the States parties to the proceedings or by both of them. A special agreement must indicate the subject of the dispute and the parties thereto. Since there is neither an "applicant" State nor a "respondent" State, in the Court's publications their names are separated by an oblique stroke at the end of the official title of the case, e.g., Benin/Niger;
- by means of an application: the application, which is of a unilateral nature, is submitted by an applicant State against a respondent State. It is intended for communication to the latter State and

the Rules of Court contain stricter requirements with respect to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis - a treaty or a declaration of acceptance of compulsory jurisdiction - it claims the Court has jurisdiction, and must succinctly state the facts and grounds on which it bases its claim. At the end of the official title of the case the names of the two parties are separated by the abbreviation "v." (for the Latin *versus*), e.g., Nicaragua v. Colombia.

The date of the institution of proceedings, which is that of the receipt by the Registrar of the special agreement or application, marks the opening of proceedings before the Court. Contentious proceedings include a written phase, in which the parties file and exchange pleadings containing a detailed statement of the points of fact and of law on which each party relies, and an oral phase consisting of public hearings at which agents and counsel address the Court. As the Court has two official languages (English and French), everything written or said in one language is translated into the other. The written pleadings are not made available to the press and public until the opening of the oral proceedings, and then only if the parties have no objection.

After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment is final, binding on the parties to a case and without appeal (at most it may be subject to interpretation or revision). Any judge wishing to do so may append an opinion to the judgment.

By signing the Charter, a State Member of the United Nations undertakes to comply with any decision of the Court in a case to which it is a party. Since, furthermore, a case can only be submitted to the Court and decided by it if the parties have in one way or another consented to its jurisdiction over the case, it is rare for a decision not to be implemented. A State which contends that the other side has failed to perform the obligations incumbent upon it under a judgment rendered by the Court may lay the matter before the Security Council, which is empowered to recommend or decide upon the measures to be taken to give effect to the judgment.

The procedure described above is the normal procedure. Certain matters can however affect the proceedings. The most common case is that of preliminary objections raised in order to prevent the Court from delivering judgment on the merits of the case (the respondent State may contend, for example, that the Court lacks jurisdiction or that the application is inadmissible). The matter is one for the Court itself to decide. Then, there are provisional measures, which can be requested as interim measures by the applicant State if the latter considers that the rights which form the subject of its application are in immediate danger. It may further occur that a State seeks to intervene in a dispute involving other States because it considers that it has an interest of a legal nature which may be affected by the decision to be taken in the dispute between those States. The Statute also makes provision for cases where the respondent State does not appear before the Court, either because it totally rejects the Court's jurisdiction or for any other reason. Hence failure by one party to appear does not prevent proceedings in a case from taking their course. But in such a case the Court must first satisfy itself that it has jurisdiction. Finally, should the Court find that parties to separate proceedings are submitting the same arguments and submissions against a common opponent in relation to the same issue, it may order joinder of the proceedings.

The Court discharges its duties as a full court but, at the request of the parties, it may also establish *ad hoc* chambers to examine specific cases. A Chamber of Summary Procedure is elected every year by the Court in accordance with its Statute.

The sources of law that the Court must apply are: international treaties and conventions in force; international custom; the general principles of law; and judicial decisions and the teachings of the most

highly qualified publicists. Moreover, if the parties agree, the Court can decide a case *ex aequo et bono*, i.e., without limiting itself to existing rules of international law.

A case may be brought to a conclusion at any stage of the proceedings by a settlement between the parties or by discontinuance. In the latter case, an applicant State may at any time inform the Court that it is not going on with the proceedings, or the two parties may declare that they have agreed to withdraw the case. The Court then removes the case from its List.

Advisory proceedings

Advisory proceedings before the Court are open solely to five organs of the United Nations and to 16 specialized agencies of the United Nations family or affiliated organizations.

The United Nations General Assembly and Security Council may request advisory opinions on "any legal question". Other United Nations organs and specialized agencies which have been authorized to seek advisory opinions can only do so with respect to "legal questions arising within the scope of their activities".

When it receives a request for an advisory opinion, the Court, in order that it may give its opinion with full knowledge of the facts, is empowered to hold written and oral proceedings, certain aspects of which recall the proceedings in contentious cases. In theory, the Court may do without such proceedings, but it has never dispensed with them entirely.

A few days after the request is filed, the Court draws up a list of those States and international organizations that will be able to furnish information on the question before the Court. Those States are not in the same position as parties to contentious proceedings: their representatives before the Court are not known as agents and their participation, if any, in the advisory proceedings does not render the Court's opinion binding upon them. In general, the States listed are the Member States of the organization requesting the opinion. Any State not consulted by the Court may ask to be.

It is rare, however, for the ICJ to allow international organizations other than the one having requested the opinion to participate in advisory proceedings. With respect to non-governmental international organizations, the only one ever authorized by the ICJ to furnish information did not in the end do so (*International Status of South West Africa*). The Court has rejected all such requests by private parties.

The written proceedings are shorter but as flexible as in contentious proceedings between States. Participants may file written statements, which sometimes form the object of written comments by other participants. The written statements and comments are regarded as confidential, but are generally made available to the public at the beginning of the oral proceedings. States are then usually invited to present oral statements at public sittings.

Advisory proceedings are concluded by the delivery of the advisory opinion at a public sitting.

It is of the essence of such opinions that they are advisory, i.e., that, unlike the Court's judgments, they have no binding effect. The requesting organ, agency or organization remains free to give effect to the opinion by any means open to it, or not to do so. Certain instruments or regulations can, however, provide beforehand that an advisory opinion by the Court shall have binding force (e.g., conventions on the privileges and immunities of the United Nations).

It remains nevertheless that the authority and prestige of the Court attach to its advisory opinions and that where the organ or agency concerned endorses that opinion, that decision is as it were sanctioned by international law.

