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Opening the World Court to State and Non-State Actors in Contentious Cases: Reality or Utopia?

AMPLIANDO O ACESSO À CORTE MUNDIAL POR ATORES ESTATAIS E NÃO ESTATAIS EM CASOS CONTENCIOSOS: REALIDADE OU UTOPIA?

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Abstract
Over the last decades, the participation of State and non-State actors in law-making has become one of the basic features of international law. Considering the International Court of Justice (ICJ) as a focus, this analysis will discuss the potential and limits of Non-State Actors (NSA)'s participation, as 'friends of the Court,' in contentious proceedings. The ICJ Statute and Rules of Court contain no provision on *amicus curiae* participation in contentious cases. The lack of an express mention does not indicate, however, that this practice would be proscribed by the Court. This research applies an empirical methodology for mapping the ICJ's practices concerning forms of submitting relevant information to the Court in contentious proceedings. Broadening the possibilities for participation would imply the recognition of the plurilateral nature of international disputes, notably when global public goods are at stake. If the goal is to 'introduce public interest considerations', then the 'friends of the Court' could also contribute to upholding rules aimed at protecting the international community's fundamental values and, ultimately, strengthening the democratic legitimation of judicial decisions.

Keywords
International Court of Justice; contentious cases; *amicus curiae*; intergovernmental organizations; non-governmental organizations; individuals.

Resumo
Nas últimas décadas, a participação de membros da sociedade internacional em processos de tomada de decisões tornou-se uma característica elementar do direito internacional. Concentrando-se na Corte Internacional de Justiça, a presente análise pretende discutir o potencial e os limites da participação de atores não estatais como "amigos da Corte' em procedimentos contenciosos. O Estatuto e o Regulamento da Corte não contêm previsão admitindo a participação de amicus curiae *em casos contenciosos. A ausência de uma menção expressa, no entanto, não indica que a referida prática estaria proibida pela Corte. Essa pesquisa aplica metodologia empírica para mapear a prática da Corte Internacional de Justiça quanto a formas de submissão de informação relevante via amicus curiae em casos contenciosos. Ampliar as possibilidades para participação significaria reconhecer a natureza plurilateral das disputas internacionais, especialmente quando dizem respeito a bens públicos globais. Com o objetivo de "introduzir considerações de interesse público", os "amigos da corte" poderiam contribuir para a preservação das regras de proteção dos valores fundamentais da comunidade internacional e, assim, fortalecer a legitimidade democrática das decisões judiciais.*

Palavras-chave
Corte Internacional de Justiça; casos contenciosos; amicus curiae; organizações intergovernamentais; organizações não governamentais; indivíduos.

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Introduction

International law is no longer just a tool for the co-existence of States; it is also, and ultimately, a mechanism for the protection of community interests. The 'recognition of community interest in positive law' reflects this trend (BENZING, 2006, p. 370). Traditionally, the concept of community interests referred to certain fundamental values which cannot be left to the free disposition of individual States or in exclusive relation to them but are notably 'recognized and sanctioned by international law as a matter of concern to all States' (SIMMA, 1994, p. 233). More broadly, community interests can go beyond the international community's fundamental interests and values as a whole and also comprise interests and values that transcend States' interests, 'shared on a non-universal level and protected by law which only binds groups of States' (FEICHTNER, 2007, p. 4).

The realization of community interests depends on the existence of an institutional structure for the promotion and protection of these interests (SIMMA, 1994, p. 285). However, in the current scenario, there is no supranational authority or appropriate public institution on a global level capable of compelling States to accomplish global achievements related to community interests (BENZING, 2006, p. 372; CAFAGGI and CARON, 2012, p. 645). As a component of the international governance structure, international courts and tribunals (ICTs) can be considered key elements in the promotion of international rule of law (ULFSTEIN, 2014, p. 859-860), including the provision of global public goods (NOLLKAEMPER, 2012, p. 769-770).

The case law of the International Court of Justice (ICJ) deals with issues involving community interests. The ICJ has dealt with genocide, war crimes, and other human rights violations in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* and also in the *Jurisdictional Immunities* case (SHELTON, 1994 p. 614). Environmental law cases are also among issues that reflect widespread concern or broad public interest, such as the *Gab íkovo-Nagymaros* case. Even boundary disputes may have an important impact on individuals. These examples illustrate that international litigation has rarely been a matter of private concern affecting exclusively the parties in dispute (SHELTON, 1994 p. 614-615) and this growing concern would indirectly stimulate public interest in the work of the Court, among other advantages (ROSENNE, 1997, p. 654-655).

Together with ICTs' increasingly important role in the promotion, recognition, and application of community interest norms, there is also a growing participation of State and non-State actors to ensure and facilitate compliance and enforcement with these norms. Non-State actor (NSA) is not a legal term but rather a descriptive concept that seeks to reflect reality's contours (d'ASPREMONT, 2011, p. 1). This research adopts the understanding of the 2016 International Law Association Report that defines NSAs as 'legally recognized and organized entities that are not comprised of nor governed or controlled by States nor groups of States and that actually perform functions in the international arena

that have real or potential effects on international law' (ILA, 2016, p. 4). By applying that definition, the NSAs considered in this research are non-governmental organizations (NGOs) and individuals, while State actors comprise States and intergovernmental organizations (IGOs).

Alongside State actors, NSAs play an important role in the enforcement of community interests' norms, notably via participation in international dispute settlement mechanisms. This participation may take several forms, both formally and informally (ILA, 2012, p. 19). Whereas their formal role has only very exceptionally been recognized, their informal participation in international dispute settlements cannot be ignored (DE BRABANDERE, 2011, p. 86, 89). As participants before ICTs, NSAs may perform a variety of functions and activities: provide legal expertise and factual information, give access to persons or entities who cannot be parties to an ICT's proceeding but whose interests may be affected by the decision; and, 'to a certain extent, represent public interest considerations' (BARTHOLOMEUSZ, 2005, p. 274). NSAs' submissions before ICTs may serve to highlight broader implications of decisions that go beyond bilateralism and impact matters of public interest (RAZZAQUE, 2002, p. 170-171). The participation of NGOs, in particular, may contribute to the mobilization of the general public (BOGDANDY and VENZKE, 2014, p. 29).

The participation of State and non-State actors in international dispute settlements generally takes the form of *amicus curiae* interventions.[1] Their goal is to 'introduce public interest considerations into the decision – and, indirectly, to impact the development of international law' (RONEN and NAGGAN, 2013, p. 821). Despite being accepted and regulated by many ICTs,[2] there remains considerable disagreement within the ICJ in this regard, which seems still reluctant to expand the dispute beyond the limits initially prescribed by the parties to the proceedings (RONEN and NAGGAN, 2013, p. 823), notably in contentious

1 *Amici curiae* 'are those actors who do not themselves have a legally protected interest in a particular case and yet want to intervene' (BOGDANDY and VENZKE, 2011, p. 1366-1367; see also SANDS and MACKENZIE, 2009, para. 2; ASCENSIO, 2001, p. 897), thereby opening bilateral litigation to issues of community interests (SHELTON, 1994 p. 612).

2 See, e.g., International Tribunal for the Law of the Sea (ITLOS) Rules of the Tribunal, Articles 84(1), 84(2); International Centre for Settlement of Investment Disputes (ICSID) Arbitration Rule 37(2) (a); European Court of Human Rights (ECHR) Article 36(2); Inter-American Court of Human Rights (IACtHR) Rules, Article 2(3), 44; International Criminal Court (ICC) Rules of Procedure and Evidence, Rule 103; International Criminal Tribunal for the former Yugoslavia (ICTY) Rules of Procedure and Evidence, Rule 74; International Criminal Tribunal for Rwanda (ICTR) Rules of Procedure and Evidence, Rule 74, among others. In the World Trade Organization (WTO), the institution of *amicus curiae* was accepted by the WTO Appellate Body based on a broad interpretation of Article 13 of the Dispute Settlement Understanding

cases. Indeed, the ICJ Statute and Rules of the Court contain no provision on *amicus curiae* participation in contentious cases. The lack of an express mention of *amici curiae* briefs does not indicate, however, that this practice would be proscribed by the Court, notably in contentious proceedings.

By applying an empirical research methodology for mapping the ICJ's practice concerning notifications to State and non-State actors and other forms of submitting relevant information to the Court under its existing Statute and Rules' provisions (1), this research discusses the possibilities of participation by the State and non-State actors in ICJ's contentious cases. It goes beyond describing and exemplifying formal avenues of participation and presents a well-founded picture of ICJ's contentious practice (2). It also addresses informal avenues of participation by State and non-State actors in ICJ's contentious cases (3). Finally, this paper will discuss current challenges and possible alternatives to expand participation (4).

1. Methodology and Legal Basis

This research covered submissions by IGOs, NGOs, and individuals (both natural and legal persons) in ICJ's contentious cases.

The analysis was comprised of three steps. The first step was keyword research into each and every case law (notably 'written statements,' 'orders,' 'judgments,' and 'other documents') to map additional actors' participation, other than actors from the main parties or a third-party intervener in the proceedings, and reference the legal basis which request for additional actors were addressed to the Court. The second step consisted in producing tables to organize the data gathered on the participation of State and non-State actors. The third and final step was to process the information to produce several figures, comprising all contentious cases (according to the year of judgment) and 15 pending cases (according to the year of request).[3]

The keyword search used terms that referred to the following provisions: Articles 34 and 50 of the Statute; and Articles 43 and 69 of the Rules of Court. The main legal basis for the participation of State and non-State actors in contentious cases are Articles 34 and 50 of the Statute, while Articles 43 and 69 of the Rules indicate the procedure for submitting information to the Court.

(DSU). For more details on *amicus curiae* before tribunals other than the ICJ, see Razzaque (2002, p. 169-200); Bartholomeusz (2005, p. 209-286); Shelton (1994, p. 611-642); Brabandere (2011, p. 85-113).

3 For the purpose of this paper, the research data was last updated in 20 September 2022.

According to Article 34(2), the Court 'may request of public international organizations information relevant to cases before it' and/or shall receive such information from such organizations 'on their own initiative'. The Rules of Court, as amended in 2005, define 'public international organizations' as 'an international organization of States' (Article 69(4)).[4] Despite controversies concerning the interpretation of Article 34(2) – whether it could be interpreted more broadly to encompass 'international public organizations' – the Court decided not to accept submissions from international organizations other than those of an intergovernmental structure (DUPUY and HOSS, 2019, para. 3-4). Indeed, in the *Asylum* case (Colombia v. Peru), the Court confined the application of Article 34 to public international organizations (Part IV, Correspondence. Docs. 63, 66, p. 227-228).

Article 34(3) of the Statute provides an avenue for public international organizations to be notified by the Registrar and eventually present written observations in the framework of intervention proceedings based on Article 63(2) of the Statute. According to an amendment to Article 43 of the Rules, which entered into force in 2005, the Court may direct the Registrar to notify any public international organization that is a party to the construction of a convention that may be in question in a case. Article 69(4) of the Rules of Court defines the term 'public international organization' as 'an international organization of States', excluding, therefore, any submission made by NGOs. Article 43(2) of the Rules, as amended in 2005, allows the organizations so notified to submit observations on the particular provisions of the convention in question. The rationale behind the updated Article 43 is to consider that both States and international organizations may hold a comparable interest in taking part in the proceedings in which the construction of a convention is discussed before the Court. The procedure to be followed in this case is provided for in Article 69(3) of the Rules.

If participation under Article 34 is considered by the Court to be limited to organizations composed of States, other non-State entities, such as NGOs and individuals, may seek to submit information to the Court based on Article 50 of the Statute, which allows the Court to invite individuals, bodies, bureaus, commissions or other organizations to carry out an inquiry or give an expert opinion. Article 50 is supplemented by Article 67 of the Rules, according to which individuals or IGOs may be heard in their limited capacity as experts. Thus, NSAs would be able to contribute information indirectly, as expert witnesses, by requesting that the Court appoint them to give their opinion (SHELTON, 1994, p. 628).

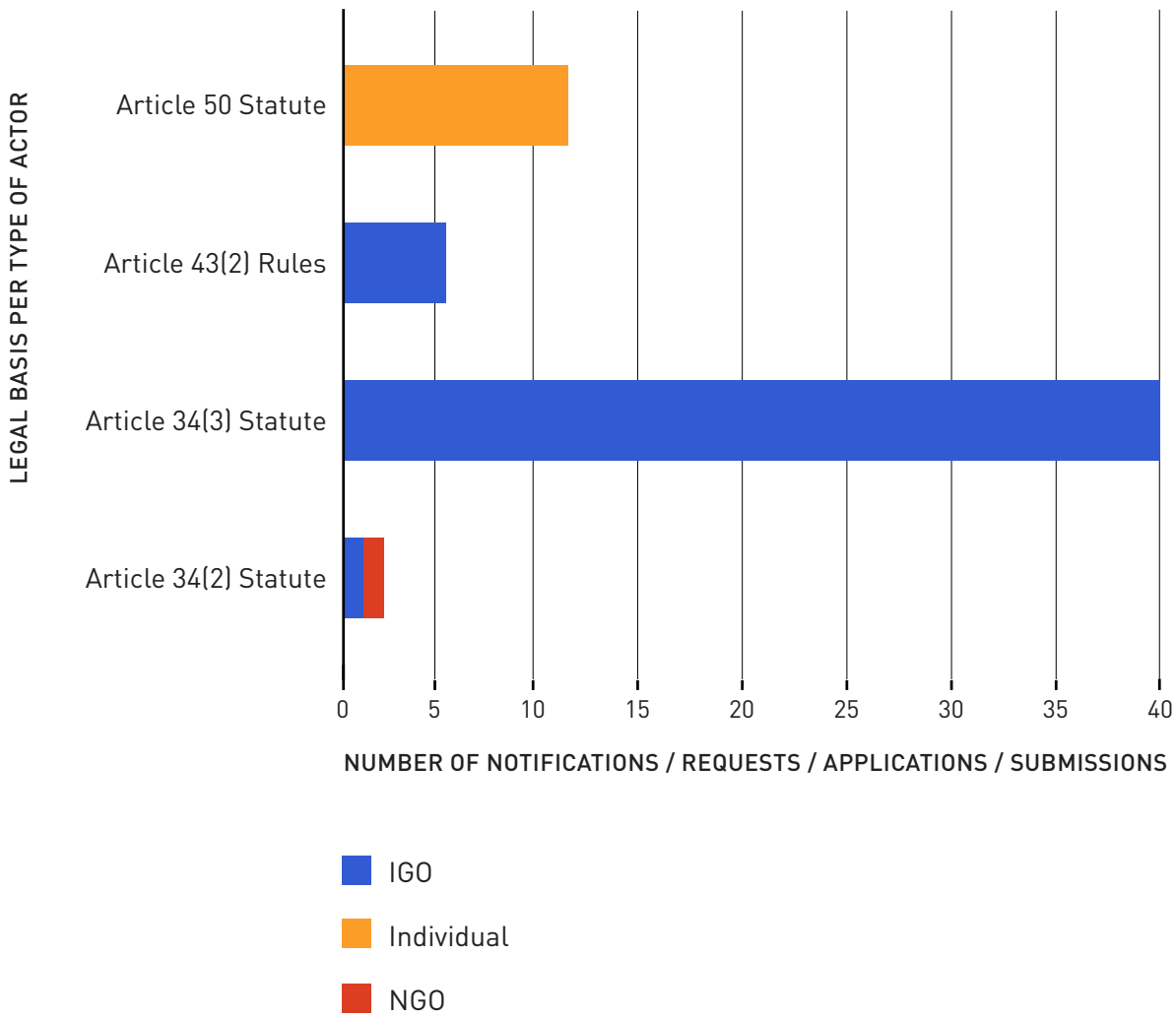
4 According to Shelton (1994, p. 625), "the predecessor of Art 34 of the Statute did not reflect a rigid 'states only' policy". For the background and drafting history, see Shelton (1994, p. 620-621). See also Bartholomeusz (2005, p. 213).

As put by Shelton, 'both the PCIJ [Permanent Court of International Justice] and the ICJ have used this power to obtain information akin to that submitted by *amici curiae* in other tribunals' (SHELTON, 1994, p. 627).

2. Formal Avenues for State and Non-State Actors' Participation

In contentious cases, there are various legal basis worth examining regarding the submission of observations and requests for participation *proprio motu* by State and non-State actors. According to such legal basis, this research mapped ICJ notifications to submit observations in all contentious cases, as well as their outcomes. The Court's notifications to NSAs can be classified under four main provisions (see Graph 1).

GRAPH 1 – **Legal Basis for NSAs Participation in Contentious Cases** (1949-2022)



Source: Authors' own elaboration.

It can be noted that IGOs stand out as the most active actor, having received a total of 46 notifications from the ICJ, mostly under Article 34(3) of the Statute, often combined with the procedural provision of Articles 43 and 69 of the Rules of Court (a). In contrast, NGOs have attempted to participate in ICJ contentious proceedings despite the Statute's formal limitation to 'public international organizations' under the avenue of Article 34(2) of the Statute. Although not formally considered *amicus curiae* submissions, expert opinions under Article 50 of the ICJ Statute could be another possibility for individuals, among other actors, to indirectly participate in ICJ proceedings (b).

a. Article 34 of the Statute

In contentious cases, the presentation of information to the ICJ is limited to intergovernmental organizations via notifications under Article 34 of the Statute and Article 43 of the Rules (i). In practice, the Court has never received submissions from NGOs in contentious cases. As indicated above, Article 34 of the Statute limits the possibility of presenting information to international organizations of States. However, some relevant observations can be drawn from the *Asylum* case. During the proceedings, an NGO – the International League for the Rights of Man – made an unsuccessful attempt to participate pursuant to Article 34(2) of the ICJ Statute. Since *Asylum*, there appears to exist no subsequent attempts by NGOs to submit information to the ICJ in contentious proceedings (DUPUY and HOSS, 2019, para. 41).

Therefore, any public international organization, or IGO, duly notified (ii) may submit its written observations on the particular provisions of a convention before the closure of the written proceedings (iii) and, if the Court so desires, may be able to supplement its observations orally (Article 69(2) of the Rules). Furthermore, there were cases in which the ICJ missed the opportunity to address notifications for the submission of observations from IGOs but could have benefited from doing so (iv).

i. Overview of ICJ Notifications

Over the last 73 years, out of 155 contentious cases that were brought before the ICJ by 30 June 2022, the Court issued 46 notifications for IGOs to submit information: 42 notifications in 33 contentious cases and four notifications in four pending cases (see Graph 2).

GRAPH 2 – RATE OF ICJ NOTIFICATIONS TO IGOS IN CONTENTIOUS CASES (1949-2022)

Source: Authors' own elaboration.

In 1972, the ICJ Registrar addressed one notification pursuant to Article 34(3) to the Secretary-General of the International Civil Aviation Organization (ICAO) in *ICAO Council*, concerning the application of the Chicago Convention. The ICAO Secretary-General was notified of the time limit to submit observations but declined the opportunity to do so.

In 1992, the Court addressed one notification under Article 34(3) to the Secretary-General of the Organization of American States (OAS) in *Border and Transborder* concerning Article 31 of the 1947 Pact of Bogotá as a basis for the ICJ jurisdiction. The Court fixed time limits for the submission of observations; however, the Secretary-General considered he had no authority for such submission in the name of the Organization of American States.

In 1996, the ICAO was once again notified under Article 34(3) of the Statute, in the *Aerial Incident of 3 July 1988*, concerning the application and interpretation of the Chicago and Montreal Conventions. In this case, the organization submitted observations.

In 2003, the two related *Lockerbie* cases prompted one ICJ notification to the ICAO, each under Article 34(3) of the Statute (the same notification was replicated in both proceedings). The Registrar sent the ICAO Secretary-General copies of the written pleadings and, without formally requesting a submission or fixing a time limit, recalled that the submission should be limited to questions of jurisdiction and admissibility. On 26 June 1996, the Secretary-General was informed that the ICAO had no observations to make at that point 'but wished to remain informed about the progress of the case, in order to be able to determine whether it would be appropriate to submit observations later'.

In 2004, a total of eight ICJ notifications under Article 34(3) were sent to the United Nations (UN), regarding the Convention on the Prevention and Punishment of the Crime of Genocide, in the *Legality of Use of Force* cases (the same notification was replicated in all proceedings) but no submissions were returned. In 2006, pursuant to Article 34(3) four ICJ notifications were issued to the following IGOs: United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the UN, and the ICAO, regarding the Convention on Discrimination against Women, in *Armed Activities New Application*. All of the IGOs declined the opportunity to submit observations.

In 2007, the Court issued a notification under Article 34(3) to the OAS, regarding the application of the Pact of Bogotá, in the *Territorial and Maritime Dispute* but the organization declined the opportunity to submit observations. In the same year, the ICJ Registrar addressed a notification provided for by Article 34(3) to the UN Secretary-General concerning the construction of the Genocide Convention in the *Bosnian Genocide* case, but there was no reply. This was the first notification addressed to the UN under Article 34(3).

In 2009, the Court issued a notification under Article 34(3) to the OAS in *Navigational and Related Rights* concerning the application of the Pact of Bogotá, but no submission was sent. In the same year, the ICJ Registrar issued a notification as provided for by Article 43(2) of the Rules to the European Community (before absorption by the EU in 2009),

concerning the UN Convention on the Law of the Sea (UNCLOS), in *Maritime Delimitation,* but again no submission was sent.

In 2011, a notification under Article 34(3) was declined by the UN in the *Application of the ICERD* concerning the construction of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In 2012, a notification under Article 34(3) was sent to the OAS States, concerning the Pact of Bogotá, in the *Territorial and Maritime Dispute* but the organization did not wish to submit observations.

In 2014, the Court addressed two notifications to the Permanent Commission for the South Pacific and to the OAS, concerning the Pact of Bogotá, pursuant to Article 34(3) in *Maritime Dispute*. Both organizations did not wish to submit observations. In the same year, the ICJ addressed another notification under Article 34(3) in *Whaling in the Antarctic*, concerning the International Convention for the Regulation of Whaling. The Court required observations from the International Whaling Commission. Nonetheless, the Commission indicated that it did not intend to submit any observations in writing according to Article 69(3) of the Rules.

In 2015, the Court sent the notification of Article 34(3) to the UN Secretary-General regarding the *Croatian Genocide* concerning the construction of the Genocide Convention, but the organization declined the opportunity to submit observations. In 2016, the UN received the same notification in *Nuclear Disarmament* concerning the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, but the notification was left unanswered.

In 2018, the Court issued two notifications under Article 34(3) to the OAS: the first in the case *Obligation to Negotiate*, which was declined, and the second, which was left unanswered, in *Certain Activities*, both concerned the Pact of Bogotá. In the same year, the ICJ also issued two identical notifications, which were left unanswered, under Article 43 of the Rules to the European Union, in the joined cases *Maritime Delimitation* and *Land Boundary*, concerning the United Nations Convention on the Law of the Sea (UNCLOS).

In 2020, the Court issued two notifications in *Immunities and Criminal Proceedings*: one under Article 43(2) of the Rules to the European Union with respect to the Palermo Convention, which was declined; and the other under Article 34(3) of the Statute to the UN Secretary-General, which was left unanswered.

In 2021, the Court addressed one notification under Article 34(3) to the OAS, regarding to the Pact of Bogotá, in *Alleged Violations*, which was declined. In the same year, a notification issued under Article 43(2) of the Rules to the European Union in *Maritime Delimitation*, regarding the UNCLOS, was also declined.

Finally, in 2022, the Court concluded the judgment of *Armed Activities*, in which three notifications under Article 34(3) were issued to the following organizations, each concerning a particular convention: the African Union Commission (African Charter on Human and Peoples' Rights); the ICAO (Chicago Convention); and the UN (International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment). These three organizations did not wish to submit observations.

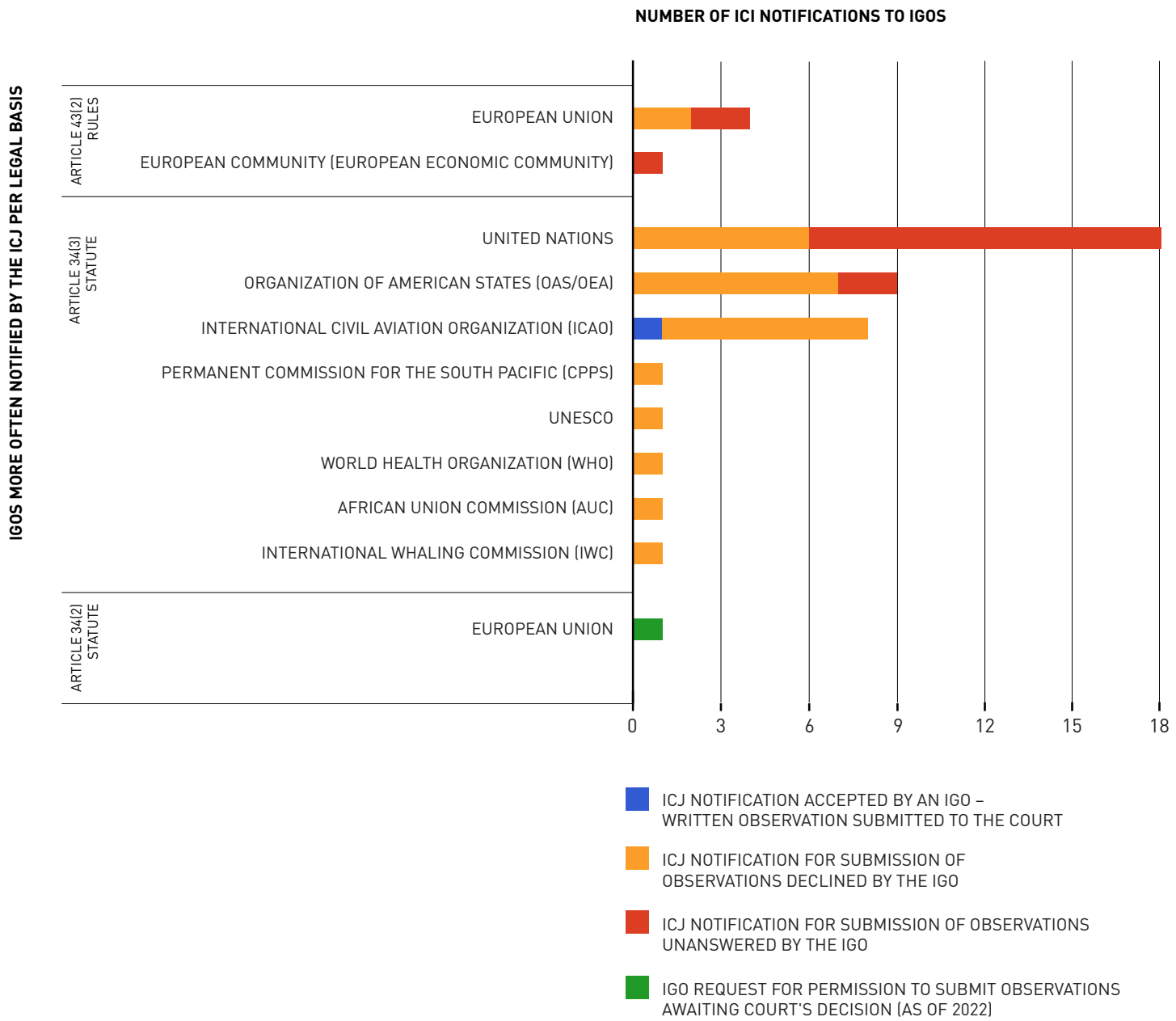
As opposed to contentious proceedings that have already been judged by the Court (mapped according to the cases' judgment year), the empirical analysis of pending cases was initiated on the date on which the Court addressed notifications. There are two pending cases in which one notification for each was sent by the Court.

In 2014, the ICJ addressed one notification under Article 34(3) in *Continental Shelf*, which was later declined, and, most recently, in 2017, the Court issued one notification under Article 34 (3) to the UN, concerning the International Convention for the Suppression of the Financing of Terrorism and the ICERD, in *Financing of Terrorism* which was left unanswered.

ii. IGOs Most Frequently Notified by the ICJ

Apart from expert opinions submitted by individuals, the ICJ addressed 46 notifications to 10 IGOs to submit observations in contentious cases (see Graph 3).

GRAPH 3 – **IGOs Most Often Notified by the ICJ per Legal Basis** (1949-2022)



Source: Authors' own elaboration.

The United Nations was notified the most in 18 cases: *Bosnian Genocide*; the eight *Legality of Use of Force* cases; *Armed Activities*; *Armed Activities New Application*; *Croatian Genocide*; *Application of the ICERD* (Georgia v. Russia); *Application of the ICERD* (Qatar v. United Arab Emirates); *Nuclear Disarmament*; *Immunities and Criminal Proceedings*; *Financing of Terrorism; Application of the Convention on the Prevention and Punishment of the Crime of Genocide*.

The Organization of American States was notified second most often in nine cases: *Border and Transborder*; *Territorial and Maritime Dispute*; *Territorial and Maritime Dispute*; *Navigational and Related Rights*; *Certain Activities*; *Maritime Dispute*; *Obligation to Negotiate*; *Continental Shelf*; and *Alleged Violations*.

The International Civil Aviation Organization was notified third most often in eight cases: *ICAO Council*; *Aerial Incident of 3 July 1988*; the two *Lockerbie* cases; *Armed Activities*; *Armed*

Activities New Application; *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation*; and *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation*.

Next, the European Union was notified fourth most often in four cases: *Immunities and Criminal Proceedings*; *Maritime Delimitation*; and in both proceedings of the joined cases, *Maritime Delimitation* and *Land Boundary*. More recently, the EU has submitted information under Article 34(2) in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide*; the Court's assessment of the attempted participation is still pending.

Finally, the following organizations each received one ICJ notification: the African Union Commission (*Armed Activities*); the World Health Organization (*Armed Activities New Application*); UNESCO (*Armed Activities New Application*); the European Community, before absorption by the EU in 2009 (*Maritime Delimitation*); the International Whaling Commission (*Whaling in the Antarctic*) and the Permanent Commission for the South Pacific (*Maritime Dispute*).

iii. The Sole Submission by an IGO: The Aerial Incident of 1988 Case

Empirical data confirms that IGOs appear as the type of actor that has received the highest amount of notifications in ICJ contentious cases. Despite the Court's effort to notify IGOs potentially interested to submit information, only one notification has been positively answered. In the case concerning the *Aerial Incident of 3 July 1988,* the ICJ invited the ICAO to furnish information regarding its Council's proceedings. The dispute between Iran and the US concerned the destruction of an Iranian Airbus A-300B by the USS Vincennes, a US guided-missile cruiser that operated in the Persian Gulf. The incident of 3 July 1988 caused the death of 290 Airbus passengers and crew.

Iran had previously referred the matter to the ICAO Council, a United Nations' specialized agency in charge of the administration and governance of the Convention on International Civil Aviation (Chicago Convention) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention). However, Iran instituted proceedings before the ICJ by an Application of 17 May 1989 contending that 'the ICAO Council decision was erroneous'.

By a letter, dated 22 May 1989, the ICJ Deputy-Registrar notified the ICAO under Article 34(3) of the Statute of the proceedings and informed Iran that the Montreal and Chicago Conventions were an issue. Another letter, dated 14 March 1991, showed that the Registrar invited the ICAO to indicate whether it wished to submit written observations under Article 69(3) of the Rules.

Iran argued that the submission of ICAO observations 'would be superfluous', since the Court already had a full contemporary record of the Council's proceedings and that it would be inappropriate for the ICAO Council to submit substantive comments on an issue 'under appeal' over which it had rendered a decision.

Conversely, the US stated that the ICAO Council did not act under Article 84 as a quasi-judicial body sitting to decide a disagreement between two parties over the interpretation or application of the Convention but that it had rather been acting 'under its general authority deriving from Articles 54 and 55 of the Convention'. For this reason, the US contended that the ICJ had no jurisdiction to consider the *Aerial Incident* case as an appeal since the Chicago Convention does not permit decisions taken under Articles 54 and 55 to be appealed to the ICJ.

Nevertheless, after the ICJ Registrar fixed the respective time limit, the ICAO Secretary-General presented its observations. It considered that the Chicago Convention had vested the ICAO Council with the functions of settling disputes related to the Convention and its Annexes, whilst Chapter XVIII of the Convention (Disputes and Defaults), including Article 84, is related to the settlement of disagreements arising out of the interpretation or application of the Convention. However, the ICAO Secretary-General stated that since the Iranian request did not make any reference to Article 84, it was considered under other provisions of the Chicago Convention, in particular Articles 54 and 55. Therefore, the ICAO Secretary-General confirmed the US argument, according to which decisions and recommendations of the Council taken under other provisions may not be referred to the ICJ.

On 22 February 1996, the parties to the dispute jointly notified the ICJ that their governments had entered into an agreement and agreed to the discontinuance of the case.

iv. Missed Opportunities to Open Contentious Proceedings to IGOs

There are several cases in which the ICJ could have made use of Article 34(3) to address notifications to IGOs for the submission of observations but failed to do so, coupled with situations in which IGOs could have been more active in submitting information to the Court.

The first case that brought the attention of the ICAO Council to the ICJ was the *Aerial Incident of 27 July 1955*. In the third session of the Council in 1958, the organization's Secretary-General noted the relevance of the case concerning the legal aspects of civil aircraft safety flying nearby international frontiers and being unintentionally able to cross them. The Council agreed to supply information when requested, but no ICJ notification was issued (DUPUY and HOSS, 2019, para. 10).

In the *South West Africa* cases, the Director-General of the International Labour Office of the International Labour Organization (ILO) informed the ICJ Registrar that he would be at the disposal of the Court to submit information regarding the ILO, under the resolution of the ILO Administrative Council. The Registrar took notice and transmitted the letter to the President, but the Court did not request information nor did the ILO present it on its own initiative (DUPUY and HOSS, 2019, para. 10).

In *Corfu Channel* and *U.S. Nationals in Morocco*, although no notification under Article 34 was issued to international organizations, the disputes could have permitted such participation. Moreover, notifications for submission of observations might have been expected,

although they were not issued, in the following cases (DUPUY and HOSS, 2019, para. 17): *East Timor*; *Fisheries Jurisdiction*; *Breard*, *LaGrand*, and *Avena*; *Gab íkovo-Nagymaros*; *the Aerial Incident of 10 August 1999*; *Pulp Mills*; and all 10 *Legality of Use of Force* cases.

Despite the amount of Court notifications to IGOs (42 notifications in settled cases and four in pending cases), the real impact the organizations had on the proceedings has been almost non-existent. Even in the aforementioned *Aerial Incident of 3 July 1988*, the observations received from the ICAO did not impact the Court's final decision since the case was discontinued. In addition, the two most notified organizations under Article 34(3) (the UN and the OAS) have not submitted observations in any proceeding.

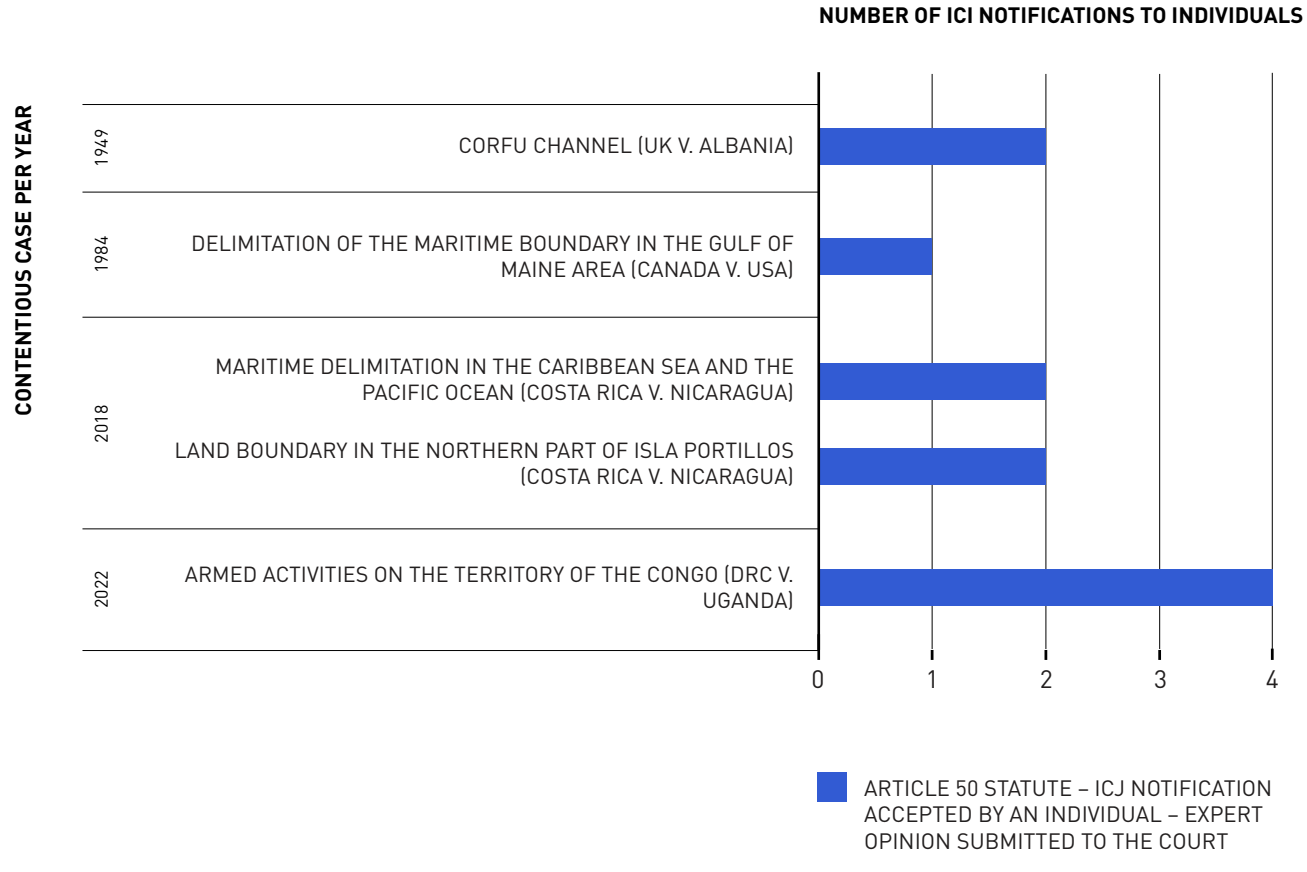
This data demonstrates primarily that the Court has rarely used the instruments at its disposal to broaden the proceedings in the interests of the international community. Secondly, the lack of interest from IGOs to submit observations is also evident. Several occasions represented possibilities for IGOs to submit relevant observations, but the Court and the relevant actors remained silent.

b. Article 50 of the Statute

Article 34 of the ICJ Statute was intentionally drafted by the Committee of Jurists to exclude individuals from appearing before the ICJ. This is because, to the Committee, 'individuals are not subjects of international law' and 'have no *locus standi* before international tribunals' (LAUTERPACHT, 2002, p. 109). Therefore, in principle, individuals have no voice before the Court. Their only possibility to have their rights vindicated before the Court rests in the hands of their States of nationality when exercising diplomatic protection.

However, it is frequently affirmed that Article 50 of the ICJ Statute could provide a potential avenue for the Court to invite individuals or IGOs to participate as *amicus curiae* in contentious cases. Pursuant to it, the Court may invite individuals, bodies, bureaus, commissions, or other organizations to carry out an inquiry or to give an expert opinion. This provision, supplemented by Article 67 of the Rules, allows individuals or IGOs to be heard in their limited capacity as experts. Yet, no IGOs have been invited to submit an inquiry or to give an expert opinion under Article 50. The Court only applied this legal basis for requesting expert opinions from individuals (see Graph 4).

GRAPH 4 – **NUMBER OF ICJ NOTIFICATIONS TO INDIVIDUALS IN CONTENTIOUS CASES** (1949-2022)



Source: Authors' own elaboration.

The Court's scant practice does not indicate an intention to interpret expansively the scope of an individual's capacity under Article 50 to include the possibility to present *amicus curiae* (BARTHOLOMEUSZ, 2005, p. 216-217). In practice, individuals solicited by the Court acted exclusively in the capacity of experts.

Indeed, in *Corfu Channel*, two experts were appointed: Mr. J. B. Berck, Rear-Admiral of the Royal Netherlands Navy, and Mr. G. de Rooy, Director of Naval Construction from the Royal Netherlands Navy. At the public hearings, the Court entrusted questions of a technical nature regarding the investigation to experts.

In the *Gulf of Maine*, Canada and the USA signed a Special Agreement to bring a dispute before a Chamber of the Court concerning the delimitation of the maritime boundary of the Gulf of Maine area dividing the continental shelf and fisheries zones within it. As provided for in the Special Agreement between the Parties, the Chamber appointed former Commander Beazley of the British Royal Navy and member of the British delegation to the third UN Conference on the Law of the Sea as an expert to assist it in technical matters (TORRES BERNÁRDEZ and MBENGUE, 2019, para. 71; PEAT, 2014, p. 9).

In the joined *Maritime Delimitation* and *Land Boundary* cases, two independent experts, Mr. Eric Fouache and Mr. Francisco Gutiérrez, were requested, along with the European

Union, to produce a report concerning the dispute between Costa Rica and Nicaragua over determining the course of a single boundary between the maritime areas appertaining to both countries in the Caribbean Sea and the Pacific Ocean and also over the precise definition of the boundary in the area of Los Portillos and Harbor Head Lagoon.

Finally, in *Armed Activities*, the Court appointed four experts to assist in the determination of the amount of reparation: Ms. Debarati Guha-Sapir, Mr. Michael Nest, Mr. Geoffrey Senogles, and Mr. Henrik Urdal.

If scholars suggest that the Court should 'take advantage of its existing powers to permit an individual directly concerned to give to the Court his or her own version of the facts and construction of the law' (ROSENNE, 1967, p. 244), this empirical research confirms that no further participation of individuals was sought in other proceedings. However, existing mechanisms could enable the Court to accept some form of participation by individuals, although, to date, Article 50 of the Statute has only been used to pursue technical evidence.

2. Informal Avenues for State and Non-State Actors' Participation

The insufficiency of statutory avenues for amici curiae participation before the Court has given way to informal avenues of participation by the international community in bilateral disputes that concern community interests. Notably, individuals may have their interests involved whenever States exercise diplomatic protection (a). Similarly, NSA briefs concerning a specific dispute may be introduced as part of the disputing States' submissions (b). Finally, other forms of participation include that of other actors furnishing information relevant to institution proceedings or case judgments (c).

a. The Use of the Institute of Diplomatic Protection

Some cases might demonstrate an ancillary influence of individuals in proceedings, notably whenever national companies have their interests protected by the State via diplomatic protection.

In *ELSI*, Mr. Bisconti, an attorney from Elettronica Sicula S.p.A (ELSI) was a member of the USA delegation. The dispute originated from the requisition by Italy of the plant and related assets of the Italian electronic components company, which was allegedly owned by two American corporations. During the oral hearings, Mr. Bisconti waived attorney/client privilege to his clients from ELSI. The President of the Court at that time, Judge Ruda, considered his participation as a witness and submitted him to cross-examination since part of his statements presented evidence from his personal experience as a lawyer for the firm.

In *Anglo-Iranian Oil Co.*, the UK instituted proceedings against Iran 'on behalf of' the British company Anglo-Iranian Oil Company. The dispute concerned Iranian laws for nationalization of the oil industry that altered the oil concession agreement between Iran and the

company. However, the latter had no opportunity to submit its views nor provide an attorney for the UK delegation.

In *Oil Platforms*, Iran instituted proceedings concerning the destruction by US Navy warships of three oil platforms from the National Iranian Oil Company, a State-owned company. The plaintiff alleged a fundamental breach of the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the two States. During the proceedings, the attorney Dr. M. A. Movahed, Senior Legal Adviser of the State-owned company whose products were destroyed, acted as a member of the Iranian delegation. However, as indicated by Rosenne, the whole discussion occurred between the British and Iranian governments without conferring any opportunity for the company to submit its views in the proceedings. In this case, no doubt remains that direct representation by the affected individuals would not only stimulate public interest but also enhance confidence in the work of the Court (ROSENNE, 1997, p. 654-655, fn. 91; RAZZAQUE, 2002, p. 175; BARTHOLOMEUSZ, 2005, fn. 36).

In *Diallo*, Guinea instituted proceedings against the Democratic Republic of the Congo (DRC) in defense of Mr. Ahmadou Sadio Diallo, a businessman of Guinean nationality who had allegedly been subjected to imprisonment and despoilment of his sizable assets, and then expelled from the DRC at a time when Mr. Diallo was seeking the payment of debts owed to his businesses (the companies Africom-Zaire and Africontainers-Zaire) by the DRC government and by oil companies established in its territory and of which the State was a shareholder. The Court admitted Guinea's application 'in so far as it concerns the protection of Mr. Diallo's rights as an individual and his direct rights as *associé* in Africom-Zaire and Africontainers-Zaire', although denying admissibility of the claim concerning the alleged violations of the rights of both companies; it was recognized that the DRC had violated several human rights treaties and it was settled that the DRC owed a total sum of US$ 95,000 to Guinea.

b. Briefs Introduced as Part of Disputing States' Submissions

Notably, States may be a useful vehicle to indirectly transmit information originally provided by other actors, such as NGOs, IGOs, and individuals. *Amicus curiae* briefs may therefore be introduced as a part of States' submissions.

This occurred in *Gab íkovo-Nagymaros*, in which NSAs indirectly submitted briefs as part of the disputing parties' submissions, particularly in the 'scientific reports' referred to in the annexes of the Memorials. The reports were specifically prepared by organizations and individuals endowed with relevant competence related to the dispute at hand, i.e., over the construction and operation of the *Gab íkovo-Nagymaros* barrage system and the construction and operation of the project's 'provisional solution'.

The *Gab íkovo-Nagymaros* case represents only one example of the indirect participation of NSAs before the ICJ since empirical research is not able to map all situations in which there

were attempts of indirect participation via States' submissions. Therefore, States' submissions could also be a vehicle to ensure the participation of other actors that remain deprived of formal and direct access to the ICJ, such as NGOs and individuals.

c. Relevant Information to the Institution of Proceedings or the Judgment of the Case

Other means of informal participation include that of other actors playing an important role in the proceedings or judgment of the case by furnishing information relevant to the parties.

In *Obligation to Prosecute or Extradite*, the Human Rights Watch (HRW) was said to have influenced Belgium's initiative to file an application before the ICJ (DUPUY and HOSS, 2019, para. 4). In *Gambia v. Myanmar*, Gambia's application concerned alleged violations of the Genocide Convention and was said to be supported by documents and statements provided by the Organization of Islamic Cooperation (OIC) (HRW, 2019, p. 1). Both cases concerned alleged violations of conventions that establish *erga omnes partes* obligations (namely, the Convention against Torture and the Convention against Genocide).

Furthermore, information provided by other means and by other actors was also taken into account by the Court in *Military and Paramilitary Activities*. Both Nicaragua and the USA submitted to the Court a large number of documentary materials of various kinds from several sources. The material included press articles' reports; book extracts; and statements by States' representatives: some appearing in the official records of States' official organs and international or regional organizations, others reported by the press in interviews or press conferences. The Court did not consider them as evidence but rather as auxiliary material, *i.e.* information for corroborating the existence of a fact, and they were admitted as being in the public domain.

This was not the first occasion the ICJ admitted information in the public domain. In *United States Diplomatic and Consular Staff in Tehran*, the Court referred to facts considered as matters of public knowledge, which had received extensive and international coverage by press, radio, and television.

4. Challenges and Alternatives for Expanding Participation in ICJ Contentious Cases

In contrast to the ICJ's scant practice on Article 34(2), Article 34(3) has been referred to by the Court to issue most IGOs' notifications to submit observations. However, even after notification by the Court, IGOs have rarely taken the opportunity to provide the Court with their observations. Efforts from the ICJ to notify every relevant actor to submit written statements could also demonstrate, on the one hand, the Court's openness to *amicus curiae* participation; and, on the other hand, the organizations' unwillingness to present observations. It is noteworthy to mention that no NGOs were notified under Article 34(3).

The empirical research confirms the doctrinal hypothesis, according to which 'art 34 is unlikely to be a means for NGOs to have access to the ICJ in contentious cases' (BARTHOLOMEUSZ, 2005, p. 216). In this sense, Article 34 seems to be outdated and certainly disconnected from the contemporary developments characterizing the international community nowadays. The participation of members of the international community in the law-making process and in monitoring 'has become one of the basic features of modern international relations' (DUPUY and HOSS, 2019, para. 5). Whatever the case may be, international organizations could make active use of Article 34, thereby motivating an expanded interpretation of this provision by the Court.

Arguably, NGOs and individuals would be more likely to have access to the ICJ by using Article 50 of the ICJ Statute and NSAs would be able to contribute information indirectly as expert witnesses. In practice, Article 50 provided the legal basis for four expert opinions submitted by nine individuals. Scholars suggest that Article 50 provides a potential avenue for the Court to invite NSAs to participate as *amicus curiae* in contentious cases (BARTHOLOMEUSZ, 2005, p. 214; PALCHETTI, 2002, p. 170), although neither the Court nor NSAs have explored the potential of this provision (BARTHOLOMEUSZ, 2005, p. 215). During the debates surrounding the 1926 Revision of the Permanent Court of International Justice (PCIJ) Rules of Procedure, Judge Anzilotti suggested that these experts could not only be individuals but also private organizations (PCIJ, 1926, p. 224-5). However, in practice, the ICJ has been reluctant to appoint representatives of NGOs as experts and has instead limited itself to designated individuals.

The analysis of ICJ's contentious practice cannot be restricted to situations in which observations were effectively submitted to the Court. Other forms of informal participation include that of State and non-State actors playing an important role in the institution of proceedings by furnishing information relevant to the parties, as happened in *Obligation to Prosecute or Extradite* and in *Gambia v. Myanmar*. Also, information provided by other means and by other actors might be taken into account by the Court, such as in the *Military and Paramilitary*. In *United States Diplomatic and Consular Staff in Tehran*, the Court referred to facts considered as matters of public knowledge, which had received extensive and international coverage by the press, radio, and television. Therefore, States' submissions could also be a vehicle to ensure the participation of other actors that remain deprived of direct access to the ICJ, such as NGOs and individuals.

In any event, a revision of the Rules or Practice Directions would also be useful to allow for greater participation by State and non-State actors, including non-governmental organizations or corporations, as proposed by Phillipe Sands, Alina Miron, Hélène Ruiz-Fabri, and Judge Tomka (CRAWFORD and KEENE, 2016, p. 229). The participation of those directly affected as *amicus curiae* would contribute to the proper administration of international justice (ROSENNE, 1967, p. 250).

Conclusion

Over the last decades, intergovernmental organizations have increased their involvement in the process of international law-making. Recent changes also include the participation of new actors and a more influential role of judicial bodies attached to IGOs. This analysis addressed the potential and limits of the participation of a variety of NSAs in contentious proceedings before the ICJ. The empirical research aimed to assess all cases in which the Court issued notifications to NSAs, as well as attempts and other forms of participation, the specific actors involved, and, ultimately, their potential contribution to judicial law-making.

As discussed, the ICJ Statute and the Rules of Court contain no provision on *amicus curiae* participation in contentious cases. However, the lack of an express mention of *amici curiae* briefs does not indicate that this practice would be proscribed by the Court. By applying an empirical research methodology for mapping the ICJ practice concerning *amicus curiae* submissions and other forms of submitting relevant information to the Court – including the legal basis according to which each notification request was issued by the ICJ, the analysis demonstrated that IGOs stand out as the most active actors in so far as notifications from the ICJ are concerned. Despite the Court's effort to notify IGOs potentially interested to submit information, only one notification was positively answered.

The participation of members of the international civil society in the judicial law-making process has become one of the basic features of international law. There is no doubt that ICJ procedural law remains outdated and disconnected from the contemporary developments characterizing the international community nowadays. Broadening the possibilities for *amicus curiae* submissions would imply recognition of the plurilateral nature of international disputes. This would require not only the expansion of the active legitimacy for submitting *amicus curiae* briefs but also the enlargement of its scope, notably when community interests are at stake. If the goal is to 'introduce public interest considerations' then 'friends of the Court' could also contribute to upholding rules aimed at protecting the fundamental values of the international community and, ultimately, to strengthening the democratic legitimation of judicial decisions.

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REFERENCES

ASCENSIO, Hervé. L'Amicus curiae devant les Juridictions Internationales. *Revue Générale de Droit International Public*, v. 105, p. 897-930, 2001.

BARTHOLOMEUSZ, Lance. The amicus curiae before International Courts and Tribunals. *Non-State Actors and International Law*, v. 5, n. 3, p. 209-286, 2005.

BENZING, Markus. Community Interests in the Procedure of International Courts and Tribunals. *The Law and Practice of International Courts and Tribunals*, v. 5, n. 3, p. 369-408, 2006.

BERNHARDT, Rudolf. Judicial and Arbitral Settlement of International Disputes Involving more than two States. *Institute of International Law Yearbook*, v. 68, n. 1, p. 57-250, 1999.

BOGDANDY Armin von; VENZKE, Ingo. *In Whose Name?* A Public Law Theory of International Adjudication. Oxford: Oxford University Press, 2014.

BOGDANDY Armin von; VENZKE, Ingo. On the Democratic Legitimation of International Judicial Lawmaking. *German Law Journal*, v. 12, n. 5, p. 1341-1370, 2011.

BRABANDERE, Eric De. NGOs and the "Public Interest": The Legality and Rationale of *Amicus curiae* Interventions in International Economic and Investment Disputes. *Chicago Journal of International Law*, Chicago, v. 12, n. 1, p. 85-113, 2011.

CAFAGGI, Fabrizio; CARON, David D. Global Public Goods amidst a Plurality of Legal Orders: A Symposium. *The European Journal of International Law*, v. 23, n. 3, 2012.

CRAWFORD, James; KEENE, Amelia. Editorial. *Journal of International Dispute Settlement*, Oxford, v. 7, n. 2, p. 225-230, 2016.

d'ASPREMONT, Jean. Non-state Actors in International Law: Oscillating Between Concepts and Dynamics. *In*: d' ASPREMONT, Jean (ed.). *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*. London: Routledge, 2011.

DUPUY, Pierre-Marie; HOSS, Cristina. Art 34. *In:* ZIMMERMANN, Andreas; TAMS, Christian J.; OELLERS-FRAHM, Karin; TOMUSCHAT, Christian (eds.). *The Statute of the International Court of Justice*: A Commentary. 3rd ed. Oxford: Oxford University Press, 2019.

FEICHTNER, Isabel. Community Interest. *Max Planck Encyclopedia of Public International Law*, 2007.

FORLATI, Serena. *The International Court of Justice*: An Arbitral Tribunal or a Judicial Body? Berlin: Springer, 2014.

GAJA, Giorgio. A New Way for Submitting Observations on the Construction of Multilateral Treaties to the International Court of Justice. *In:* FASTENRATH, Ulrich *et al.* (eds.). *From Bilateralism to Community Interest*: Essays in Honour of Bruno Simma. Oxford: Oxford University Press, 2011.

GUZMAN, Andrew T.; MEYER, Timothy L. International Common Law: The Soft Law of International Tribunals. *Chicago Journal of International Law*, v. 9, n. 2, Article 7, 2008.

HUMAN RIGHTS WATCH (HRW). Questions and Answers on Gambia's Genocide Case against Myanmar before the International Court of Justice. *Human Rights Watch*, Dec. 5, 2019. Available at: hrw.org/news/2019/12/05/questions-and-answers-gambias-genocide-case-against-myanmar-international-court#_Why_has_Gambia. Accessed on: Feb. 6, 2020.

INTERNATIONAL LAW ASSOCIATION (ILA). *Report on 'Non State Actors'*. Fourth and Final Report of the Committee on Non-State Actors. Johannesburg Conference, 2016. p. 1-26.

INTERNATIONAL LAW ASSOCIATION (ILA). *Report on 'Non State Actors'*. Second Report of the Committee on Non-State Actors in International Law: Lawmaking and Participation Rights. Sofia Conference, 2012. p. 1-28.

LAUTERPACHT, Hersch. The Revision of the Statute of the International Court of Justice: With an Introduction by Sir Elihu Lauterpacht. *The Law and Practice of International Courts and Tribunals*, v. 1, p. 55-128, 2002.

MURPHY, Sean D. Amplifying the World Court's Jurisdiction through Counter-Claims and Third-Party Intervention. *The GeorgeWashington Journal of International Law and Economics*, v. 33, n. 1, p. 21-25, 2000.

NOLLKAEMPER, André. International Adjudication of Global Public Goods: The Intersection of Substance and Procedure. *The European Journal of International Law*, v. 23, n. 3, p. 769-791, 2012.

PALCHETTI, Paolo. Opening the International Court of Justice to Third States – Intervention and Beyond. *In:* FROWEIN, Jochen A.; WOLFRUM, Rüdiger (eds.). *Max Planck Yearbook of United Nations Law*, v. 6. Kluwer Law International, 2002. p. 139-181.

PAPASTAVRIDIS, Efthymios. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), 1986. *In:* ALMEIDA, Paula Wojcikiewicz; SOREL, Jean-Marc (eds.). *Latin America and the International Court of Justice*: Contributions to International Law. Abingdon (UK): Routledge, 2016.

PEAT, Daniel. The Use of Court-Appointed Experts by the International Court of Justice. University of Cambridge Faculty of Law Research Paper No. 60/2014. *British Yearbook of International Law*, v. 84, n. 1, p. 271-303, 2014. Available at SSRN: https://ssrn.com/abstract=2495450.

PERMANENT COURT OF INTERNATIONAL JUSTICE (PCIJ). Acts and Documents Concerning the Organization of the Court, Series D. Addendum to No 2 Revision of the Rules of Court. *Detailed Minutes of the Meetings of the Court Concerning the Revision of the Rules of Court*, 1926.

RAZZAQUE, Jona. Changing Role of Friends of the Court in the International Courts and Tribunals. *Non-State Actors and International Law*, v. 1, p. 169-200, 2002.

RONEN, Yaël; NAGGAN, Yael. Ch 37 Third Parties. *In:* ROMANO, Cesare P. R.; ALTER, Karen; SHANY, Yuval (eds.). *The Oxford Handbook of International Adjudication*. Oxford: Oxford University Press, 2013.

ROSENNE, Shabtai. Reflections on the Position of the Individual in Inter State Litigation in the International Court of Justice. *In:* SANDERS, Pieter (ed.). *International Arbitration*: Liber Amicorum for Martin Domke. Leiden: Martinus Nijhoff, 1967.

ROSENNE, Shabtai. *The Law and Practice of the International Court, 1920-1996*. 3rd ed. Leiden: Martinus Nijhoff, 1997. v. II.

SANDS, Philippe; MACKENZIE, Ruth. International Courts and Tribunals, Amicus curiae. *In:* WOLFRUM, Rüdiger (ed.). *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2009.

SHELTON, Dinah. The Participation of Nongovernmental Organizations in International Judicial Proceedings. *The American Journal of International Law*, Cambridge, v. 88, n. 4, p. 611-642, 1994.

SIMMA, Bruno. From Bilateralism to Community Interest in International Law. *In*: *Collected Courses of the Hague Academy of International Law*. Volume 250. The Hague, Boston, London: Martinus Nijhoff Publishers, 1994. p. 217-384.

TORRES BERNÁRDEZ, Santiago; MBENGUE, Makane Moïse. Art 48. *In:* ZIMMERMANN, Andreas; TAMS, Christian J.; OELLERS-FRAHM, Karin; TOMUSCHAT, Christian (eds.). *The Statute of the International Court of Justice*: A Commentary. 3rd ed. Oxford: Oxford University Press, 2019.

ULFSTEIN, Geir. International Courts and Judges: Independence, Interaction and Legitimacy. *NYU Journal of International Law and Politics*, New York, v. 46, n. 3, 2014.

WAGNER, Markus. Non-State Actors. *Max Planck Encyclopedia of Public International Law*. Oxford University Press, 2013.

WOLFRUM, Rüdiger. Enforcing Community Interests through International Dispute Settlement: Reality or Utopia? *In*: FASTENRATH, Ulrich *et al.* (eds.). *From Bilateralism to Community Interest*: Essays in Honour of Judge Bruno Simma. Oxford: Oxford University Press, 2011.

Jurisprudence

INTERNATIONAL COURT OF JUSTICE. Aerial Incident of 27 July 1955 (Israel v. Bulgaria). Judgment: Preliminary Objections. *ICJ Reports*: p. 127, 1959.

INTERNATIONAL COURT OF JUSTICE. Aerial Incident of 3 July 1988 (Iran v. United States). Order of 22 February. *ICJ Reports*: p. 9, 1996.

INTERNATIONAL COURT OF JUSTICE. Aerial Incident of 10 August 1999 (Pakistan v. India). Judgment. *ICJ Reports*: p. 12, 2000.

INTERNATIONAL COURT OF JUSTICE. Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). Judgment: Compensation. *ICJ Reports*: p. 324, 2012.

INTERNATIONAL COURT OF JUSTICE. Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). Judgment: Merits. *ICJ Reports*: p. 639, 2010.

INTERNATIONAL COURT OF JUSTICE. Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). Judgment: Preliminary Objections. *ICJ Reports*: p. 582, 2007.

INTERNATIONAL COURT OF JUSTICE. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). *Order of 16 March 2022*: Provisional Measures. Available at: https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf. Accessed on: Sep. 9th, 2022.

INTERNATIONAL COURT OF JUSTICE. Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia). Judgment: Preliminary Objections. *ICJ Reports*: p. 3, 2016.

INTERNATIONAL COURT OF JUSTICE. Anglo-Iranian Oil Co. (United Kingdom v. Iran). Judgment: Preliminary Objections. *ICJ Reports*: p. 93, 1952.

INTERNATIONAL COURT OF JUSTICE. Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan). Judgment. *ICJ Reports*: p. 46, 1972.

INTERNATIONAL COURT OF JUSTICE. Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar). Judgment. *ICJ Reports*: p. 81, 2020.

INTERNATIONAL COURT OF JUSTICE. Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar). Judgment. *ICJ Reports*: p. 172, 2020.

INTERNATIONAL COURT OF JUSTICE. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). Judgment: Preliminary Objections. *ICJ Reports*: p. 595, 1996.

INTERNATIONAL COURT OF JUSTICE. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). Judgment. *ICJ Reports*: p. 43, 2007.

INTERNATIONAL COURT OF JUSTICE. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia). Judgment: Preliminary Objections. *ICJ Reports*: p. 412, 2008.

INTERNATIONAL COURT OF JUSTICE. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar). Order: Provisional Measures. *ICJ Reports*: p. 3, 2020.

INTERNATIONAL COURT OF JUSTICE. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russia). Judgment: Preliminary Objections. *ICJ Reports*: p. 558, 2019.

INTERNATIONAL COURT OF JUSTICE. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia). Judgment: Preliminary Objections. *ICJ Reports*: p. 70, 2011.

INTERNATIONAL COURT OF JUSTICE. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). Judgment: Compensation. *ICJ Reports*: 2022.

INTERNATIONAL COURT OF JUSTICE. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). Judgment: Merits. *ICJ Reports*: p. 168, 2005.

INTERNATIONAL COURT OF JUSTICE. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). Order: Appointment of Experts. *ICJ Reports*: p. 295, 2020.

INTERNATIONAL COURT OF JUSTICE. Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda). Judgment: Jurisdiction and Admissibility. *ICJ Reports*: p. 6, 2006.

INTERNATIONAL COURT OF JUSTICE. Asylum (Colombia v. Peru). Judgment of November 20th. *ICJ Reports*: p. 266, 1950.

INTERNATIONAL COURT OF JUSTICE. Avena and Other Mexican Nationals (Mexico v. United States). Judgment: Merits. *ICJ Reports*: p. 12, 2004.

INTERNATIONAL COURT OF JUSTICE. Border and Transborder Armed Actions (Nicaragua v. Honduras). Judgment: Jurisdiction and Admissibility. *ICJ Reports*: p. 69, 1988.

INTERNATIONAL COURT OF JUSTICE. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). Order: Provisional Measures. *ICJ Reports*: p. 6, 2011.

INTERNATIONAL COURT OF JUSTICE. Continental Shelf (Tunisia v. Libya). Judgment: Application for Intervention. *ICJ Reports*: p. 3, 1981.

INTERNATIONAL COURT OF JUSTICE. Corfu Channel (United Kingdom v. Albania). Judgment: Assessment of Compensation. *ICJ Reports*: p. 244, 1949.

INTERNATIONAL COURT OF JUSTICE. Corfu Channel (United Kingdom v. Albania). Order of 19 November. *ICJ Reports*: p. 238, 1949.

INTERNATIONAL COURT OF JUSTICE. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. USA). Judgment: Merits. *ICJ Reports*: p. 246, 1984.

INTERNATIONAL COURT OF JUSTICE. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. USA). Order of 30 March. *ICJ Reports*: p. 165, 1984.

INTERNATIONAL COURT OF JUSTICE. Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua). Judgment. *ICJ Reports*: p. 213, 2009.

INTERNATIONAL COURT OF JUSTICE. East Timor (Portugal v. Australia). Judgment. *ICJ Reports*: p. 90, 1995.

INTERNATIONAL COURT OF JUSTICE. Elettronica Sicula S.p.A. (ELSI) (United States v. Italy). Judgment. *ICJ Reports*: p. 15, 1989.

INTERNATIONAL COURT OF JUSTICE. Elettronica Sicula S.p.A. (ELSI) (United States v. Italy). Oral Arguments; Correspondence. *ICJ Pleadings*, v. III, 1987, p. 3.

INTERNATIONAL COURT OF JUSTICE. Fisheries Jurisdiction (Spain v. Canada). Judgment. *ICJ Reports*: p. 432, 1998.

INTERNATIONAL COURT OF JUSTICE. Gab íkovo-Nagymaros Project (Hungary v. Slovakia). Judgment: Merits. *ICJ Reports*: p. 7, 1997.

INTERNATIONAL COURT OF JUSTICE. Immunities and Criminal Proceedings (Equatorial Guinea v. France). Judgment: Preliminary Objections. *ICJ Reports*: p. 292, 2018.

INTERNATIONAL COURT OF JUSTICE. LaGrand (Germany v. United States). Order: Provisional Measures. *ICJ Reports*: p. 9, 1999.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. Belgium). Judgment: Preliminary Objections. *ICJ Reports*: p. 279, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. Canada) Judgment: Preliminary Objections. *ICJ Reports*: p. 429, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. France). Judgment: Preliminary Objections. *ICJ Reports*: p. 575, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. Germany). Judgment: Preliminary Objections. *ICJ Reports*: p. 720, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. Italy). Judgment: Preliminary Objections. *ICJ Reports*: p. 865, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. Netherlands). Judgment: Preliminary Objections. *ICJ Reports*: p. 1011, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. Portugal). Judgment: Preliminary Objections. *ICJ Reports*: p. 1160, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Serbia and Montenegro v. United Kingdom). Judgment: Preliminary Objections. *ICJ Reports*: p. 1307, 2004.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Yugoslavia v. Spain). Order: Provisional Measures. *ICJ Reports*: p. 761, 1999.

INTERNATIONAL COURT OF JUSTICE. Legality of Use of Force (Yugoslavia v. United States). Order: Provisional Measures. *ICJ Reports*: p. 916, 1999.

INTERNATIONAL COURT OF JUSTICE. Maritime Delimitation in the Black Sea (Romania v. Ukraine). Judgment. *ICJ Reports*: p. 61, 2009.

INTERNATIONAL COURT OF JUSTICE. Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua). Judgment. *ICJ Reports*, p. 139, 2018.

INTERNATIONAL COURT OF JUSTICE. Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua). Order of 31 May. *ICJ Reports*: p. 237, 2016.

INTERNATIONAL COURT OF JUSTICE. Maritime Delimitation in the Indian Ocean (Somalia v. Kenya). Judgment: Preliminary Objections. *ICJ Reports*: p. 3, 2017.

INTERNATIONAL COURT OF JUSTICE. Maritime Dispute (Peru v. Chile). Judgment. *ICJ Reports*: p. 3, 2014.

INTERNATIONAL COURT OF JUSTICE. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States). Judgment: Merits. *ICJ Reports*: p. 14, 1986.

INTERNATIONAL COURT OF JUSTICE. Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment. *ICJ Reports*: p. 14, 2010.

INTERNATIONAL COURT OF JUSTICE. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom). Judgment: Preliminary Objections. *ICJ Reports*: p. 833, 2016.

INTERNATIONAL COURT OF JUSTICE. Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile). Judgment: Preliminary Objections. *ICJ Reports*: p. 592, 2015.

INTERNATIONAL COURT OF JUSTICE. Oil Platforms (Iran v. United States). Judgment: Preliminary Objection. *ICJ Reports*: p. 803, 1996.

INTERNATIONAL COURT OF JUSTICE. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom). Preliminary Objections, Judgment. *ICJ Reports*: p. 9, 1998.

INTERNATIONAL COURT OF JUSTICE. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United States). Preliminary Objections, Judgment. *ICJ Reports*: p. 115, 1998.

INTERNATIONAL COURT OF JUSTICE. Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia). Judgment: Preliminary Objections. *ICJ Reports*: p. 100, 2016.

INTERNATIONAL COURT OF JUSTICE. Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal). Judgment. *ICJ Reports*: p. 422, 2012.

INTERNATIONAL COURT OF JUSTICE. Rights of Nationals of the United States of America in Morocco (France v. United State). Judgment. *ICJ Reports*: p. 176, 1952.

INTERNATIONAL COURT OF JUSTICE. South West Africa (Ethiopia v. South Africa) (Liberia v. South Africa). Judgment: Preliminary Objections. *ICJ Reports*: p. 319, 1962.

INTERNATIONAL COURT OF JUSTICE. Territorial and Maritime Dispute (Nicaragua v. Colombia). Judgment: Preliminary Objections. *ICJ Reports*: p. 832, 2007.

INTERNATIONAL COURT OF JUSTICE. Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Judgment. *ICJ Reports*: p. 659, 2007.

INTERNATIONAL COURT OF JUSTICE. United States Diplomatic and Consular Staff in Tehran (United States v. Iran). Judgment. *ICJ Reports*: p. 3, 1980.

INTERNATIONAL COURT OF JUSTICE. Vienna Convention on Consular Relations (Paraguay v. United States). Order of 9 April. *ICJ Reports*: p. 266, 1998.

INTERNATIONAL COURT OF JUSTICE. Whaling in the Antarctic (Australia v. Japan: New Zealand intervening). Judgment: Merits. *ICJ Reports*: p. 226, 2014.

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