



# RESEARCH NOTE

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## The International Court of Justice

### Creation

The International Court of Justice was established in 1945 with the creation of the United Nations. It is the UN's main judicial body (*Article 92 UN Charter*) and the *Statute of the ICJ* is integrated in the *UN Charter* itself. The ICJ is located at the Peace Palace, the Hague in the Netherlands. It succeeds the Permanent Court of International Justice established in 1922 under the League of Nations and dissolved on 18 May 1946. Between 1946 and July 1995 the ICJ has delivered 57 judgments and 21 advisory opinions.

### Composition

The ICJ comprises 15 Members no two of whom may be nationals of the same State (*Article 3(1)*). Members are elected by the General Assembly (GA) and the Security Council voting independently on persons nominated by national groups in the Permanent Court of Arbitration or other national (political or regional) groups in the GA. Each group may nominate up to 4 persons. In practice 5 of the elected Members are nationals of each of the 5 permanent members of the Security Council.

Non-members of the UN may be parties to the *ICJ Statute (Article 93(2) UN Charter)* and may participate in the election of Members of the ICJ (*GA resolution 264 (III) 8/10/48*).

Members of the ICJ are elected for 9 years with terms staggered so that 5 of the Judges' terms expire every 3 years. The ICJ elects its President and Vice-President for terms of 3 years. All may be re-elected. If there is no Judge of their nationality, a party may choose a Judge *ad hoc* to sit on the case (*Article 31(2),(3)*).

Electors must ensure the composition of the ICJ reflects the 'main forms of civilization and the principle legal systems of the world' (*Article 9*). The ICJ uses English and French as its official languages and provides annual reports to the GA.

### Australian members

Currently there are no Australian Members. Sir Percy Spender was a Member 1958-67 and President 1964-67. Sir Garfield Barwick was Judge *ad hoc* in the 1974 *Nuclear Test cases*, Sir Ninian Stephen was Judge *ad hoc* in *Portugal v Australia* (1995).

### Only States appear

Only States may be parties in ICJ cases (*Article 34(1)*). These States include:

- States members of the UN (presently 185: *Article 93(1) UN Charter*)
- States not members of the UN but which are parties to the *ICJ Statute* (Switzerland and Nauru)
- States not parties to the *ICJ Statute* to which the ICJ is open (under *Article 35(2) UN Charter* having made a decla-

ration recognising the jurisdiction of the ICJ in a particular case(s)).

### Jurisdiction

#### *Categories of contentious cases*

- cases referred by the parties (*Article 36(1)*)
- matters provided in the *UN Charter*, or other treaties (*Article 36(1)*)
- cases covered by a declaration by a party (*Article 36(2)*).

#### *Declaration of recognition of jurisdiction*

Parties to the *ICJ Statute* may make an advance declaration under *Article 36(2)* and recognise the ('compulsory') jurisdiction of the ICJ in all legal disputes concerning:

- the interpretation of a treaty
- any question of international law
- breach of an international obligation
- reparation for breach of an international obligation.

Sixty-one States have made declarations. Declarations may be unconditional (30 States), with

### Members of the ICJ (as at 25 October 1995)

President Mohammed Bedjaoui (Algeria) 1997*	Geza Herczegh (Hungary) 2003
Vice President Stephen Schwebel (USA) 1997	Shi Jiuyong (China) 2003
Shigeru Oda (Japan) 2003	Carl-August Fleischhauer (Germany) 2003
Gilbert Guillaume (France) 2000	Abdul Koroma (Sierra Leone) 2003
Mohamed Shahabuddeen (Guyana) 1997	Vladlen Vereshchetin (Russian Fed)
Andres Aguilar Mawdsley (Venezuela) 2000	Luigi Ferari Bravo (Italy) 1997
Christopher Weeramantry (Sri Lanka) 2000	Rosalyn Higgins (UK) 2000
Raymond Ranjeva (Madagascar) 2000	*Term expires

conditions specified in *Article 36(3)* concerning reciprocity or time limit of declarations, or additional conditions (31 States) which generally concern exclusion of domestic matters. Australia made its declaration on 17/3/75 with a proviso that the ICJ does not have jurisdiction where the parties agree to some other method of peaceful settlement.

### Sources of law

The following sources of international law must be applied by the ICJ:

- international conventions
- international custom
- general principles of law recognised by civilised nations
- subsidiary sources such as the decisions and teachings of the most highly qualified publicists of the various nations (*Article 38(1)*).

The ICJ may, with the consent of the parties, decide a case *ex aequo et bono* (according to what is equal and good: *Article 38(2)*). ICJ decisions may also contribute to the development of international law.

### Examples of decisions

- *Fisheries (UK v Norway)* (15/12/51) upholding the Norwegian method of drawing territorial waters baselines
- *Temple of Preah Vihear (Cambodia v Thailand)* (15/6/62) finding the temple was in Cambodian territory.

### Effect of decisions

An ICJ judgment is final, without appeal (except where revision is sought because of new facts: *Article 61*) but is only binding on the parties to that case (*Articles 59, 60*). UN members, however, have a general obligation to comply with ICJ decisions (*Article 94(1)*). Parties which are not UN members have to give an undertaking of compliance before being admitted to a case. If a party does not comply with a decision the other party may have recourse to the Security Council which may make recommendations or decide measures to be taken to give effect to the decision.

### Advisory opinions

The GA, Security Council and certain other UN organs may request advisory opinions on legal questions from the ICJ (*Article 96*). An advisory opinion

of 21/6/71 advised that South Africa's presence in Namibia was illegal. The GA and Security Council decide whether to implement an advisory opinion. Other UN organs may be required under their Statutes to comply.

### Legality of nuclear weapons

The World Health Organisation and the GA have requested advisory opinions on the legality of nuclear weapons. On 30/10/95 Australia will make oral submissions in relation to these.

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## Decisions involving Australia

### *Nuclear Tests case*

On 9/5/73 Australia and New Zealand each instituted proceedings to halt France's atmospheric testing of nuclear weapons in the South Pacific. France considered that the ICJ lacked jurisdiction and did not participate. On 22/6/73 the ICJ issued 2 Orders providing interim protection that France should avoid nuclear tests causing radioactive fallout on Australian and New Zealand territory until there was a judgment. France later announced it would cease atmospheric tests. On 20/12/74 the ICJ determined a decision was no longer necessary.

### *Nauru*

On 19/5/89 Nauru instituted proceedings alleging Australian responsibility for rehabilitation of phosphate lands mined before Nauru's independence on 31/1/68. Australia, New Zealand and the UK had exercised a UN joint trusteeship. NZ and the UK had not accepted the compulsory jurisdiction of the ICJ and were not parties to the case. In preliminary proceedings Australia argued that any responsibility ceased with independence. On 9/8/93 the Australian Government announced a Compact of Settlement with Nauru to end the case.

### *Portugal v Australia*

On 30/6/95 the ICJ held by 14 to 2 that it could not decide a dispute referred by Portugal challenging the validity of the Timor Gap Treaty Australia had concluded with Indonesia. Portugal had sought to argue that Australia's conclusion of the Treaty contravened the rights of the East Timorese people to self determination and sovereignty over their resources. The ICJ found it could not decide the case as it would have required finding whether Indonesia's annexation was illegal which was not possible as Indonesia was not a party to the case.

### *Underground tests*

On 22/9/95 the ICJ dismissed an application by New Zealand to reopen the 1973 case to prevent French underground nuclear testing in the South Pacific and applications to intervene by Australia, Samoa, Solomon Islands, Marshall Islands and the Federated States of Micronesia. This was on the basis that no new circumstances had arisen which affected the 1974 decision - France was not resuming atmospheric tests only underground tests