Remedies before the International Court of Justice: a systemic analysis

STOICA, Victor Stefan

Abstract

The scope of the thesis is to determine the manner in which the International Court of Justice interprets and applies the remedies generally accepted by the international community and codified by the International Law Commission (ILC) in its Articles on State Responsibility. This thesis seeks to answer the following questions: i) Whether the International Court of Justice adopts a specific approach towards the remedies of international law? and ii) If yes, what are the justifications for the approach adopted by the International Court of Justice? The survey of theoretical perspectives, canvassing academic writings and subjective perspectives featured in the pleadings of the parties to the disputes, and the judgments of the Court, illustrates relevant results. The systematic analysis demonstrates that the Court has a distinct approach to the interpretation and application of remedies available in international law. While the Court is cautious in ordering precise actions from the parties, it appears to prioritize declarations regarding issues of legality.

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Remedies before the International Court of Justice

A Systemic Analysis

Victor Stoica

Doctoral Thesis

Under the direction of Professor Laurence Boisson de Chazournes

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University of Geneva Faculty of Law

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INTRODUCTION

1. The Context of the Thesis

The manner in which states perform international obligations contributes towards and influences the development of international law. Further, international law is interpreted and clarified by international institutions, designed for various purposes, including the resolution of disputes between states. Even if the clarification of international law is not the primary function of the International Court of Justice, this judicial body is, perhaps, one of the most important international institutions that provides constant and relevant insight with respect to the interpretation and clarification of international law, and, consequently, with respect to its evolution.

The Court’s function is uncontroversial, and prescribed by article 38 of the Statute of the International Court of Justice which provides that it is mandated to “decide in accordance with international law such disputes as are submitted to it”. Through the exercise of its function, the International Court of Justice contributes not only to the development and clarification of international law but also towards the maintenance of peace among states, in its capacity as the principal judicial organ of the United Nations.

In the exercise of its contentious function, the Court renders a judgment at the end of its proceedings, through which the injury suffered by the applicant state is sought to be totally or partially repaired, by certain mechanisms designed for this purpose. The mechanisms that are meant to repair injuries and, consequently, to re-establish the situation as it existed prior to the occurrence of the illegal act, are referred to as “remedies of international law”. Without a remedy, submitting a dispute before the International Court of Justice would be redundant. Therefore, the final resolution of a dispute implies a judgment on remedies, without which the dispute would not be settled in its entirety. The Permanent Court of International Justice has confirmed this conclusion in several of its judgments, these findings being further substantiated by the International Court of Justice throughout its case-law.

The remedies granted by the International Court of Justice represent, therefore, an important pillar of the final resolution of a dispute. By submitting a dispute before the International Court of Justice, the states seek the resolution of their disputes in the manner set out in the prayers for relief within their pleadings. The documents submitted by parties, such as special agreements, applications, memorials, counter-memorials and rejoinders, include express references to the specific remedies that the Court is called upon to grant.

The judgments of the Court often provide a detailed clarification of the legal arguments and controversies of a given case, with respect to the relevant breaches of international law and the interpretation and application of the provisions related to the dispute. However, the Court generally provides few details regarding the interpretation of the

1 Case Concerning Factory at Chorzow (Germany v Poland) [1928] PCIJ Rep Series A, No 9, 4, 21; Case of the S.S. “Wimbledon” (Britain et al v Germany) [1923], PCIJ Rep Series A, No 1; The Mavrommatis Palestine Concessions Case (Greece v United Kingdom) [1924] PCIJ Rep Series A, No 2.
2 Corfu Channel Case (Great Britain v Albania) (Merits) [1949] ICJ Rep 4; Fisheries Jurisdiction Case (Germany v Iceland) (Jurisdiction and Admissibility) [1973] ICJ Rep 49, 54.
applicable remedies. Consequently, while findings of principle make up the bulk of the judgment, the Court’s analysis of remedies and their interpretation remains on its fringes. A systemic study of the various perspectives regarding the remedies of international law, as applied by the International Court of Justice is therefore relevant for determining the meaning and characteristics of the related notions.

The remedies that are available under international law have been, in a general manner, analysed both by scholarly writings and by specialized international bodies. Authors like James Crawford\(^3\) and Christine Gray\(^4\) have provided relevant insight regarding the remedies of international law. Both writers conclude that the scope of remedies available before the International Court of Justice has been rather ignored by the Court and by academic writing as well. In that sense, a comprehensive analysis of remedies is still outstanding and necessary with respect to a variety of issues.

International bodies such as the International Law Commission have contributed to the interpretation and clarification of the remedies which are available under general international law, and thus, for proceedings before the International Court of Justice, which applies international law in adjudicating the cases before it. The customary rules regarding the particular remedies usually granted by international bodies have been best described by the International Law Commission in its ‘Articles on Responsibility of States for Internationally Wrongful Acts’, which contains several provisions that treat remedies as part of the wider notion of reparation for injury.\(^5\) These provisions represent a synthesis of the customary international rules with respect to the available remedies under international law. Moreover, the International Law Commission has also adopted a Commentary which interprets and clarifies the notions contained in the ILC Articles on State Responsibility.

To say that there is no analysis regarding the remedies of international law would be an exaggeration and an underestimation of the relevant work which currently exists. However, even though the above mentioned references clarify the remedies available under international law, there is no precise theory of remedies under international law that applies as is before the International Court of Justice. The Court generally takes into consideration the principles which describe the remedies of international law but contextualizes them by observing the particularities of the disputes that are submitted before it. In this respect, it can be argued that the Articles of Responsibility of States for Internationally Wrongful Acts represent a general instrument that is not intended to provide a clear determination of the manner in which the prescribed remedies should apply before the International Court of Justice. The conclusion regarding the generality of the ILC Articles on State Responsibility is also reflected and confirmed by the preamble of this document, which provides the following with respect to its scope:

“\(1\) These articles seek to formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts.”\(^6\)

\(^6\) ibid 31 (emphasis added).
There is, therefore, a need for a more focused and targeted study regarding the manner in which said remedies of international law are applied by the International Court of Justice. Its practice is useful for contextualizing and developing the basic rules provided by the ILC Articles on Responsibility of States for Internationally Wrongful Acts. The proliferation of international courts and tribunals which occurred during the past decades justifies the wide approach of the International Law Commission towards remedies in international law. A general theory of remedies of international law might also be suitable for the multitude of international legal situations occurring in the world today, such as human rights disputes that are resolved by the European Court of Human Rights, inter-state disputes resolved through arbitration, investment disputes resolved through ad-hoc or institutional arbitration such as the International Centre for Settlement of Investment Disputes, and inter-state disputes resolved by the International Court of Justice. All these dispute resolution institutions might need a specific set of remedies depending on various elements such as the affiliation of the institution, the appearing parties, or the subject matter that the said institution is competent to decide upon. Each judicial body has the power to interpret and apply the principles of reparation which involve remedies, in accordance with its own functions. Thus, even if the said institutions do not necessarily need a substantially different set of remedies, the manner in which the remedies apply before each institution might differ. This is the justification for which a systemic analysis of the remedies of international law applied by the International Court of Justice is relevant.

2. The Scope of the Thesis

For a relevant determination of whether a particular set of rules is applicable before a particular international body, the general set of remedies available under international law should be tested by observing how the said international body applies them. The focus of the thesis is the International Court of Justice and the consequences that the disputes before this international body produce in the context of remedies. Consequently, the primary research material is represented by the submissions of the parties before the International Court of Justice, and by the judgments and orders of the Court with respect to remedies.

In this manner, the thesis shall provide a systemic and detailed analysis regarding the remedies available before the International Court of Justice. It shall endeavour to determine whether the general theory of remedies provided by the International Law Commission through the Articles on State Responsibility, as currently interpreted by academic writings, is applicable before the International Court of Justice or whether the rules provided by the ILC Articles do not necessarily mirror the practice of the Court.

The current interpretation of the remedies of international law before the International Court of Justice is focused on interpreting their characteristics through the lens of landmark cases, *locus classicæ* on the point. Examples such as the *Chorzow Factory Case,* the *Corfu Channel Case,* the *Gabcikovo Nagymaros Case,* among others,

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8 *Case Concerning the Factory at Chorzow (Germany v Poland)* (Merits) [1928] PCIJ Rep Series A No 17.
9 *Corfu Channel Case (Great Britain v Albania)* (Compensation) [1949] ICJ Rep 244.
contain clarifications regarding the applicable remedies before the International Court of Justice. The conclusions that the Permanent Court of International Justice and the International Court of Justice provided in these cases have been guised as *obiter dictum* or findings of principle, which have established the customary interpretation of certain concepts. However, these findings of principle are not without flaws and are sometimes interpreted differently by scholarly writings and even by the Court in its subsequent case-law. The scope of the thesis is to identify the manner in which the practice of the Court has shaped these notions.

The first relevant issue with respect to the subject matter of the thesis is the manner in which the Court clarified its competence to decide upon the applicable remedies even if the state parties did not “expressly give the Court the power to grant a particular remedy”. The issue of the competence of the Court to decide upon issues related to remedies was first clarified by the Permanent Court through judgments such as the one in the *Wimbledon Case* and the *Chorzow Factory Case* in which the applicant states raised preliminary objections regarding the power of the Court to grant remedies. The question has arisen in other cases as well, but the Court has maintained and confirmed its findings from the *Chorzow Factory Case*, where it concluded that it has jurisdiction to decide upon the applicable remedies, in this situation.

The competence of the Court to grant remedies is controversial to a certain degree and, further, issues exist with respect to the substantial interpretation of certain remedies. Thus, declaratory judgments, restitution in kind, compensation, satisfaction, specific performance, cessation, assurances and guarantees of non-repetition—all raise complicated problems with respect to their interpretation and clarification.

Restitution in kind is one of the most controversial remedies that have been requested before the Permanent Court of International Justice and the International Court of Justice. Issues regarding its definition, availability, and application, mainly originate from the alleged primacy of this remedy. The conclusion regarding the primacy of restitution is further confirmed by the ILC Articles on State Responsibility in Article 36 which provides that “the State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution”. It therefore follows that the perspective of the ILC Articles on State Responsibility is that other remedies should be provided only if restitution in kind is not materially possible.

Not only is the primacy of restitution in kind before the International Court of Justice disputable, but its availability before the Court is questionable as well. Thus, Gray concludes in this respect that there are “fundamental uncertainties as to the availability of restitution in international law” indicating that this argument is further substantiated by the recent case-law of the International Court of Justice.

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11 Gray (n 4) 57.
12 Case of the S.S. “Wimbledon” (Britain et al v Germany) (n 1).
13 Case Concerning the Factory at Chorzow (Germany v. Poland) (n 8).
15 ILC Articles (n 5).
controversies regarding this remedy go as far as to the question of the definition of restitution in kind and its interaction with the wider concept of *restitutio in integrum*.

Compensation is a remedy that has been interpreted by the Court in a rather restrictive manner. The Court’s judgments regarding compensation are few and provide even fewer details related to the interpretation and clarification of this remedy. It is telling that monetary compensation as a remedy before the International Court of Justice has been granted by the Court in only two cases: the *Corfu Channel Case*\(^\text{17}\) and the *Diallo Case*.\(^\text{18}\) Further, moral damages have been granted in a single case, the *Diallo Case*, in the jurisprudence of the Court. However, in the same manner in which the Permanent Court of International Justice provided certain findings of principle related to restitution in kind, the International Court of Justice has pursued this approach as well, and issued judgments related to compensation, further clarifying the characteristics of this remedy.

The very right of a state to claim compensation has been confirmed by the Court in the *Gabčíkovo Nagymaros Case*. In this case, the Court established that receiving compensation is a principle of international law, in the following words:

> “It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”\(^\text{19}\)

The *Corfu Channel Case* further established the Court’s authority to use experts for the verification and determination of the amounts of compensation that were requested by the applicant state. In this respect, the Court concluded the following in a preliminary order:

> “(1) Experts designated by the Court shall examine the figures and estimates stated in the last submissions filed by the Government of the United Kingdom regarding the amount of its claim for the loss of the Saumarez and the damage caused to the Volage;”\(^\text{20}\)

The *Diallo Case* is unique in its findings with respect to moral compensation before the International Court of Justice. Even though the Court rejected the majority of the heads of the claim related to compensation as being unsubstantiated, it granted moral compensation in a determined amount and concluded that:

> “Arbitral tribunals and regional human rights courts have been more specific, given the power to assess compensation granted by their respective constitutive instruments. Equitable considerations have guided their quantification of compensation for non-material harm.”\(^\text{21}\)

Thus, the Court established that its case-law takes due consideration of the judgments of the European Court of Human Rights.\(^\text{22}\) This is a step towards the improvement of

\(^{17}\) *Corfu Channel Case* (Great Britain v Albania) (n 9) 250.

\(^{18}\) *Ahmadou Sadio Diallo* (Republic of Guinea v Democratic Republic of the Congo) (Merits) [2010] ICJ Rep 639

\(^{19}\) *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) (n 10) 81.

\(^{20}\) *Corfu Channel Case* (Great Britain v Albania) (Order) [1949] ICJ Rep 237, 238.

\(^{21}\) *Ahmadou Sadio Diallo* (Republic of Guinea v Democratic Republic of the Congo) (n 18) 324, 15.

\(^{22}\) ibid.
interaction between international dispute resolution bodies in the area of the remedies of international law.

The fact that the Diallo Case is exceptional regarding the interpretation and application of compensation, in the sense that it granted moral compensation and paid due consideration to other relevant international courts and tribunals, does not imply that the concept of compensation needs no further clarifications. Issues such as determination of quantum, typologies of compensation and the interaction of this remedy with others remain to be determined by the Court.

The meaning attributed by the International Court to satisfaction and the mechanism through which the Court considers that satisfaction is applied and granted, throughout its case-law, contribute to the idea that the ILC Articles on State Responsibility have no application before it with respect to this remedy. While the ILC Articles on State Responsibility prescribe that satisfaction should be ordered by the Court and further provided by the responding state, when it is responsible for the internationally wrongful act, the International Court of Justice has taken a different approach.

In the Corfu Channel Case, with respect to satisfaction, the Court concluded as follows:

“Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.”

The approach that the Court has taken with respect to satisfaction in the Corfu Channel Case has been confirmed by its subsequent case-law. Thus, the Court considered that satisfaction should not be provided by the responding state and that a declaration in this respect would suffice for the purposes of granting this remedy. However, whether this approach will be confirmed by its future judgments or whether this remedy would be granted at all by the Court remains to be seen. This approach of the Court regarding this remedy has led certain members of the Court to conclude that satisfaction should no longer be considered as a veritable remedy before the International Court of Justice.

Cessation is a remedy that has raised a number of controversies in the past, which have not yet been completely resolved by the Court. While cessation is clearer, as a concept, than the other remedies, its interaction and relationship with other forms of relief has led to certain confusions. For example, the interplay between cessation and assurances and guarantees of non-repetition is the reason why both the ILC Articles on State Responsibility and the case-law of the International Court of Justice treat them as being complementary remedies. The fact that the two remedies are often treated as such does not necessarily imply that they should be requested together or that a request for only one of the two would not be appropriate.

The manner in which cessation and specific performance are applied by the Court, due to their final scope of fulfilling an obligation, has also led to differences of opinion.

23 Corfu Channel Case (Great Britain v Albania) (n 2) 4, 36.
25 Corfu Channel Case (Great Britain v Albania) (n 2) (Dissenting Opinion of Judge Azevedo).
among authors and rather harsh reactions from some. The case-law in this respect is not very clear. Firstly, the Court never used the nomenclature of ‘specific performance’, even though it granted it in several of its judgments. The Court, in several cases such as the Case Concerning Military and Paramilitary Activities in Nicaragua,26 the Lighthouses Case,27 the Serbian Loans Case,28 and the Iranian Hostages Case,29 has granted specific performance without referring to this remedy as such. Cessation suffers the same fate as specific performance with respect to the lack of clarity with which the Court has treated this remedy.

It is clear that the above mentioned remedies are far from having been completely developed both by the Permanent Court of International Justice, in the past, by the International Court of Justice, presently, and by academic writings. Both the parties and the Court are more comfortable with requesting and granting declaratory relief. This is perhaps due to the fact that the International Court of Justice system takes due consideration not only of the legal relationship between the parties but to the political one as well; the impact of the political relationship between the parties is justified, considering that the Court is the principal judicial body of the United Nations. Generally, the Court does not pursue a coercive approach to order the parties to act in a certain manner, but rather decides upon the legality of a certain approach, allowing the parties to decide through diplomatic mechanisms the manner in which the injury, if any, would be repaired. Thus, a declaratory judgment has the potential to resolve the dispute through post judgment negotiations between the state parties rather than a judgment which would provide for other remedies which would order the parties involved to explicit future behaviours.

Another relevant issue that has arisen both before the Permanent Court of International Justice and before the International Court of Justice, and which has contributed to the current understanding of remedies, is that the parties often request more than one remedy. The manner in which the above mentioned remedies interact with one another is relevant for their proper interpretation.

3. The Outline of the Thesis

The thesis shall describe and clarify the particularities of the remedies of international law available before the International Court of Justice. The thesis is divided into two parts that assess the relevant perspectives regarding the interpretation and clarification of remedies with the aim to provide a systemic overview of the manner in which the remedies of international law are interpreted and applied before the International Court of Justice.

Presently, the Court applies a determined set of remedies, which contain several specific characteristics that have evolved due to their interpretation and clarification in the case-law of the Court. However, even if the Court generally follows the framework of the

27 Lighthouses Case between France and Greece (France v Greece) (Judgment) [1934] PCIJ Series A/B No 62, 312.
28 Case Concerning the Payment of Various Serbian Loans in France (France v Yugoslavia) [1929] PCIJ Rep Series A, No 20.
29 Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) (n 14).
Articles on State Responsibility, in the sense that the remedies provided therein are found within the judgments of the Court, it has its own perspective regarding the interpretation and application of the remedies provided by the International Law Commission. As a consequence, following a general, more theoretical analysis, the thesis shall turn to the particularities of the remedies of international law, through the lens of the practice of the Permanent Court of International Justice and the International Court of Justice.

Part I provides a general perspective with respect to the remedies that are available under international law. It defines the notions and interprets the characteristics of the remedies of international law as applied by the International Court of Justice. The purpose of this part is to provide an overview of the main controversies regarding the interpretation of the relevant notions. Each chapter of Part I is focused on a particular remedy of international law and aims to provide a deconstruction of the central questions which revolve around each remedy.

The structure of the first part shall follow the framework provided by the Articles on State Responsibility. It will firstly focus on the remedies that are most versatile in their application and interpretation - the declaratory judgment and specific performance - which have been granted both by the Permanent Court of International Justice and the International Court of Justice, in the majority of the cases that were submitted to these judicial bodies. In other words, the first two chapters focus on the remedies that are well represented before the Court. Chapter 1 shall focus on the notion of “declaratory judgments” and Chapter 2 on “specific performance”.

The next three chapters focus on the more coercive remedies of cessation and assurances and guarantees of non-repetition (Chapter 3), restitution in kind (Chapter 4) and compensation (Chapter 5). These remedies are significant to the systemic analysis because they represent the most controversial remedies under international law available before the International Court of Justice. Due to their coercive nature, the characteristics of these remedies are more contentious than others. The final chapter of Part I shall evaluate satisfaction (Chapter 6). This chapter completes the spectrum of the remedies of international law applied by the International Court of Justice, it being the remedy that is most unclear with respect to the form in which the Court applies it.

After analysing the main controversies regarding the interpretation of the remedies of international law, Part II shall specifically address the manner in which these controversies have been resolved and contextualized by the International Court of Justice. Part II provides a subjective perspective. In this respect, two relevant subjects shall be studied in order to evaluate whether there is coherence between the manner in which remedies are generally interpreted, and the manner in which the state parties and the Court apply the said remedies. Therefore, Part II will be comprised of two main Titles: Title I shall provide the views of the state parties involved in the disputes, and Title II shall focus on the interpretation provided by the Court with respect to the remedies of international law.

30 For the purposes of this thesis, the notion of “Coercive remedies” means remedies through which the Court indicates that a certain act should be performed by the responding party as opposed to non-coercive remedies, such as declaratory relief, where the performance of the act that would re-establish the status quo is generally determined by the parties through post judgment diplomatic negotiation.
Understanding the interactions between the state parties and the Court regarding the remedies that are available for a particular dispute, is essential for their interpretation and clarification; analysing the remedies strictly from one perspective would constitute an isolated approach that would fail to contribute to the systemic analysis of the issues at stake.

As mentioned, Title I shall focus on the submissions of the parties with respect to the remedies of international law that are requested before the International Court of Justice. This perspective is of relevance because it is the parties who elect the remedies which they consider appropriate for their particular dispute, the Court being therefore limited, to a certain degree, to decide upon the specific requests of the parties, with due regard for the principle of *non ultra petita*.

An important element of the interpretation of the available remedies of international law is the procedural mechanism through which the Court is seized. Title I shall also analyse the impact that the special agreement and unilateral applications have with respect to the requests of the parties, and shall provide insights into the manner in which the act through which the Court is seized influences the requests for remedies. The structure of Title I will focus on particular remedies, albeit through the perspective of the state parties and their approach towards the interpretation of the relevant notions.

Even if the parties choose to leave a particular remedy out of their pleadings, the Court has the power to determine and apply the remedies that it considers relevant for that particular dispute because “it is a principle of international law that a breach of an engagement involves an obligation to make reparation in an adequate form”. Consequently, although the requests of the parties represent the first relevant perspective for the interpretation of a remedy, the judgment of the International Court of Justice is equally important, if not more, to the clarification of relevant concepts related to the remedies of international law.

Title 2 shall provide the manner in which the judgments of the International Court of Justice regard the remedies that the parties request through their pleadings. Although the parties, to a certain degree, influence the interpretation of a particular notion, the Court remains the overseer of its own functions, and has judicial discretion regarding the remedies of international law. The reason why the judgments of the Court are essential for the interpretation of remedies is that the Court provides objective findings of principle with respect to certain remedies when it decides the manner in which they should be applied, as opposed to the submissions of the parties, which are essentially subjective.

These two Titles will finalize the analysis of the remedies which are available before the International Court of Justice. The relationship between the state parties - which frame their requests in accordance with their needs - and the Court - which is mandated to resolve the dispute and, consequently, to provide a judgment in this respect - is the one that contributes substantially to the clarification and the development of the remedies of international law before the International Court of Justice.

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31 Crawford (n 3) 508.
32 *Case Concerning Factory at Chorzow (Germany v Poland) (Jurisdiction)* [1927] PCIJ Rep Series A No 9, p. 21.
33 Crawford (n 7) 691.
PART I. THE GENERAL THEORETICAL PERSPECTIVES

The International Court of Justice primarily aims to resolve inter-state disputes, the development and clarification of international law being only a necessary by-product of its function. Although remedies are what the parties seek when they appear before a forum to resolve their disputes, and the Court contributes constantly to the development of international law through its case-law, “the study of judicial remedies has been regarded as peripheral to the main study of international law.”

The purpose of this Part is to identify and analyse the remedies that are requested by states before the International Court of Justice and those which may be ordered by the Court. A general perspective regarding the main controversies related to the relevant notions is of interest to a systemic study. As such, this Part shall provide an analysis of the manner in which the remedies of international law have been interpreted and clarified by the Permanent Court of International Justice and by the International Court of Justice. The notions that shall be analysed within this Chapter are the following:

I. Declaratory Judgments;
II. Specific Performance;
III. Cessation and Assurances and Guarantees of Non-Repetition;
IV. Restitution in Kind;
V. Compensation;
VI. Satisfaction.

The first chapter of the Thesis introduces the concept of “declaratory judgments” as a remedy before the International Court of Justice.

Chapter 1. Declaratory Judgments

1. Introduction

The declaratory judgment is the most versatile type of remedy that is requested by states when submitting a dispute before the Court, as it can take many forms. As one author succinctly notes, declaratory judgments “may play a variety of roles in the context of litigation before the ICJ”. The versatility of this remedy entails that it is considered as being the most common type of remedy sought before the International Court of Justice and further rendered in its decisions. States often include a request for a declaratory judgment within their prayer for relief, either as the sole remedy or at the stage preceding a request for other remedies such as restitution in kind, specific performance or compensation.

It is also this versatility that led authors like McIntyre to conclude that “the declaratory judgment's protean and flexible qualities tend to defy simple characterization; the word

34 The International Court of Justice also clarifies international law issues through Advisory Opinions, as provided by Article 65 of its Statute.
35 Gray (n 4) 1.
36 Juan José Quintana, Litigation at the International Court of Justice: Practice and Procedure (Brill-Nijhoff 2015) 1167.
37 Gray (n 4) 96.
“declare” is content free and a declaratory judgment may be directed to almost any subject or object imaginable.” This inherent flexibility of the declaratory judgment could be the reason for which it has been characterized by some authors as being convenient but unreliable without necessarily providing a further clarification of this conclusion. This finding might have arisen due to the fact that this is the most requested remedy throughout the case-load of the International Court of Justice for various types of disputes which range from territorial cases to cases addressing expropriation.

Other writers have expressed the view that the declaratory judgment is a particularly suitable remedy for international law as it strikes a balance between third party settlement and the sovereignty of states and that the declaratory judgment has the further advantage that it is undoubtedly available as a remedy for injury to the state whereas some controversy remains as to the availability of damages for direct injuries to a state.

Some arguments could therefore be raised regarding the fact that the declaratory judgment might meet the same fate as other remedies: being dogged by controversy regarding its substance.

2. The Notion and Effects of the Declaratory Judgment

The notion of declaratory judgment has been defined by some authors as being a jurisdictional decision interpreting a point of law independently of the concrete consequences of that interpretation in the circumstances of a particular case. Other authors have concluded that the declaratory judgment is an act of adjudication within the Court’s jurisdiction, but a mere declaration, with a force of res judicata, which resolves a dispute.

The latter definition is preferable as it identifies the elements that a declaratory judgment has and clearly distinguishes it from an advisory opinion. Therefore, the main characteristic of the declaratory judgment is not that it interprets points of law (as the first definition might suggest), but that of the adjudication of legal disputes (as suggested by the latter definition).

The main effect of the declaratory judgment is that it conclusively declares the pre-existing rights of litigants without the appendage of any coercive decree. The fact that the declaratory judgment does not necessarily have a coercive character, in the sense that it does not always imply a specific act on behalf of the disputing states, does not take away from its efficacy as a remedy. By virtue of article 59 of the Statute of the International Court of Justice, the declaratory judgment is binding upon the parties in the dispute, even if it does not have an executory character.

39 Ian Brownlie, ‘Remedies in the International Court of Justice’ in Robert Yewdall Jennings, Vaughn Lowe and Malgosia Fitzmaurice (eds), Fifty Years of the International Court of Justice: Essays in honour of Sir Robert Jennings (CUP 1996) 559.
40 Gray (n 4) 98.
41 ibid 99.
43 McIntyre (n 38) 131.
3. Types of Declaratory Judgments

Some authors consider that the declaratory judgment is a remedy that is often abused, in the sense that the parties often characterize as declaratory their claims related to: i) first stage proceedings; ii) legal entitlements; iii) conduct being contrary to international law; iv) specific acts of implementation of an award v) satisfaction and to vi) applicable principles.

Other authors have categorized declaratory judgments by stating that “by it, the Court clarifies with binding effect on the parties to the case (i) the meaning of certain legal norms, (ii) the significance of certain facts in relation to the applicable law, (iii) the legal scope and bearing of a given situation or (iv) the rights and obligations of the parties involved in a particular legal relationship.”

Therefore, it could be concluded that there is no coherent manner in which the declaratory judgments are categorized. Further, the above mentioned categorizations drawn by Brownlie and Kolb seem convoluted in certain respects, as they endeavour to cover a wide variety of typologies of rights and obligations involved in defining this remedy. Therefore, a general, broader categorization would be more suitable. In this respect, other authors have concluded that declaratory judgments can be divided into three main categories: i) declarations of rights or title; ii) declarations of applicable law and iii) declarations of responsibility.

The declaration of rights implies that the parties request the Court to determine whether a right or a title exists or not. The Court is not requested to determine whether a certain right has been breached or whether reparation is due for that breach. Here, the Court “becomes an instrument not merely of curative but also of preventive justice”. A boundary delimitation case is a typical example, where the Court’s mandate is to determine the correct boundary, even if a breach of a particular obligation has not yet occurred.

The declaration of applicable law implies that the parties request the Court to determine the relevant applicable law for a particular legal relationship. Therefore, the Court, at this stage, is requested to determine the lens through which the relationship of the parties must be assessed. This type of declaratory judgment has been described as “allowing the parties to learn authoritatively how they are to govern themselves in the future”.

The declaration of responsibility implies that the Court is requested to determine whether a breach of an obligation occurred and whether a certain state is responsible for such breach. This type of declaration could be interpreted restrictively or expansively. A restrictive interpretation would mean that the Court only rules on the issue of responsibility, and does not determine the amount of compensation or the concrete manner in which the harm must be repaired. An expansive interpretation, on the other hand, entails that the Court has a duty that stems from its decision on responsibility to determine the manner in which the harm shall be redressed.

45 Brownlie (n 39) 560.  
47 McIntyre (n 38) 132.  
48 ibid.  
49 Borchard (n 44) 121.
4. Declaratory Judgments and the Statute of the International Court of Justice

The Statute of the International Court of Justice contains provisions which define the judicial function of the Court without expressly mentioning the remedies that can be applied through its judgments. However, the interpretation of this legal instrument leads to the conclusion that the Court has a discretionary power regarding the mechanism through which it decides to resolve the dispute, including by means of a declaratory judgment, if considered appropriate. The competence of the Court to grant remedies, in general, is provided by Article 36 Paragraph 2 of the Statute of the Court, which prescribes the following:

“2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.”

The power to issue declaratory judgments also stems from Article 38 of the Statute of the Court as it has the broad mandate to “decide, in accordance with international law such disputes as are submitted to it.” Further, Article 59 of the Statute of the Court provides that “The decision of the Court has no binding force except between the parties and in respect of that particular case.”

As mentioned, these provisions do not specifically address the remedies that lie within the Court’s jurisdiction and, hence, arguments could be raised against the competence of the Court to grant declaratory relief. It could be asserted that a declaratory judgment is too abstract to be considered a remedy, the argument in this sense being that a declaratory judgment could not have a res judicata effect, as provided by article 59 of the Statute of the Court. Therefore, without a res judicata effect, the declaratory award might not be considered as a veritable remedy under international law.

Objections of this nature have been resolved before the Permanent Court of International Justice. The International Court of Justice has further addressed similar objections in the Northern Cameroons Case. The International Court of Justice, with respect to the force of the declaratory judgment within the system of remedies, held as follows:

51 Certain German Interests in Polish Upper Silesia (Germany v. Poland) (Merits) [1926] PCIJ Series A, No. 7, pp. 4, 18-19.
52 Case Concerning the Northern Cameroons (Cameroon v. United Kingdom) (Preliminary Objections) [1963] ICJ Rep 37.
“That the Court may, in an appropriate case make a declaratory judgment is indisputable. The Court has, however, already indicated that even if, when seized of an Application, the Court finds that it has jurisdiction, it is not obliged to exercise it in all cases.”

This was one of the cases in which the International Court relied on the finding of its predecessor, the Permanent Court of International Justice, and concluded that it has the power to issue declaratory judgments which are indispensable in certain cases. The conclusion provided by the Permanent Court of International Justice in the Chorzow Factory Case is relevant in this respect, as in this case the Permanent Court concluded that the scope of a declaratory judgment is the following:

“[…] to ensure recognition of a situation at law, once and for all, and with binding force as between the parties; so that the legal position thus established cannot again be called in question insofar as the legal effects ensuing therefrom are concerned.”

The Permanent Court, therefore, confirmed the fact that the scope of Article 59 of the Statute is not designed to exclude purely declaratory judgments, but to “prevent legal principles accepted by the Court in a particular case from being binding upon other States or in other disputes.”

The Permanent Court also held, in the Polish Upper Silesia Case, that Article 59 does not exclude declaratory judgments. Authors have concluded in this respect that “the possibility of a judgment to have a purely declaratory effect was in effect foreseen in article 63 of the Statute of the Court as well as in Article 36 […]”.

To sum up, the fact that the declaratory judgment is a remedy under international law cannot be disputed. As succinctly summarized in the words of the Permanent Court of International Justice:

“Article 59 of the Statute, which has been cited by Poland, does not exclude purely declaratory judgments. The object of this article is to prevent legal principles accepted by the Court in a particular case from being binding upon other States or in other disputes.”

5. The Interplay between the Declaratory Judgment and Various Related Concepts

The interaction between declaratory judgments with other remedies is of relevance for the determination of the characteristics of this remedy. Often, declarations of illegality before the International Court of Justice are sought by states in conjunction with other remedies such as compensation or restitution in kind, due to the fact that a declaration

53 ibid.
54 Case Concerning the Interpretation of Judgments nos. 7 and 8 concerning the Case of the Factory at Chorzow (Germany v Poland) [1927] PCIJ Rep Series A No 13, 37.
55 Quintana (n 36) 1167.
57 Quintana (n 36) 1167.
58 McIntyre (n 38) 109.
59 Case Concerning Certain German Interests in Upper Silesia (Germany/Poland) (n 51) 19.
of illegality does not exclude the application of other remedies. This approach towards declaratory judgments has led to relevant conclusions in this respect, which shall be provided below.

5.1. Declaratory Judgments and Compensation

The declaratory judgment did not have the nature of a separate remedy in the initial proceedings that were submitted before the Permanent Court of International Justice. Therefore, the Permanent Court “did not, at this stage, recognize or use the declaratory judgment as a remedy for an international wrong”\(^6\). The reasoning behind this approach was that declaratory judgments were at times interpreted as not being a separate remedy but a determination at a preliminary stage, as “in any award for damages there are two stages, first the determination or admission of responsibility and second the assessment of appropriate reparation”\(^6\)

Even if it is true that, in most cases, states request declaratory relief at the preliminary stage, this circumstance should not lead to the conclusion that this remedy cannot exist by itself.\(^6\) Thus, in the majority of cases that were referred to the Court by means of a notification of a special agreement, the parties jointly requested the Court to exclusively give declaratory judgments.\(^6\) Consequently, the declaratory judgment (even if used at a separate stage by most states) should not be interpreted as “preliminary” since this stage is independent from the future procedural steps related to monetary relief.

The relationship between a declaratory judgment and requests for compensation is not the same as the relationship between the preliminary objections stage and the merits stage. If the declaratory award is interpreted as being limited to the stage where the existence of responsibility is determined,\(^6\) a relevant conclusion would be that this stage is primary (rather than preliminary) and the stage related to monetary compensation is auxiliary. Thus, the first determination that the Court must make in order to grant compensation or restitution is a finding of illegality, or as the Articles on Responsibility of States for Internationally Wrongful Acts provide, a finding regarding the existence of an internationally wrongful act committed by a state.\(^6\)

It has been rightly stated that “a declaratory judgment is always based on the work both of the Court and of the parties; the Court intervenes only in one aspect, to clarify the law; its pronouncement in that regard is then used by the parties to resolve the

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\(^{60}\) Gray (n 4) 97.

\(^{61}\) ibid.

\(^{62}\) ibid.

\(^{63}\) The Minquiers and Ecrehos Case (France v United Kingdom) [1953] (Judgment) ICJ Rep 47; Case Concerning Sovereignty over certain Frontier Land (Belgium v Netherlands) [1959] (Judgment) ICJ Rep 209; Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v Malaysia) [2001] (Judgment) ICJ Rep 575; Frontier Dispute (Benin/Niger) [2005] (Judgment) ICJ Rep 90; Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) [2008] (Judgment) ICJ Rep 12; North Sea Continental Shelf (Germany/Netherlands and Germany/Netherlands) [1969] (Judgment) ICJ Rep 3; Continental Shelf (Tunisia/Libyan Arab Jamahiriya) [1982] (Judgment) ICJ Rep 18; Continental Shelf (Libyan Arab Jamahiriya v Malta) [1985] (Judgment) ICJ Rep 13; Kasikili/Sedudu Island (Botswana v Namibia) [1999] (Judgment) ICJ Rep 1045.

\(^{64}\) Gray (n 4) 98.

It is the monetary relief stage that cannot stand on its own, without a declaratory judgment regarding the existence of international responsibility.

In the “East Greenland Case, the Court was asked to declare that the acts of the Norwegian Government were in violation of its obligations under international law.” The Court held that it had jurisdiction in such a case. Another example is the Mavrommatis Case, where “the Court decided that as there had not been any loss to M. Mavrommatis, the claim for damages must fail.” However, declaratory relief was granted by the Court, in the following terms:

“That the concessions granted to M. Mavrommatis under the agreements signed on January 27th, 1914 between him and the city of Jerusalem regarding certain works to be carried out at Jerusalem, are valid;

That the existence, for a certain space of time, of a right on the part of M. Rutenberg, to require the annulment of the aforesaid concessions of M. Mavrommatis was not in conformity with the international obligations accepted by the Mandatory for Palestine

That no loss to M. Mavrommatis, resulting from this circumstance, has been proved. 

That therefore, the Greek Government’s claim for indemnity shall be dismissed.”

The judgment in the above mentioned case dismissed a claim for monetary relief while declaring that an international wrong had been committed on the part of the responding state. Thus, the Permanent Court, in this case, determined that a declaratory judgment would suffice for resolving the dispute, implicitly considering that the declaration of wrongfulness was sufficient as a remedy to satisfy the applicant state.

As a consequence, it can be considered that the declaration as to the existence of responsibility, i.e. the declaratory judgment, is a veritable remedy of international law which is not restricted in its interpretation by material consequences, such as restitution or compensation. Authors have confirmed this view and concluded: “Unlike compensation, the declaratory judgment merely specifies the legal relationship of the parties, and goes no further in providing material relief. Such relief may follow in subsequent proceedings, but the declaratory judgment is in itself a complete remedy.”

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66 Kolb (n 46) 755.  
67 ibid.  
68 Gray (n 4) 100.  
69 The Mavrommatis Jerusalem Concessions (Greece v United Kingdom) (Judgment) PCIJ Rep Series A No 5, 51.  
70 McIntyre (n 38) 114.
5.2. Declaratory Judgments and Restitution

Several opinions have been expressed regarding the power of the International Court of Justice to prescribe a certain behaviour within the declaratory judgments’ dispositif. In this respect, a prescriptive declaratory judgment might sometimes be interpreted as embodying certain characteristics of specific performance.

The Court has, on occasion, included in the dispositif of its judgments, the conduct that should follow the rendering of a declaratory award. For instance, in the case concerning the Temple of Preah Vihear, the Court concluded as follows:

“The Court, by nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;

Finds, in consequence, by nine votes to three,

That Thailand is under an obligation to withdraw any military or police forces or other guards or keepers, stationed by her at the Temple, or in its vicinity or Cambodian territory;

By seven votes to five,

That Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia’s fifth submission which may, since the date of the occupation of the Temple by Thailand in 1954 have been removed from the Temple or the Temple area by the Thai authorities.”

The finding of the Court in the case concerning the Temple of Preah Vihear, demonstrates that the declaratory judgment can be the cornerstone upon which restitution in kind or specific performance are based. This case is rather exceptional regarding its finding with respect to restitution in kind, in the sense that this remedy has rarely been provided by the International Court of Justice.

As highlighted in the previous section, a declaratory judgment is a complete remedy under international law and is independent from a request for damages or restitution in kind. To reiterate, the role of the Court is to resolve “legal disputes” as provided by Article 38 of the Statute of the International Court of Justice and therefore, any declaratory judgment of the Court is binding in accordance with article 59 of the Statute of the International Court of Justice.

Two strands of opinion exist with respect to the possibility of the declaratory judgment to prescribe the future behaviour of the states. One argues that the declaratory judgment should contain an inherent obligation upon the parties to act in a certain manner. The other argues that a declaratory judgment can be issued without the need for prescribing future acts.

The express request for a certain conduct might prove superficial in cases such as “Serbian Loans, Lighthouses and Socobelge, where the court declared that a contract

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71 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (Merits) [1962] ICJ Rep 6.
72 Brownlie (n 39) 560.
has been duly entered into and is binding on the parties”. In such cases, the future conduct of the parties is implied and must be complied with, since it is a binding decision.

These distinctions have been drawn by the Permanent Court when deciding upon the Certain German Interests Case where it concluded that its judgment was “to ensure recognition of a situation at law, once and for all and with binding force as between the parties; so that the legal position thus established cannot again be called in question.” This is another example where a call for action might prove superfluous, since the mandate of the court is to determine, in a binding manner, that a certain situation exists.

In the Haya de la Torre Case, the Court was requested to give guidance as to the manner in which its judgment in the Asylum Case should be performed, a formulation which the ICJ considered showed that the parties desired that the Court should make a choice amongst the various courses by which the asylum may be terminated.

The Court did not assess whether the performance of its award is implied or not. Its argument for rejecting this plea was that the Court only had the power to decide questions submitted to it in the earlier proceedings. The Court held that:

“These courses are conditioned by facts and by possibilities, which, to a very large extent the parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicality or political expediency; it is not part of the judicial function of the Court to make such a choice.”

Thus, the Court evaded a concrete answer to the question of its power to decide the manner in which the state parties shall implement its decision. In effect, the Court de facto rejected the submission of the parties regarding the performance of the Courts’ previous judgment.

Academics have expounded further upon this issue. It has been stated in this respect that “traditionally, a distinction is drawn between requests for a declaratory judgment and a judgment which requires one of the parties or both to take action […].” However, some authors consider that without a prescription as to the future conduct of the parties the declaratory judgment might lose its procedural value:

“Lauterpacht argues that the Court should be careful to keep the rendering of declaratory judgments within limits, for otherwise the contentious

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73 Gray (n 4) 98.
74 McIntyre (n 38) 118.
75 Case Concerning The Interpretation of Judgments nos. 7 and 8 Concerning the Case of the Factory at Chorzow (Germany v. Poland) (Judgment) [1927] PCIJ Rep Series A, No 13, p. 20.
76 Haya de la Torre Case (Colombia v Peru) [1951] ICJ Rep 71.
77 Colombian-Peruvian Asylum Case (Colombia v Peru) [1950] ICJ Rep 266.
78 Crawford (n 7) 696.
79 Gray (n 4) 99.
80 Haya de la Torre Case (Colombia v Peru) (n 76) 79.
jurisdiction of the Court might be used by States to obtain Advisory Opinions.”

It is undeniable that a declaratory judgment is authoritative for all the parties involved, as it is binding pursuant to Article 60 of the Statute of the Court, which provides that such decision shall be final and without appeal. It has been rightly stated that “the impact of any decision shall range far and wide” and, thus, declaratory judgments are not “mere opinions devoid of legal effect” even if the dispositif does not contain provisions with respect to the future conduct of the parties. Thus, “[i]n these cases, the Court’s function is completely performed by determining and deciding the case in a form binding upon the parties.”

To conclude, it can be considered that the essence of the declaratory judgment rests not in the fact that it contains an order for the parties, but in the declaration as to the legality of a certain legal relationship.

5.3. Declaratory Judgments and Satisfaction

A form in which declaratory judgments have been used by the Court is to assimilate this remedy into the remedy of satisfaction. The case that is most often referred to when discussing this topic is the Corfu Channel Case, where the Court concluded that “to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of sovereignty.” Through the dispositif of the judgment, the Court further concluded as follows:

“Unanimously, gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People’s Republic of Albania and that this declaration by the Court constitutes in itself appropriate satisfaction.”

It is important to note at this juncture that the Court, in this case, followed the submission of Albania, which requested the Court to declare that Albania had the right to request satisfaction from the United Kingdom. However, the issue of whether the declaratory judgment has the power to represent satisfaction still remains, since the Court did not necessarily explain the reasons for which it considered that this was the case.

It is relevant to point out in this respect that even if Albania sought the “common form of satisfaction as an apology, which may be given verbally or in writing by an appropriate official or even head of state” Judge Azevedo concluded that “the Court

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82 Gray (n 4) 100.
84 McIntyre (n 38) 117.
85 ibid.
86 Corfu Channel Case (Great Britain v Albania) (n 2) 35.
87 ibid 36.
should break away from the familiar mediaeval procedure... such as apologies, flag saluting, etc."^89

Whether the Court can deliver declaratory judgments that represent satisfaction is debatable. It has been remarked that "the Corfu Channel formulation is not an instance of satisfaction in the usual meaning of the word since the declaration is that of a court and not a party."^90

Another answer would be that the Court should not offer remedies on behalf of the parties, and that the Court should order the party to provide satisfaction, rather than assimilating this remedy with the judgment itself. In other words, satisfaction should be performed by the losing party after the dispute has been resolved, and not by the Court through its judgment. Thus, even if the Court has not been necessarily consistent in its approach towards the issue of declaratory judgments as satisfaction, the practice indicates that this remedy is geared towards the parties and, hence, the Court should carefully approach this remedy, so that the injured state is satisfied with its judgment.

5.4. Declaratory Judgments and Advisory Opinions

Coming back to the view of Lauterpacht^91 with respect to the danger of declaratory judgments being used by the parties to obtain advisory opinions, such a risk indeed exists. It is useful, however, to look at the main differences between these two manifestations of the Court’s jurisdiction.

A fundamental difference between a declaratory judgment and an advisory opinion is that the immediate scope of the advisory function is not the resolution of disputes. This is based on the interpretation of Article 65 of the Statute of the Court, which provides the following:

"1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

On the other hand, Article 36 of the Statute of the Court clearly states that the Court has the power to resolve "legal disputes". Therefore, the existence of a genuine legal dispute is essential to the Court’s competence to render a declaratory judgment.\(^93\)

The word "declare" bears more meaning than it appears to at first blush. As such, it has been stated that one "fundamental difference between advisory opinions and declaratory judgments is that the former relate to the future whereas the latter bear on the past."\(^94\) Therefore, according to this view, an advisory opinion manifests its effects in the future. This entails that the manner in which the parties interpret and apply the

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^89 McIntyre (n 38) 144; Corfu Channel Case (n 286) (Dissenting Opinion of Judge Azevedo).
^90 ibid McIntyre.
^91 Gray (n 4) 100.
^92 Philippe Couvreur, 'The Effectiveness of the International Court of Justice with respect to Disputes involving Highly Political Issues’ in AS Muller, David Raic and JM Thuranszky (eds), The International Court of Justice: its Future Role after Fifty Years (Martinus Nijhoff Publishers 1997) 113.
^93 McIntyre (n 38) 120.
^94 Gray (n 4) 101.
issue that has been submitted to the Court for its determination is irrelevant under this perspective.

In contrast, declaratory judgments target precisely the application and interpretation of a legal relationship as being in accordance with international law, thus having a retroactive character. This distinction seems superficial and has been criticized, since the International Court of Justice has issued declaratory judgments for the future.\(^95\)

Even Gray argues against Lauterpacht and concludes on this issue that “there seems to be no compelling reason why the International Court of Justice should not give declaratory judgments as to the legality of a proposed course of conduct”, i.e. for the future.

One could validly argue that parties could seek the interpretation of a treaty through the declaratory judgment provided that “the requested interpretation is not too far divorced from the factual situation pertaining to the relevant State, such as to render it abstract”.\(^96\) Therefore, the main distinction between a declaratory judgment and an advisory opinion appears to rest upon its degree of abstractness or concreteness.

One instance where this argument was discussed was before the Permanent Court in the German Interests Case, where Poland challenged the jurisdiction of the court to issue a declaratory judgment because the relief that Germany sought was too abstract.\(^97\) However, the Permanent Court dismissed this argument and proceeded with the case, on the basis of the “broader normative effect that such a declaratory judgment might have”.\(^98\) This reasoning is in conflict with Ritter’s interpretation, as presented by Gray, who argues that “to the extent that a declaratory judgment goes beyond the consideration of the past, it is no longer a judgment but a method of proclaiming a norm”,\(^99\) which is not what the International Court is mandated to do.

This appears to be the interpretation that the Court has given to the notion of declaratory judgments in rendering the decision in the Northern Cameroons Case. Here, the Court concluded that even if it had jurisdiction, it could not exercise its judicial function given the fact that the instrumentum upon which the relationship of the parties was based, i.e. the treaty, was no longer in existence.\(^100\) Gray further concludes that this decision has been heavily criticized, and agrees with the conclusion of Judge Morelli, which concluded through a Separate Opinion that if the Court found that a dispute is in existence, it should have issued a judgment to settle the said dispute.\(^101\)

However, the Court cannot issue a declaratory judgment where the level of abstractness is so high that it becomes hypothetical. In other words, for the Court to be able to decide the case through a declaratory judgment, a concrete dispute must be in existence, as provided by Article 36 paragraph 2 of the Statute of the Court. Therefore, a question raised before the Court could be abstract but still connected to the dispute and, hence, capable of being resolved through a declaratory judgment.

\(^{95}\) ibid.
\(^{96}\) McIntyre (n 38) 121.
\(^{97}\) ibid 122.
\(^{98}\) ibid.
\(^{99}\) Gray (n 4) 101.
\(^{100}\) ibid 103.
\(^{101}\) ibid.
This issue is directly connected with the fact that the declaratory judgment is binding and, consequently, has a res judicata effect, while the advisory opinion is not binding and does not have a res judicata character. It has been stated that “a declaratory judgment endowed with res judicata force may provide the basis for diplomatic negotiations during which the parties have to respect what the court has said with regard to the legal issues that were in issue”.

6. Conclusion

This chapter aimed to provide an analysis of the characteristics of declaratory judgments and the interplay between this form of remedy and other related concepts. One conclusion that can be drawn from the above is that the declaratory judgment is an independent and flexible remedy, through which the International Court of Justice can tackle various issues of international law, with a binding character and without providing the parties with an explicit mechanism through which its decision shall apply. As such, the declaratory judgment as a remedy of international law does not depend upon, nor does it necessarily imply, subsequent findings regarding more coercive remedies such as restitution in kind or compensation.

It can be further concluded that the declaratory judgment, given its versatile character, even if subject to a degree of abuse by the parties, represents the remedy that states are most comfortable with—the reason being that it represents a perfect compromise between the resolution of the dispute by a third party while still retaining an important role for the exercise of state sovereignty. However, the versatility and flexibility of this remedy should be carefully considered by the International Court of Justice when deciding the instances in which the declaratory judgment has the potential to replace other remedies, such as satisfaction.

Chapter 2. Specific Performance

1. Introduction

Specific performance as a remedy before the International Court of Justice has a particular nature, and as such, its interaction with other concepts related to remedies such as cessation and restitution in kind is of interest. Further, some uncertainty exists regarding the availability of specific performance before the International Court of Justice.

The reason for which there is an apparent concern with regard to the power of the Court to grant this remedy is that specific performance usually takes the form of an order that has an inherent mandatory effect, through which the Court concludes that a certain conduct should be carried by the state that failed to fulfil its obligation. It is generally accepted that specific performance means that a state has to fulfil its exact obligation without having the possibility to replace the performance with monetary relief.

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102 Wellens (n 81) 288.
103 Crawford (n 3) 468.
104 Crawford (n 7) 696.
It has also been argued that the distinct nature of specific performance, similar to the declaratory judgments, is related to the fact that “the Court has to make its own way because the formulation of article 36 provides no express guidance in respect to specific performance”. This being the case, the Court has to determine certain procedural mechanisms in order to deliver a judgment through which it grants specific performance, if it considers this to be the appropriate manner in which the injured state would receive reparation. However, even if rarely referred to as such, specific performance has been ordered by the Court in several cases.

The manner in which the Court grants specific performance has its definitive features. These features range from determining the power of the Court to order specific performance to determining the relationship between specific performance and other remedies, such as cessation and restitution in kind.

Doubts have also been expressed in relation to the competence of the Court to order specific performance. Gray has opined on this issue that “the jurisdiction of the International Court of Justice to give remedies such as specific performance or injunctions, where there is no express provision for this in the agreement from which the Court derives its jurisdiction, is not clear”. At the same time, others have opined that the Court has the power to give orders in different forms, “whether it is a mandatory order (a direction to do something that is not being done); an order for specific performance (aiming at the fulfilment of a legal or contractual obligation) or a negative injunction (a prohibition from persisting in certain conduct or an order to put an end to a given activity)”.

The fact that specific performance as a remedy is not concretely defined in public international law further complicates the interpretation of this remedy, in the sense that it could be confused with other remedies. A reason for which such a confusion has arisen could be that “the language of specific performance (peculiar to the common law) is not used, but in principle international courts and tribunals can make orders giving mandatory effect, whether by way of declaration or otherwise”. Thus, the issue of language appears to be relevant in defining the scope of the jurisdiction of the Court regarding specific performance. However, a linguistic analysis in an isolated manner, without considering the substance of the terminology used, might prove to be a superficial approach.

This Chapter shall identify the main elements that define specific performance as a remedy before the Court and shall clarify the controversies that have arisen with regards to specific performance as a potential remedy, starting with the power of the Court to order it and concluding with the ways in which specific performance interacts with other similar remedies.

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105 Brownlie (n 39) 558.
106 These cases shall be provided in the following sections of this Chapter.
107 Gray (n 4) 99.
108 Quintana (n 36) 1157.
109 Gray (n 4) 413.
110 Crawford (n 3) 468.
111 Chithararjan Felix Amerasinghe, Jurisdiction of Specific International Tribunals (Martinus Nijhoff 2009), 177.
2. The Power of the International Court of Justice to order Specific Performance

Several opinions have been expressed with regards to the power of the Court to order specific performance. One such argument revolves around “the idea that sometimes is expressed that the Court cannot make orders which equate to orders of specific performance against states”. The reasoning behind this conclusion appears to stem from a conflation of specific performance with injunctions, and since injunctions cannot be issued by the Court, the argument goes: nor can specific performance. This argument has its origins in the submission that unless expressly provided within the parties agreement, specific performance should not be granted, as this remedy would be similar in scope to an injunction, which is sometimes considered to be outside the scope of the judicial function of the Court. This view is contextualised through the decision of the Court in the Haya de la Torre Case. In this instance, the parties requested the Court to decide the manner in which its decision in the Asylum Case should have been implemented. It could be considered that in this case the Court was requested to make an order of specific performance, or, in the words of the Court, “make a choice amongst the various courses by which the asylum must be terminated.” The Court refused to make such a determination and concluded as follows:

“These courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations but only on considerations of practicability or of political expediency; it is not part of the Court’s judicial function to make such a choice.”

It can therefore be concluded that the Court refused to decide upon the issue that was raised, because it considered that the parties alone are in a position to determine the manner in which their obligations should be performed. The Haya de la Torre Case is rather peculiar, as the Court has in fact, made orders for specific performance throughout its case-law, without necessarily indicating the manner in which the parties should implement its decision. Therefore, while the Court has required a certain outcome in mandatory terms, it has also simultaneously allowed the parties to choose the manner in which such outcome should be achieved.

The findings of the Permanent Court in the Chorzow Factory Case should also be referred to when determining whether specific performance falls within the Court’s

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112 Crawford (n 3) 468.
113 Gray (n 4) 95.
114 This conclusion has also been challenged. See Christoph Schreuer, ‘Non-Pecuniary Remedies in ICSID Arbitration’ (2004) 20:4 Arbitr Int 325, 326: “The International Court of Justice has ordered relief in the form of judgments for specific performance in numerous cases.”
115 Gray (n 4) 95, 96.
116 Haya de la Torre Case (Colombia v Peru) (n 76) 71.
117 Colombiam-Peruvian Asylum Case (n 77).
118 Haya de la Torre Case (Colombia v Peru) (n 76) 79.
119 ibid.
121 Crawford (n 7) 699.
122 Case Concerning the Factory at Chorzow (Germany v Poland) (Merits) PCIJ Rep Series A No 17.
judicial function. Contrary to the determination in the *Haya de la Torre Case*, which could be considered the *locus classicus* for declining specific performance, the judgment of the Court in the *Chorzow Factory Case* has been considered the foundation upon which orders for specific performance are issued by the Court.¹²³ The Permanent Court, in adjudicating the *Chorzow Factory Case*, has concluded that it has the power to grant a remedy even if the parties did not include the reference within their agreement, since “it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”¹²⁴

The question that arises in this context is whether specific performance could be considered as an “adequate form” of reparation, according to the determination of the Court in the *Chorzow Factory Case*. Should the conclusion be in the affirmative, an inclusion within the agreement of the parties in this respect would prove unnecessary.

Should it be considered that specific performance may not be ordered by the Court if the parties did not include it within their agreement, then the consequence of such an argument would be that specific performance is, *de facto*, not a remedy before the Court and that, therefore, the Court does not have inherent jurisdiction to order it. This latter outcome would be too detached from the Court’s practice.

*Per a contrario*, should it be considered that specific performance might be considered a remedy, it could also be argued, in this circumstance, that the Court has the inherent jurisdiction to grant it. Thus, the issue that needs to be answered is whether specific performance is a remedy available before the Court.

To determine whether specific performance can be considered a remedy before the Court, a closer look at the case-law in which the Court has determined that specific performance should be ordered, is warranted as it seems that (even if not explicitly), the Court has granted (but not ordered *per se*) specific performance.

The judgment of the Court in the *Haya de la Torre Case* and the judgment in the *Chorzow Factory Case* represent the two ends of the spectrum regarding the power of the Court to order specific performance: the former considering that the Court does not have the judicial power to order specific performance, while the latter implying that specific performance could be considered as an appropriate means of restoring the *status quo ante*. However, these are not the only judgments of the Court that considered specific performance.

The Court has issued several other judgments, which seem to confirm that specific performance falls within its judicial function, as “in several instances it has issued decisions ordering for specific performance (sometimes in conjunction with pecuniary damages)”¹²⁵ Illustratively, in the *Iranian Hostages Case*,¹²⁶ the Court found the following:

¹²³ Schreuer (n 114) 326.
¹²⁴ ibid 29.
“Decides that the Government of the Islamic Republic of Iran must immediately take all steps to redress the situation resulting from the events of 4 November 1979 and what followed from these events, and to that end:

(a) must immediately terminate the unlawful detention of the United States Charge d’affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran and must immediately release each and everyone and entrust them to the protecting Power
(b) must ensure that all the said persons have the necessary means of leaving Iran territory, including means of transport;
(c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy in Tehran and of its Consulates in Iran.”

It is arguable whether this solution is a veritable order or it is a declaratory judgment. The opinion that “this was a case in which, although the word “ordered” was not used, the Court decided that the respondent should act in a certain way which is in effect an order for specific performance”

128 has merit, as “finding the Iranian government’s inaction during the Iranian hostage situation to constitute a violation of international law, the ICJ ordered Iran to redress its unlawful omission by specific performance of its legal obligations.”

This conclusion seems reasonable, as the general idea expressed by the Court through the dispositif of its judgment was indeed that Iran should perform its obligations in the form in which they were agreed upon. Thus, the view that the substance of the remedy supersedes its linguistic designation seems to be a reasonable approach when determining the scope of a decision of the Court.

The Iranian Hostages Case is not an isolated one in its determination that specific performance is the appropriate form of reparation, as “in those cases such as the Serbian Loans, Lighthouses, and Socobelge cases where the Court declared that a contract has been duly entered into and is binding on the parties or that an arbitral award is binding, although this is not formally an order for specific performance it is clear what the parties ought to do.”

130 These cases were of a contractual nature.

In the Serbian Loans Case the Court decided as follows:

“That, in regard to the Serbian 4% loan of 1985, the holders of bonds, of this loan, are entitled, whatever their nationality may be to obtain at their free choice payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due as also of their bonds drawn for redemption but not refunded and those subsequently drawn.

That, in regard to the 4% 1985, 5% 1902, 44% 1906, 48% 1909 and 5%
1913 Serbian loans, the holders of these bonds are entitled to obtain payment of the nominal amount of their coupons due for payment but not paid and of those subsequently due, as also of their bonds drawn for redemption but not refunded and those subsequently drawn in gold francs.”\textsuperscript{131}

The quoted finding of the Court represents a clear indication that the respondent state should specifically perform its obligations as provided by the agreement between the state parties, even if the Court did not use the word “order”. As such, the fact that the Court found the applicant entitled to the amounts that were included within the agreement of the parties is a clear determination that the said obligations should be specifically performed.

The Court had the same approach in the \textit{Lighthouses Case}\textsuperscript{132} where it decided as follows:

\begin{quote}
“That the contract concluded on April 1\textsuperscript{st} 1913 between the French firm Collas & Michel, known as the “Administration generale des Phares de L’Empire Otoman” and the Ottoman Government, extending from September 4\textsuperscript{th} 1924 to September 4\textsuperscript{th} 1949 concession contract granted to the said firm, was dully entered into and is accordingly operative as regards the Greek government in so far as concerns lighthouses situated in the territories of Crete including the adjacent islets and of Samos, which were assigned to that Government after the Balkan wars.”
\end{quote}

Thus, in these two above mentioned cases, the Court considered that the obligations of the responding state should be respected and ordered the specific performance of the said obligations, albeit implicitly. It cannot be validly argued that the Court did not order specific performance, but issued mere declarations, due to the fact that, if this were the case, the judgment of the Court would not be properly adressed.

One case where the Court also indicated that specific performance of the legal obligations should be carried out by the responding state is the \textit{Case Concerning Military and Paramilitary Activities in Nicaragua}\textsuperscript{133} where the International Court of Justice concluded the following:

\begin{quote}
“the United States of America is under a duty immediately to cease and refrain from all such acts as may constitute breaches of the foregoing legal obligations.”\textsuperscript{134}
\end{quote}

This finding of the Court could be interpreted as ordering cessation, as the responsible state was ordered to refrain from certain acts. However, it being an order for cessation does not exclude it from also being an order for specific performance. It has been argued that “these examples \textit{Case Concerning Military and Paramilitary Activities in

\textsuperscript{131} Lighthouses Case between France and Greece (France v Greece) (n 27).

\textsuperscript{132} ibid.

\textsuperscript{133} Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America) (n 26).

\textsuperscript{134} ibid 149.
Nicaragua included clearly demonstrate the ICJ’s power to order specific performance against states. ¹³⁵

It becomes clear that the views that the Court lacks the power to order specific performance are isolated ones. It can therefore be concluded that the Court has the inherent jurisdiction to order specific performance in the same manner in which it does with respect to other remedies of international law. This latter view is substantiated by the case-law of the Court (as discussed above) where it has concluded that specific performance should be implemented by the respondent state.

In other words, if the judgment of the Court is clear enough to determine its scope, the language in which the remedy is granted, becomes secondary, if not irrelevant.

3. The Relationship between Specific Performance and Other Forms of Reparation

3.1. Specific Performance and Injunctive Relief

Views have been expressed in the sense that specific performance could not be ordered by the Court, as this type of remedy is similar to injunctions, which is a remedy that is not available before the Court. ¹³⁶ Even if the previous section has endeavoured to clarify the issue of the inherent powers of the Court to grant specific performance, the issue of the similarities between specific performance and injunctions still remains.

The views that injunctive relief might not be a proper remedy before the Court are based upon the consideration that the Court may not issue mandatory orders in the same manner as a regular municipal court often does. ¹³⁷

The argument supporting this view is that the Court “deliberately chose not to go into this problem” ¹³⁸ when it addressed the issues in the Iranian Hostages Case. However, the fact that the Court did not explicitly answer the question related to specific performance does not necessarily mean that it considered that this remedy was outside its judicial powers.

Further, the view that the Court might not have the power to issue injunctions has also been contested. One argument that has been made in this sense is that “the primary remedial means of reparation under international law is a form of injunctive relief: restitution.” ¹³⁹ The Court has made injunctive orders, amounting to both restitution and cessation. ¹⁴⁰ This understanding is predicated on the dominant view that restitution and cessation are injunctive forms of relief, as these concepts often merge with one another. ¹⁴¹ Thus, if this view is accepted, it becomes clear that the Court has the power to order injunctive relief.

¹³⁵ Schreuer (n 114) 327.
¹³⁶ Gray (n 4), 96.
¹³⁸ Gray (n 4), 95.
¹³⁹ Martin, Schnably, Wilson, Simon, Tushnet (n 129) 302.
¹⁴⁰ Crawford (n 7) 697.
¹⁴¹ Quintana (n 36) 1164.
It could, therefore, be concluded that states should not be restricted in their
determination of the appropriate remedy that would properly restore the status quo ante,
as nor the Statute neither the Rules of the Court contain any restrictions as to the
manner in which states should request reparation.

Arguments of a practical nature have also been made as being of certain relevance when
determining whether specific performance should or should not be ordered. In support of
such an argument, views have been expressed that in numerous cases, the Court presumed compliance¹⁴² and did not consider the possibility of non-compliance which
might prove difficult to reverse once a state decides that it will not follow the judgment
of the Court. However, other authors have concluded that the Court has a generally
satisfactory compliance record for its judgments.¹⁴³ Therefore, the opinions that
conclude that specific performance should not be ordered, due to an alleged lack of
compliance with the judgments of the Court which provide this remedy, do not seem to
observe the case-law of the Court in this respect.

Significantly, arguments of practical nature should not supersede legal arguments, as the
case-law of the Court proves that “it may well be that the cases in which compensation
is adequate are more numerous or that states prefer to agree upon the payment of
compensation but this experience does not permit a legal principle to be inferred”.¹⁴⁴
Further, even if it is more seldom requested, the Court has rarely awarded compensation.¹⁴⁵ Thus, the differences of opinion regarding the fact that specific
performance would be inappropriate before the Court prove to be of a rather academic
character.

The controversy regarding the availability of specific performance and injunctive relief
before the Court seems to stem from the fundamental differences between the common
law system and civil law system. In the common law system, compensation has priority
over specific performance, which is an exceptional remedy, while in the civil law
system, the priority of remedies is reversed, specific performance being the remedy
which has priority over compensation.

Thus, it has been argued that “in the United States, the law of Contracts attempts the
realization of reasonable expectation that have been induced by the making of a
promise. Reasonable expectations means that at the time of the bargaining, the parties
knew that an appropriate remedy would be provided by a court in the event of a breach
but it did not necessarily mean that the original promises would be compelled. The
historical institutional limitation was that courts of equity were without jurisdiction
unless the remedy at law was inadequate, making specific performance an exceptional
relief in England and the United States”.¹⁴⁶ As such, “in Anglo-American law the

¹⁴² Reisman (n 137) 2.
¹⁴³ Aloysius P Llamzon, ‘Jurisdiction and Compliance in Recent Decisions of the International Court of
¹⁴⁴ Fritz A Mann, Further Studies in International Law (OUP 1990) 128.
¹⁴⁵ Stephen M Schwebel, Justice in International Law: Selected Writings of Judge Stephen M. Schwebel
(CUP 1994) 419.
limitations on according specific performance are, of course, great. Only where damages are an inadequate remedy may specific performance be granted”.\(^{147}\)

It is therefore understandable that common law-trained lawyers and scholars could be supporting the view that specific performance should be awarded by the Court in very specific instances-it being the exceptional remedy-while compensation remaining the rule.

On the other hand, the following argument has been raised, in the sense that:

“in most civil law systems the right to demand contract performance has been said to be an established principle and an absolute right. This is generally the case in France and Germany. The sanctity of the contract is regarded as implying the claim for performance. Unlike the reactive states, which dilute a court’s coercive authority by maintaining non codified authority restrictions, progressive codified sources in France and Germany presumed that such a relief would be granted by a Court unless the disadvantages of the remedy outweighed the advantages of granting the relief.”\(^{148}\)

A distinction should, thus, also be made between the German and the French legal systems, at this juncture. Under German Law there is no norm with respect to the priority of a certain remedy, the rule being that the parties have to elect and the Courts must grant a specific relief. However, in France specific performance is the norm.\(^{149}\) Even if under most municipal systems, there is a predetermined priority regarding the remedies awarded by national courts, it seems that this strict prioritization of remedies falls short of much consideration by the Court. The general approach in this respect is that the parties have the inherent right of electing and determining the appropriate and suitable remedy for their cause,\(^{150}\) without the strict limitations of a predetermined remedial priority. In other words, the states that submit disputes before the International Court of Justice have the right to choose any remedy they consider applicable for their dispute without any restrictions in this respect. Thus, for example, the applicant state has the option to choose specific performance as a remedy, without considering restitution in kind even if the latter might be applicable for the said dispute. The alleged primacy of restitution in kind would not render its claim for specific performance invalid in such a situation.

Furthermore, should the Court consider the choice of the applicant state reasonable, it will grant it without necessarily entering into strict priority considerations. One opinion that would go further in arguing against this view (according to which the Court may not ordinarily order compensation) is that “in fact, in cases before the ICJ awards of monetary damages would be unusual, while orders of specific performance or mere findings of illegality would be the normal type of relief”.\(^{151}\)

It is thus clear at this stage that there is no indication that injunctive forms of relief are unusual or not proper before the Court and as a consequence it also becomes clear that

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\(^{147}\) Schwebel (n 145) 418.

\(^{148}\) ibid.


\(^{150}\) Crawford (n 3) 508.

\(^{151}\) ibid 367.
there is no clear general rule in this respect. This approach seems similar to the German municipal approach towards specific performance. Therefore, the question whether specific performance is an appropriate relief is to be answered by the Court when analysing the factual matrix of each case, as “basically, the Court has as wide an inherent jurisdiction in regard to remedies as is appropriate to its judicial functions as international tribunals”.

3.2. Specific Performance, Cessation and Restitution in Kind

Examples of cases where these notions interact are numerous before the International Court, *Avena*,\(^{153}\) *LaGrand*\(^{154}\) and *Arrest Warrant*\(^{155}\) being the disputes in which certain related confusions are probably most apparent.

Cessation and restitution in kind are remedies that are well established before the Court, their availability being clearer than that of specific performance. As argued in the preceding section, specific performance could also be, in fact, inferred through a declaratory judgment as the relationship before these two remedies is one of cause and effect: the declaration being the cause, while specific performance is the effect.

Turning to the relationship between specific performance, cessation and restitution in kind, it can also be concluded that it is of the same causal nature as the relationship between declaratory judgments and specific performance, but turns that relationship on its head. Thus, an order for specific performance could be considered the consequence of a declaratory judgment. In other words, specific performance could be the practical consequence of a finding of illegality.

The scope of specific performance would extend from its declaratory nature to an injunctive one - of a positive nature in the case of restitution in kind and of a negative one in the case of cessation. Considering that specific performance means the implementation of a certain international obligation, it can be concluded that the structure of a judgment issued by the International Court of Justice in this respect, would be framed, generally, as such:

i) The responsible state has breached a norm of international law (the declaratory judgment);

ii) The responsible state should specifically perform the said obligation (the cause – specific performance);

iii) The responsible state should cease violating the rights of the injured state (the negative effect - cessation);

iv) The responsible state should resituate any property or rights that it has infringed (the positive effect – restitution in kind).

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152 Amerasinghe (n 111) 177.
153 Case Concerning Avena and Other Mexican Nationals (Mexico v United States of America) (Judgment) [2004] ICJ Rep 12.
154 LaGrand (Germany v United States of America) (Judgment) [2001] ICJ Rep 466.
155 Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) (n 120).
156 Quintana (n 36) 1164.
The confusion between these three remedies stems from the fact that the Court does not refer to the above structure and seldom refers to these elements within its declaratory judgment. This approach of the Court allows the parties to infer that cessation and restitution are means through which its declaratory judgment must be respected. One exceptional example in which the Court has respected the above mentioned framework is the Case Concerning the Temple of Preah Vihear\(^\text{157}\) in which the dispositif of the judgement was structured as follows:

“finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;

finds in consequence,

that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory;

that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.”\(^\text{158}\)

Thus, the first part of the dispositif of the Court represents the declaration regarding the location of the object in dispute, i.e. the temple. This declaration is the cause that triggered the conclusion of the Court that the responsible state has to specifically perform its obligations. Further, this finding has triggered both the negative effect that the responsible state must withdraw its forces (cessation) and the positive effect that the responsible state must restore certain objects to the injured state (restitution in kind). It has been argued in this respect, and rightly so, that “the substance of the matter is that a Judgment is binding and the performance required is the consequence of the decision on entitlement.”\(^\text{159}\) Therefore, the declaratory judgment represents the source for specific performance while specific performance is the source for cessation and restitution in kind.

This is not the only case where the Court has in fact respected the above mentioned framework. Other cases have proven this framework where the Court first and foremost declared that a breach existed, and that as a consequence of that declaration certain specific acts should be performed, in view of the obligations that were assumed by the responsible state through agreement. One such example, in which the Court issued a declaratory award upon which an order for specific performance was issued, is the Arrest Warrant Case where the Court decided that Belgium, by means of its own choosing, should take all necessary steps to cancel the warrant in question.\(^\text{160}\)

\(^{157}\) Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71) 34.

\(^{158}\) ibid 36-37.

\(^{159}\) Brownlie (n 39) 129.

\(^{160}\) “The Court accordingly considers that Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it was circulated...The Court sees no need for any further remedy.” See Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) (n 120) 32.
4. Conclusion

This Chapter endeavoured to clarify several issues with respect to specific performance as a remedy before the Court. The main controversies regarding specific performance are related to its availability as a remedy of international law before the Court and its interaction with other remedies. The outcome that can be drawn from the above analysis has been perfectly formulated by Quintana as such:

“It is suggested that it cannot be seriously put in doubt that the Court has the power to grant the remedy of consequential orders, whether in the form of mandatory orders, orders for specific performance or negative injunctions.”

As provided throughout this Chapter, the International Court of Justice has granted this remedy without referring to it as such, and, further, without providing a relevant finding that would further clarify the characteristics of specific performance. It could, therefore, be considered that the International Court of Justice, when faced in the future with issues related to this remedy, should provide a more focused consideration with respect to its interpretation and clarification.

Chapter 3. Cessation, Assurances and Guarantees of Non-Repetition

1. Introduction

Cessation, assurances and guarantees of non-repetition represent a special category amongst remedies, as they differ fundamentally from other types of remedies, such as restitution, compensation, specific performance and satisfaction. The doctrine and case-law of the Court places cessation and assurances in a different category of remedies - forward-looking ones - in contrast with the other types that look to the past. Barboza confirms the Court’s jurisprudence in this respect by stating that “assurances and guarantees of non-repetition are said to look towards the future, whereas the other means of reparation look to the past, to damage caused.” The complexity of these remedies has led Stern to observe that:

“Thus, international responsibility has now become just as complex in cases of breach of jus cogens, as this specific case involves four different aspects: the continued duty of the responsible State to perform the obligation breached (Article 29), cessation of the breach (Article 48(2)(a), referring to Article 30(1)), assurances and guarantees of non-repetition (Article 48(2)(a), referring to Article 30(2)), reparation in the name of those injured (Article 48(2)(b), referring to the articles on reparation).”

161 Quintana (n 36) 1161.
One of the main differences is that out of all the remedies that are available before the Court, cessation and assurances and guarantees of non-repetition, imply a negative action or an abstention, respectively. Crawford confirms this view, and concludes that:

“These paragraphs can be seen to address the negative and positive aspects of future performance respectively. Article 30(a) is concerned with securing an end to wrongful conduct; Article 30(b) is concerned with the prevention of future wrongful conduct.”

Due to this difference, these remedies have proved controversial to classify in the past. For example, certain authors consider that cessation could be perceived “simply as a form of satisfaction” while others consider this remedy as a form of restitution. These arguments seem to contradict the time related difference regarding the scope of cessation and assurances and guarantees of non-repetition. What is certain is that the “learned opinion is not unanimous regarding the nature of cessation.”

Questions have been raised as to the availability of cessation as a veritable remedy of international law. Further, concerns have been expressed about cessation being considered as a form of injunctive relief, which is not a remedy before the Court. Illustratively, Gray considers in this respect that the power of the Court to grant such remedies is not yet settled. Certain concerns have also been expressed with respect to requests for cessation by states, other than the ones that suffered an injury:

“claiming cessation of the breach does not invoke responsibility; presented as a claim by a State other than an injured State, without any reference to legal injury, it is difficult to reconcile such a claim with the basic mechanisms of international responsibility.”

Assurances and guarantees of non-repetition have encountered hostility as well—occasionally being considered less powerful in comparison with other remedies. Questions have also been raised with respect to the potential lack of consequences of a failure to comply with a judgment that provides for these remedies. The following extract best addresses these concerns:

“Insofar as cessation constitutes an independent remedy it may be assumed that this is also reflected in countermeasures aiming at cessation. Special Rapporteur Arangio-Ruiz has indeed indicated that ‘the relevance of non-compliance with a claim for cessation or with an injunction to that effect from a competent international body, would present itself as justification for resort to immediate – individual or institutional - measures against the wrongdoing state’.”

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164 Crawford (n 3) 459.
165 Quintana (n 36) 1153.
166 Philippe Couvreur, The International Court of Justice and the Effectiveness of International Law (Brill Nijhoff, 2017) 233.
167 Barboza (n 162) 105.
168 Gray (n 4) 98.
169 Stern (n 163) 105.
170 Crawford (n 3) 475.
However, despite certain controversies related to these remedies, this chapter shall demonstrate that they are both veritable and autonomous and that they apply with the same force as restitution, compensation, or satisfaction. Therefore, cessation and assurances and guarantees of non-repetition should not be confused or assimilated with other remedies. Further, it can be concluded that cessation and guarantees and assurances of non-repetition contribute substantially to the elimination of the consequences of a wrongful act leading to a breach of an international obligation.

2. Cessation

Cessation has often been ignored in the doctrine, because of its special characteristics related to the manner in which the effects of this remedy are manifested. This conclusion is best represented by the words of Special Rapporteur Arangio-Ruiz in this respect:

“Except for some valuable thoughts expressed on it by the previous Special Rapporteur this remedy has indeed rarely been the specific object of study; and when it is considered, it is often done within the framework and for the purposes of a discussion aimed at determining, obversely, the notion of restitutio in integrum rather than for the purpose of determining the concept of cessation per se, as a remedy with a role of its own.”

The Special Rapporteur considers, therefore, that cessation is a veritable remedy and that its analysis should not be limited to its interaction with other remedies, but rather it should be viewed autonomously.

Certain authors agree with the individual characterization of cessation, and, as a consequence, consider cessation as being a normal type of relief. Opinions have further been expressed in the sense that “in practice, cessation is often the primary remedy sought.” These opinions lend further credence to the claim that the primacy of restitution in kind as a remedy before the Court is often an exaggeration.

Another relevant issue with respect to cessation is its interaction with restitution and satisfaction. This issue is central to the interpretation and clarification of the notion of cessation. Several opinions seem to underestimate cessation as a remedy before the Court. Thus, it has been argued that, at times, “the cessation of the wrongful act may correspond to a form of restitution since it is aimed at the restoring the situation as it existed prior to the wrongful act”.

However, as mentioned above, cessation can be considered as being an independent remedy, even though it might share certain characteristics with other remedies. The observation that it “is considered a fortunate development [that] the ILC clearly endorsed the idea that cessation is an autonomous legal consequence of an internationally wrongful act and a very important one at that, as it is stressed by the

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173 Crawford (n 3) 461-464.
175 See Chapter 4 Section 2.3.
176 Couvreur (n 166) 233.
fact that in the 2001 articles the provision containing cessation comes directly after that on the continued duty of performance”¹⁷⁷ and the conclusion that “both cessation of the violation and guarantees of non-repetition are appropriate remedies under international law”¹⁷⁸ have merit in this respect.

2.1. The Definition of Cessation

There is less to no controversy with respect to the definition of cessation. Thus, the conclusion that “[c]essation consists in what Special Rapporteur Riphagen called ‘an obligation to stop the breach’”¹⁷⁹ seems a reasonable one, and it has not provoked special analysis, or further arguments. Several definitions have been provided by the doctrine and by the Court. The conclusion of Judge Tomka in his Separate Opinion from the Avena Case is relevant from the perspective of the definition of cessation:

“I consider that the fact that individual cases are still pending before the United States courts is not pertinent to the obligation of cessation. It is the continuing nature or otherwise of the violation which determines whether the obligation of cessation exists. The Court can only order the cessation of a wrongful act if that act continues.”¹⁸⁰

What is, however, relevant to note is that the Commentary to the Articles on State Responsibility does not provide any definition of this remedy.¹⁸¹ This might have occurred due to the fact that the drafters of the Articles intended to leave the means of interpreting this notion to the state parties to the dispute or to the International Courts and Tribunals faced with adjudicating upon this remedy. Even if cessation has not necessarily been defined, it is clear that “the recent jurisprudence of the International Court of Justice confirms that an order for the cessation or discontinuance of wrongful acts or omissions is only justified in case of continuing breaches of international obligations which are still in force at the time the judicial order is issued”.¹⁸²

The Tribunal in the Rainbow Warrior arbitration determined that it has an inherent power to find that cessation can be sought before it, and further established that two conditions should be met for cessation to be granted:

“The delivery of such an order requires, therefore, two essential conditions intimately linked, namely that the wrongful act has a continuing character and that the violated rule is still in force at the time in which the order is issued.”¹⁸³

¹⁷⁷ Quintana (n 36) 1153.
¹⁷⁹ ibid 1150.
¹⁸⁰ Case Concerning Avena and Other Mexican Nationals (Mexico v United States of America) [2004] (Separate Opinion of Judge Tomka) 90 ¶19.
¹⁸² Crawford (n 3) 265.
¹⁸³ Rainbow Warrior (New Zealand v France) (Arbitration Tribunal) [1990] 20 RIAA 270.
Further, it is also relevant to point out that in this case the Tribunal concluded that “the power to order the cessation of an illegal behaviour was inherent in the powers of a competent Tribunal”\textsuperscript{184}

2.2. The Characteristics of Cessation

The ILC Articles contain provisions related to cessation and guarantees of non-repetition within Article 30, which links the two, as such:

“The State responsible for the internationally wrongful act is under an obligation:

(a) to cease that act, if it is continuing;

(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.”

As is evident from the above, cessation and assurances and guarantees of non-repetition are available remedies depending upon the nature of the illegal act, \textit{i.e.} whether the act is of a continuing nature or whether the act has stopped.

The Court has determined that cessation represents a remedy in the \textit{Dispute related to Navigational and Related Rights}, case in which it concluded as follows:

“the cessation of a violation of a continuing character and the consequent restoration of the legal situation constitute a form of reparation for the injured State.”\textsuperscript{185}

It has been argued in this respect that, if the act is of a continuing nature, the state has the right to request the Court to deliver a judgment providing for cessation:

“...as stated by the tribunal in the Rainbow Warrior arbitration, for an order of cessation there are ‘two essential conditions intimately linked, namely that the wrongful act has a continuing character and that the violated rule is still in force at the time in which the order is issued’. The second condition is self-explanatory.”\textsuperscript{186}

The Commentary to the ILC Articles further mentions that the obligation to cease the continuous breach of an international obligation is the first requirement for eliminating the consequences of that breach. Thus, the ILC Articles implicitly confirm that cessation represents an autonomous remedy of international law, since it contributes to the restoration of the \textit{status quo ante}, as such:

“Cessation of conduct in breach of an international obligation is the first requirement in eliminating the consequences of wrongful conduct.”\textsuperscript{187}

\textsuperscript{184} Schreuer (n 114) 328.
\textsuperscript{185} Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua) (Judgment) [2009] ICJ Rep 213, 267.
\textsuperscript{186} Crawford (n 3) 262.
\textsuperscript{187} Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 89.
The Commentary to the ILC Articles also mentions the following, with respect to the function of cessation as a remedy:

“The function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule. The responsible State’s obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.”¹⁸⁸

The main feature of cessation is, therefore, that it is focused on obligations that are of a continuing nature. As has been aptly summarized by Quintana:

“…the distinguishing feature of cessation as a remedy is that it is called to play a role in the context of a breach of an obligation that is of a continuing nature – in the sense that the breach persists on the date of the delivery of the decision. As a result, if the breach of an international obligation occurred in the past and has come to an end by the time of the rendering of the decision the Court will find no cause to order its cessation.”¹⁸⁹

Therefore, the Court can order cessation only in a situation in which the breach is contemporaneous with the delivery of the judgment. Consequently, the responding state can prevent such an award by ceasing the act during the proceedings. This is a distinctive feature of cessation, as opposed to compensation, for example.

For the Court to order cessation it must first find that the responding state is breaching an international obligation at the time of the rendering of the judgment. If the state has stopped breaching the obligation before the judgment is issued, the request for cessation would become moot. It is therefore a prerequisite that must be met for cessation to be granted by the Court. To sum up:

“It is the continuing nature or otherwise of the violation which determines whether the obligation of cessation exists. The Court can only order the cessation of a wrongful act if that act continues.”¹⁹⁰

2.3. The Interaction between Cessation and other Remedies

The interaction between cessation and reparation in general and with other remedies in particular is probably the most controversial issue with respect to this remedy. Scholars have gone so far as to conclude that cessation is not reparation at all, providing the following arguments in this respect:

“In the field of doctrine, Professor Dominicé has rightly observed that ‘the obligation to bring an illegal situation to an end is not reparation, but a return to the initial obligation’, adding that ‘if one speaks, regarding this type of circumstance, of an obligation to give (in the general sense) restitutio in integrum, it does not actually mean reparation. What is required is a return, to the situation demanded by law, the cessation of

¹⁸⁸ ibid.
¹⁸⁹ Quintana (n 36) 1150.
¹⁹⁰ ibid.
illegal behaviour. The victim State is not claiming a new right, created by the illegal act. It is demanding respect for its rights, as they were before the illegal act, and as they remain.”\textsuperscript{191}

Also, as mentioned above, the interaction of cessation with remedies such as restitution, satisfaction and specific performance is of relevance as different opinions have been expressed that the above remedies encompass, to a certain degree, or imply the cessation of the wrongful act.

\textbf{A. Cessation and Restitution}

The relationship between cessation and other remedies such as restitution has been constantly under the scrutiny of the doctrine. Illustratively, Crawford considers that cessation and restitution are similar with respect to their final scope and argues that “often, the result of restitution will be indistinguishable from that of cessation.”\textsuperscript{192} Julio Barboza is harsher in his characterization of the relationship between cessation and restitution, and considers the first being a form of the latter, as such:

\begin{quote}
\textit{“cessation is but a form of restitution and assurances and guarantees of non-repetition also imply some form of reparation for a moral damage, then only by causing a material or moral injury would the breach of an obligation produce some legal consequence according to the draft articles.”}\textsuperscript{193}
\end{quote}

Gideon Boas goes as far as to conclude that in certain situations cessation and restitution are identical, implying that a request for one would imply the other:

\begin{quote}
\textit{“in some cases cessation might be indistinguishable from restitution, especially where the wrongful conduct is an omission.”}\textsuperscript{194}
\end{quote}

It could be argued that the first conclusion, provided by Crawford, related to the scope of these remedies, has merit, as the opinions of Barboza and Boas seem too harsh in their implication that cessation should not even be a remedy as it has identical characteristics with restitution.

It could also be considered that the second argument is overreaching. Should the wrongful act be an omission, a request for restitution would be redundant, and at times even moot, as the responding state would not have anything material or legal to restore. A claim for restitution would therefore be without a precise object. Further, should the act be an omission, the request for cessation would also seem moot as the responding state would not have to stop any legal action, but would have to perform a certain action. Therefore, in the situation that the illegal act is an omission, the appropriate cause of action should be specific performance and not cessation or restitution. This conclusion is confirmed by the following argument in this respect:

\begin{quote}
\textit{“I respectfully beg to disagree on this point: the breach of the obligation}
\end{quote}

\textsuperscript{191} M.E. Schneider, “Selected Other Cases” in M.E. Schneider, J. Knoll (eds.), \textit{Performance as a Remedy: Non Monetary Relief in International Arbitration}, ASA Special Series No. 30 (JurisNet 2011) 201.

\textsuperscript{192} Crawford (n 3) 465.

\textsuperscript{193} Barboza (n 162) 9.

\textsuperscript{194} Boas (n 174) 296.
has been completed as soon as the date on which the obligation is due has passed without the obligation having been complied with. That obligation, moreover, can never be fulfilled because the date is a fundamental part of the obligation.”

The approach of Gray is preferable, when she argues that there is some uncertainty as to the relationship between restitution, specific performance and cessation because it is undeniable that a relationship between cessation and restitution exists, to the argument that these remedies are identical.

The judgment of the Tribunal in the Rainbow Warrior arbitration might have contributed to the contemporary misinterpretation of cessation and to the confusion between cessation and restitution. Gray also confirms this view, and concludes that the Rainbow Warrior Tribunal misinterpreted the requests of the parties:

“New Zealand expressly sought restitution and apparently understood this as including an order for specific performance of a treaty; it said that any other remedy would be inappropriate in this case. But the tribunal perversely regarded this as a request for the cessation of the wrongful act.”

In the Wall Advisory Opinion, cessation was also addressed by the Court. The Court concluded that Israel should demolish the Wall, and that, should it fail to do so, the international obligation would be continually breached. One very relevant issue with respect to the difference between cessation and restitution is that the first cannot be avoided by the responding party due to material impossibility. Thus:

“in contrast to the absolute obligation of cessation, restitution may not be required if the burden is out of proportion to the benefit, at least according to the ILC articles on state responsibility. Placing the dismantling as an obligation of cessation avoids allowing Israel to pay for the breach by providing compensation in lieu of restitution”.

Cessation, therefore, can repair in certain cases what restitution is not able to, which again goes to reaffirm the conclusion that the better view is to understand cessation as a stand-alone, autonomous remedy.

B. Cessation and Specific Performance

Cessation and specific performance are both facets of the general principle of *pacta sunt servanda*. Crawford addresses this issue when he states that “one issue raised in the drafting of Article 30(a) was the distinction between the obligation of cessation and the continued duty of performance of the underlying obligation, specifically whether the

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195 Barboza (n 162) 14.
196 Gray (n 4) 61.
197 Gray (n 16) 420.
Thus, it could be indeed considered that a duty of specific performance implies a duty to cease the breach of an obligation, should it occur. However, this is not necessarily the case. Crawford further quotes the Commentary to the ILC Draft Articles on State Responsibility, without any further explanation of the distinction between cessation and specific performance:

“There are several reasons for treating cessation as more than simply a function of the duty to comply with the primary obligation. First, the question of cessation only arises in the event of a breach. What must then occur depends not only on the interpretation of the primary obligation but also on the secondary rules relating to remedies, and it is appropriate that they are dealt with, at least in general terms, in articles concerning the consequences of an internationally wrongful act. Secondly, continuing wrongful acts are a common feature of cases involving State responsibility and are specifically dealt with in article 14.”

The conclusion of the Commentary to the ILC Articles on State Responsibility has merit. The distinction between cessation and specific performance is further demonstrated by Article 48(1) b of the ILC Articles, which gives a state the possibility of choosing between these two remedies:

“2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State.”

As mentioned at the beginning of this section, both cessation and specific performance are part of the general principle of *pacta sunt servanda*. However, the manner in which this principle manifests itself differs for each of these two remedies.

The statement that concludes that “the obligation of cessation is crucial to the international rule of law and the underlying principle of *pacta sunt servanda*. As a wrongful act does not affect the state’s continued duty to perform its obligation, a state is under a duty to cease its act if it is continuing” confirms the view that cessation and specific performance apply differently—the first being conditioned upon a breach while the second overarches the behaviour of the parties throughout the performance of the treaty whether there is a breach or not. This conclusion is substantiated by Article 29 of the Articles on State Responsibility which provides that:

“The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the

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199 Crawford (n 3) 264.
200 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 89.
201 Boas (n 174) 296.
It can, therefore, be concluded that even if cessation and specific performance represent two different facets of the same coin, they are different in scope—one being conditioned upon a breach, while the other remains in force throughout the performance of a treaty.

C. Cessation and Satisfaction

The characteristics of cessation have often led to the conclusion that it is a form of satisfaction rather than an independent remedy. It has been argued in this respect that under the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’, cessation is a form of satisfaction. However, the ILC Articles contain a different understanding in this respect. It could be concluded that the ILC Articles contain a preferable approach and that, as a consequence, cessation should not be confused with satisfaction. This is because the means of implementing these two remedies differ fundamentally.

While satisfaction implies that the responding state should present apologies and acknowledge the breach of the international obligation, cessation implies that the responding state should act in a manner which would stop the continuous breach of the said obligation. Of course, should the responding state cease the breach, it necessarily means that it would implicitly acknowledge the breach, and therefore, certain elements of satisfaction would be present, albeit lacking formality.

It is also relevant to look at the characteristics of the breach when discussing the differences between cessation and satisfaction. While cessation applies solely to international breaches that have a continuous character, satisfaction is not limited as such. Further, the manner in which these remedies apply is also different. Perhaps the most relevant conclusion related to cessation is that not just any form of cessation means that this remedy is performed. Thus:

“Cessation cannot consist in simply ceasing the wrongful conduct: the concept of cessation works here as a screen behind which another concept hides. The conduct replacing the continuous wrongful act constituting the breach is not at all indifferent to the law; in fact it is utterly relevant. In a case where hostages have been taken, for instance, killing the hostages may be a way to cease the original conduct of retaining them, but cessation within the meaning of Article 30 would not have taken place. Cessation always implies some form of restitution, because it always entails a return, or necessary steps towards the return, to the status quo ante.”

202 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 89.
204 Barboza (n 162) 13.
2.4. Proceedings before the Court

The Court has rarely granted cessation as a remedy, even though it has been requested by the parties in the disputes that were submitted before it. However, certain conclusions can be drawn from these proceedings, that establish the fact that cessation is an available remedy before the International Court of Justice.

In the Dispute Related to Navigational Rights, Costa Rica requested the Court “to order Nicaragua to cease all the breaches of its obligations which have a continuing character”. Costa Rica substantiated its request by stating the following:

“Costa Rica seeks the cessation of this Nicaraguan conduct which prevents the free and full exercise and enjoyment of the rights that Costa Rica possesses on the San Juan River, and which also prevents Costa Rica from fulfilling its responsibilities under Article II of the 1956 Agreement and otherwise. In the event that Nicaragua imposes the economic sanctions referred to above, or any other unlawful sanctions, or otherwise takes steps to aggravate and extend the present dispute, Costa Rica further seeks the cessation of such conduct and full reparation for losses suffered.”

The Court delivered important findings with respect to the origin of the obligation to cease, and concluded as follows, with respect to cessation:

“As far as the first of these three submissions is concerned, it should be recalled that when the Court has found that the conduct of a State is of a wrongful nature, and in the event that this conduct persists on the date of the judgment, the State concerned is obliged to cease it immediately. This obligation to cease wrongful conduct derives both from the general obligation of each State to conduct itself in accordance with international law and from the specific obligation upon States parties to disputes before the Court.”

Further, the Court concluded that cessation is a veritable form of reparation, when it stated that:

“As for the second submission set forth in paragraph 147 above, it should be recalled that the cessation of a violation of a continuing character and the consequent restoration of the legal situation constitute a form of reparation for the injured State.”

The Court therefore, did not consider that this remedy is devoid of scope in proceedings before it. On the contrary, the International Court of Justice further substantiated the view that cessation is a remedy of international law. To sum up, the following quote best describes the relevance of cessation as a remedy before the Court:

\[\text{Refere} \text{nces}\]

205 Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua) (n 185) 222.
206 ibid.
207 Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua) (n 185) 267.
“The obligation of cessation is crucial to the international rule of law and the underlying principle of pacta sunt servanda.”

3. Assurances and Guarantees of Non-repetition

Assurances and guarantees of non-repetition is the second remedy provided by article 30 of the Articles on State Responsibility. Thus, cessation represents the primary remedy in the situation in which the breach of the obligation is of a continuing nature, and assurances and guarantees of non-repetition could be requested in situations where the party has stopped the breach of the international obligation but the applicant state has reasons to believe that this breach shall occur in the future.

This remedy is also controversial. Barboza notes about it that “[w]ith respect to ‘assurances and guarantees of non-repetition’, which are referred to in the same article as cessation, legal opinion is not unanimous as to their nature.” This section aims to provide certain clarifications with respect to assurances and guarantees of non-repetition before the International Court of Justice.

3.1. The Definition of Assurances and Guarantees of Non-repetition

First of all, it should be noted that this remedy entails two distinct notions, i.e. assurances of non-repetition and guarantees of non-repetition. Both these concepts are related to the agreement of the responding state not to breach a certain international obligation in the future. However, the manner in which this effect is manifested differs between these two remedies. The main difference between assurances and guarantees is the degree of formality through which they are implemented by the responding state, even if the final scope of the two is the same. Crawford considers in this respect that:

“According to Article 30 a state in breach of international law has the obligation to stop the breach and to offer assurances and guarantees of non-repetition – that is, to offer promises not to do it again.”

It can be considered that these two notions need further clarification, and that a promise cannot be sufficient for satisfying both assurances of non-repetition and guarantees of non-repetition. Although assurances of non-repetition are the more familiar means of providing the injured state with a promise that the breach shall not occur in the future, guarantees of non-repetition imply a stronger obligation. Crawford has expressed this conclusion in the same vein, as follows:

“The distinction between assurances of non-repetition and guarantees of non-repetition is that assurances are normally given verbally, whereas guarantees involve something more, such as the taking of preventive measures.”

208 Boas (n 174) 296.
209 Barboza (n 162) 16.
211 Crawford (n 3) 476.
Although the guarantees of non-repetition are, arguably, a more formal remedy, the manner in which these are to be requested by applicant states is not yet established before the Court. It is argued that the mechanisms through which guarantees of non-repetition are requested is not necessarily coherent. Authors have opined that “with regard to the kind of guarantees that may be requested, international practice is not uniform. The injured State usually demands either safeguards against the repetition of the wrongful act without any specification of the form they are to take or, when the wrongful act affects its nationals, assurances of better protection of persons and property.”

A relevant example regarding the incertitude with respect to the mechanisms through which this remedy should be performed by the responding state is the LaGrand Case, in which the applicant submitted a very broad request before the International Court of Justice in this respect:

“(3) the United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States' international legal obligation took place; and

(4) the United States should provide Germany a guarantee of the non-repetition of the illegal acts.”

This is not the only case in which applicants have formulated vague requests with respect to assurances and guarantees of non-repetition. Similarly, in the Dispute Regarding Navigational and Related Rights, Costa Rica submitted the following request before the Court:

“to give appropriate assurances and guarantees that it shall not repeat its unlawful conduct, in such form as the Court may order.”

In such situations the Court would be restricted to provide an order which would not determine the manner in which these remedies would be performed by the responding state. This possibility exists, inasmuch as the scope of this remedy is reached.

3.2. The Scope of Assurances and Guarantees of Non-repetition

As mentioned, this remedy entails either a promise or a more formal declaration, on behalf of the responding state, through which it provides that it shall not repeat the act through which the international obligation was breached.

The scope of assurances and guarantees of non-repetition has been interpreted as being “concerned with the restoration of confidence in a continuing relationship, although they involve much more flexibility than cessation and are not required in all cases.”

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212 Pronto and Wood (n 88) 255.
214 Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua) (n 185185) 223.
215 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 89.
Thus, this remedy is most often pursued by the injured state when it “has reason to believe that the mere restoration of the pre-existing situation does not protect it satisfactorily.” In this respect, article 30(b) of the Articles on the Responsibility of State, provides that:

“The State responsible for the internationally wrongful act is under an obligation:

...

(b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.”

Thus, should the injured state consider that certain circumstances exist in which there is a possibility that the responding state would breach the obligations in a constant or repeated manner, it has the right to request the Court to provide that the latter offers sufficient guarantees that it shall not breach its obligations.

3.3. The Relationship between Assurances and Guarantees of Non-repetition with Cessation

The scope of guarantees of non-repetition has been described as being targeted towards the future, whilst the scope of remedies such as compensation and restitution differs by providing reparation that regards the past:

“In contrast, guarantees and assurances of non-repetition as recognized in LaGrand serve a different function. Unlike restitution, compensation or satisfaction, they are forward-looking; not concerned with remedying past wrongs, but with preventing future breaches. By recognizing this remedy, the judgment seems to move away from a purely restorative approach to responsibility.”

Restitution and compensation have been described as being “primarily restorative, or backward-looking. This in turn has tended to reinforce a bilateral understanding of responsibility: restitution, compensation, and satisfaction aim at restoring the status quo in relation to the injured state.”

A relevant question is whether assurances and guarantees of non-repetition are conditioned upon the exercise of cessation or not. The commentary to the ILC Articles on State Responsibility mentions that “articles 30 deals with two separate but linked issues raised by the breach of an international obligation: the cessation of the wrongful conduct and the offer of assurances and guarantees of non-repetition by the responsible state, if the circumstances so require.” Quintana also considers that “although

216 ibid.
217 ibid.
219 ibid.
220 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 90.
cessation is a corrective remedy, it often goes hand in hand with the prospective remedy of assurances and guarantees of non-repetition”.

It could, therefore, be concluded that the main characteristic that separates the remedy of guarantees of non-repetition from other remedies is that the first pursues a certain obligation for the future on behalf of the responding state, while the latter for the past.

3.4. Assurances and Guarantees of Non-repetition: A Veritable Remedy

Even though the ILC Articles on Responsibility of States include these remedies within its framework, the doctrine of international law seems rather inconsistent with respect to the availability of assurances and guarantees of non-repetition. Some authors consider that assurances and guarantees of non-repetition is not a remedy and that the Court has not confirmed their availability. The reason for such a conclusion is that while remedies such as restitution in kind and compensation are applicable inter partes, guarantees of non-repetition are wider in scope. Thus, the following opinion has been expressed in this respect:

“Moreover, in situations involving breaches of general international law or multilateral treaties (such as the Vienna Convention), a future-oriented obligation to prevent future breaches can hardly be limited to bilateral legal relations between injured and responsible states. Although under Article 59 of the ICJ Statute the court’s judgment formally is only binding inter partes, judgments awarding guarantees and assurances of non-repetition will have a more general impact on a legal situation.”

Another reason for which guarantees of non-repetition have been considered as not being a veritable remedy of international law is that the International Court has very rarely awarded this remedy. Tams argues that, even though the Court has accepted that this remedy exists, it has not granted it:

“The Court in LaGrand and later cases has tended to accept that the category exists but has not ordered or ensured the provision of such assurances or guarantees. Increasingly, the Court has done everything to avoid not requiring assurances. This is understandable from the Court’s point of view as it does not have a continuing role of supervision over the performance of judgments.”

The main argument against the view expressed above is that the Court does not have to constantly verify whether its judgments are respected. In the case of guarantees of non-repetition, the task would prove to be more difficult on the behalf of the Court, given the various mechanisms through which this remedy could be provided by the responding state.

A more relevant argument in this respect considers that since the Court has accepted the fact that guarantees of non-repetition exist, the details regarding its supervision or scope

221 Quintana (n 36) 1153.
222 Tams (n 218) 441.
223 ibid 443.
do not influence the finding that it is a remedy. Ajibola draws the following argument with respect to assurances and guarantees of non-repetition:

“By recognizing, for the first time, a state’s right to obtain guarantees and assurances of non-repetition, the court has accepted a remedy that is not only new, but also qualitatively different from the traditionally accepted forms of reparation. As is clear from the term itself ‘reparation’ as the prime consequence of international wrongs is concerned with the restoration of the status quo, and with remedying the effects of past wrongs. Of course, as a side-effect, one would hope that the duty to provide reparations deters the wrongdoing state from committing future breaches.”

Further, guarantees of non-repetition, as a remedy, produce certain effects with respect to the continuing diplomatic relationship between the states in question. It has been argued that “assurances and guarantees play an important role in diplomatic relations in the context of breach which is one of the reasons why it is often puzzling that the ICJ does not award damages even in cases where it might have done so.”

Therefore, in the same manner in which satisfaction as a remedy contributes to the re-establishment of a fair relationship between states, assurances and guarantees of non-repetition play the same role, which cannot discredit them as remedies under international law. This conclusion was further confirmed by the Court, when it rightfully pointed out that:

“It is clear that the Court at least considers that it has the power to order assurances and guarantees of non-repetition. However, in none of the decisions in which assurances and guarantees of non-repetition have been sought has the Court identified the basis on which it was discussing the issue, referred to Article 30(b) or affirmed the existence of a free-standing obligation to offer assurances and guarantees of non-repetition.”

### 3.5. Means of Implementation of Assurances and Guarantees of Non-repetition

Once it is accepted that assurances and guarantees of non-repetition are veritable remedies under international law, one has to answer the question as to how would these remedies be implemented by a state which has to fulfil the obligation imposed by the Court. In this respect:

“In the LaGrand case, ICJ spelled out with some specificity the obligation that would arise for the United States from a future breach, but added that ‘[t]his obligation can be carried out in various ways. The choice of means must be left to the United States’. It noted further that a State may not be in a position to offer a firm guarantee of non-repetition. Whether it could properly do so would depend on the nature of the obligation in question.”

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225 ibid.
226 Crawford (n 210) 82.
227 Crawford (n 3) 473.
228 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 90.
The Court has not yet rendered a judgment clarifying the means through which assurances and guarantees of non-repetition would be implemented. It therefore appears from the case-law of the Court, that the party which must comply with its judgment has the freedom to choose the mechanism through which it should provide assurances or guarantees of non-repetition in such a manner that the applicant state is satisfied.

Crawford considers that the Court is inclined to give judgments regarding points of international law, rather than to give judgments with respect to the mechanism through which assurances and guarantees of non-repetition are implemented by the responding state, because “the Court is a discrete settlement mechanism and it is keen to show that the main point in its judgments is given effect.”229 He further argues that a judgment that would simply declare that assurances and guarantees of non-repetition are due, would contribute to the re-establishment of the diplomatic relations between the states involved, inasmuch as these relations have been compromised. Crawford concludes that such a declaration would not prevent the resolution of international disputes, but would rather contribute to the settlement thereof:

“This is of little consequence for proceedings before the Court. But whether there exists a customary international law obligation to offer assurances and guarantees of non-repetition does have relevance for the resolution of disputes outside the judicial context.”230

3.6. The Right to Claim Assurances and Guarantees of Non-repetition

This remedy has been described as being far reaching with respect to both the obligation that it imposes and to the entities that have the right to claim it before the Court. Authors have expressed the following view in this respect:

“The invocation of international responsibility by States other than an injured State is thus clearly differentiated. States other than the injured State only have the right to require cessation of the internationally wrongful act, and assurances of guarantees of non-repetition in accordance with Article 30 from a State that has breached a rule of jus cogens. In other words, they can claim reparation for breach of the law; furthermore, the Commission has also foreseen that they can claim reparation, in the name of the injured State, or in the name of the beneficiaries of fundamental rules, such as the rules for the protection of human rights.”231

However, this conclusion rather drifts away from the scope of the remedy of protecting the injured state from future breaches of the same obligations that has triggered the dispute before the Court. The opinion of Brigitte Stern is preferable in this respect, when she concludes that the obligation of assuring and guaranteeing regarding non-repetition is not necessarily a positive rule:

“As for the guarantees of non-repetition, also provided for in Article 30, one may entertain certain doubts as to the status of this obligation as a rule of positive law, on the one hand, and as to its nature as a legal consequence

229 Crawford (n 210) 82.
230 Crawford (n 3) 474.
231 Stern (163) 98.
of the wrongful act (being a measure for the prevention of other, possible future wrongful acts), on the other hand. In any case, if it had to be included, at all cost, in the obligation to make reparation, this guarantee could be seen as participating in the objective of re-establishing the breached legal order for the future rather than for the past. This was, at least in part, the Commission’s position in the 1996 draft, since the assurances and guarantees of non-repetition were included in the full reparation to which the injured State was entitled under Article 42.232

It is also relevant to point out at this juncture that article 48 of the ILC Articles on State Responsibility, further contextualizes this remedy. It contains the following provision with respect to the possibility of third states to invoke cessation and assurances and guarantees of non-repetition, as such:

“1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 […]:

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State: (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition.”

However, it bears emphasis that the Court has never applied this article, and the Commentary to the ILC Articles on Responsibility of States mentions, with respect to assurances and guarantees of non-repetition that “this aspect of article 48, paragraph 2, involves a measure of progressive development, which is justified since it provides a means of protecting the community or collective interest at stake.”233

4. Conclusion

Concluding this chapter, it can be considered that cessation is a veritable remedy of international law, and that the effects of this remedy are capable of bringing a dispute before the International Court of Justice to an end. Brigitte Stern confirms this opinion by concluding that cessation is capable of repairing injuries, by asking the following question: “If cessation is thus a form of reparation, what does it rectify, if not what I call legal injury?”234

Assurances and guarantees of non-repetition share the same fate as cessation. Even if contested at times as being remedies of international law, it can be concluded that these remedies contribute to the restoration of the status quo ante, the opinion of Barboza being of relevance in this respect:

“Assurances and guarantees of non-repetition, besides bearing deterrent effects, also intend to reaffirm the legality that the breach had jeopardized and give assurance in that respect to the injured State. Thus, they quiet incertitude: not in vain are they called ‘assurances’. Assurances and guarantees of non-repetition seem to be, then, also a form of completing reparation when the circumstances of the case give credibility to a

232 Stern (n 163) 104.
233 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 90.
234 Stern (n 163) 104
repentition of the injury."\(^{235}\)

The Courts’ approach towards these remedies, in the sense that it does not usually prescribe the means of their implementation, is beneficial to the final resolution of the dispute because it does not over formalise the mechanisms through which cessation and assurances and guarantees of non-repetition are complied with, in the post adjudication phase.

**Chapter 4. Restitution in Kind**

1. **Introduction**

The Court’s approach to analysing restitution is a complex one. Contradictory views have been expressed regarding the multitude of issues that have arisen with respect to this remedy, which include the competence of the Court to analyse restitution in kind and the limitations that the parties must take into account when requesting it. Authors have considered that certain cases, such as Paraguay v. USA, “highlights dramatically the fundamental uncertainties as to the availability of restitution in international law”.\(^{236}\) Other views have also been expressed to the effect that restitution in kind is the usual kind of relief before the International Court of Justice.\(^{237}\) These differences in approach and the reasons for which they exist shall be assessed in this chapter.

2. **The Impact of the Chorzow Factory Case**

The interpretation of restitution in kind is closely connected to one of the first cases that were submitted before the Permanent Court of International Justice- the Chorzow Factory Case.\(^{238}\) Its findings should be carefully observed when analysing restitution in kind before the International Court of Justice, as they represent the locus classicus for determining the definitional elements of this remedy.

2.1. **The Facts of the Case**

The Chorzow Factory Case concerned a contract that was signed between the Chancellor of the German Empire, on behalf of the Reich and a company called Bayerische Stickstoffwerke Aktiengesellschaft of Trotsberg, Bavaria. The object of the contract was the construction of a nitrate factory at Chorzow and Bayerische Stickstoffwerke Aktiengesellschaft had the obligation to manage the factory until 31 March 1941. On 24 December 1919, Oberschlesische Stickstoffwerke A.G. was formed so that the Reich could sell the factory at Chorzow to it. On 29 January 1920, Oberschlesische was registered as the owner of the property. On 1 July 1920, the Polish Courts nullified the registration and decided that the property should be registered by the Polish Treasury. Consequently, the Polish Government took possession of the land and factory at Chorzow, including property, patents and licenses. These actions of Poland represented the source of the dispute before the Permanent Court of International Justice, among other forums in which Germany sought reparation. On 10

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\(^{235}\) Barboza (n 162) 16.
\(^{236}\) Gray (n 16) 413.
\(^{237}\) Crawford (n 3) 509.
\(^{238}\) Case Concerning the Factory at Chorzow (Germany v Poland) (n 1).
November 1922, Oberschlesische submitted a claim before the Germano-Polish Mixed Arbitral Tribunal and requested the Tribunal to order that the Polish Government should restore the factory at Chorzow. The same company also submitted a claim before the Civil Court of Kattowitz.

During the time in which the above mentioned suits were pending, Germany filed an application before the Permanent Court of International Justice, through which it requested the Permanent Court to find that Poland was responsible for illegal liquidation and was, thus, liable for compensation.

The judgments of the Permanent Court in the Chorzow Factory Case have influenced the manner in which reparation and restitution in kind have been interpreted. The Permanent Court, in the Chorzow Factory Case, has analysed a multitude of issues with respect to its power to adjudge claims for reparation and to the place that restitution in kind takes in the hierarchy of remedies. These issues will be discussed in the following sections.

2.2. The Preliminary Objection: The Competence of the Court to Grant Restitution in Kind

Poland raised a preliminary objection through which it contested the power of the Permanent Court to award reparation. In this respect, Poland argued that the Court did not have the power to decide upon the means of reparation due to the fact that the parties did not include such reference within their agreement. Thus, it was Poland's argument that the Permanent Court had jurisdiction to decide solely upon the legal entitlement and not upon the issue of reparation. Poland requested the Court to find that:

“1) Article 23, paragraph 1, of the Geneva Convention, which gives the Court jurisdiction for "differences of opinion, resulting from the interpretation and the application of Articles 6 to 22", which may arise between the German Government and the Polish Government, does not contemplate differences in regard to reparations claimed for violation of those articles;

(2) the Geneva Convention has instituted special jurisdictions for claims which private persons might assert in the event of the suppression or diminution of their rights, and that the existence of these jurisdictions would affect that of the Court even if Article 23, paragraph 1, of the Geneva Convention could be construed as including differences of opinion in regard to reparations amongst those relating to the application of Articles 6 to 22; therefore, the interested Parties should themselves have recourse to the jurisdictions in question.”

One of the arguments used to back the argument put forth by Poland is that any determination of the Court “is invariably grounded in the will of the parties and that the Court is not entitled to give an extensive interpretation to treaties conferring

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239 ibid 20.
jurisdiction upon it." The manner in which the will of the parties is interpreted is, however, of interest, when determining the scope of such agreement.

One perspective regarding the above mentioned argument would be restrictive in its interpretation of the agreement of the parties regarding reparation. The conclusion in this respect would be the following: if the parties did not include an express reference to reparation in their agreement, the Court should not decide upon reparation. Should the Court ignore this and proceed to determine the reparation due, it would go beyond the scope of the agreement. Another, perhaps more relevant, perspective would be effective in its interpretation of the same agreement and would conclude that the Court has the power to determine the intention of the parties regarding reparation.

The Permanent Court in the Chorzow Factory Case preferred the rule of effectiveness and not the restrictive approach, concluding that a lack of explicit agreement with respect to remedies does not prohibit a decision on reparation. The Permanent Court stated the following in this respect:

“To say, therefore, that the clause compromissoire, while confessedly providing for the submission of questions of right and obligation, must now be restrictively interpreted as excluding pecuniary reparation, would be contrary to the fundamental conceptions by which the movement in favour of general arbitration has been characterized.”

The Court, therefore, referred to the fundamental understanding of general arbitration to conclude that in inter-state disputes the conceptions are similar, in the sense that a compromissory clause should be interpreted effectively.

The principle of effective interpretation has been applied by the Court in other cases as well. Thus, in the Borchgrave Case, the Government of the Spanish Republic requested the Court to declare that it did not have the jurisdiction to adjudge issues of responsibility because this was not included explicitly in the agreement of the parties. The Permanent Court considered that, “so free is the text from qualifying expressions, that the Agreement may be said to be characterized by its generality.” It further interpreted the agreement by observing the attitude of the parties throughout their relationship to conclude that it had jurisdiction to determine the extent of responsibility.

The restrictive interpretation of compromissory clauses has not been incorporated in the Vienna Convention on the Law of Treaties and neither has the International Court of Justice adopted such a principle in its practice. This further demonstrates that the principle of restrictive interpretation is not applicable before the Court. In the Chorzow

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240 Lauterpacht (n 42) 243.
242 Case Concerning the Factory at Chorzow (Germany v Poland) (n 32) 21.
244 ibid 164.
245 Wittich (n 241) 107.
Factory Case, the Permanent Court interpreted the agreement of the parties in an extensive manner and further explained its finding by stating that:

“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore, is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”

For these reasons, the Permanent Court of International Justice rejected the preliminary objection that was raised by Poland, and considered that there is no need for the parties to include any reference to reparation in their agreement, for the Court to have jurisdiction to determine it.

The Court has been consistent in this approach, and it has reached the same conclusion in other cases as well. However, views have been expressed with regards to restitution in kind not being a proper means of reparation before the International Court of Justice. As such, some authors consider that the power of the International Court of Justice to order restitution in kind is still not settled, due to reasons of practicality.

It can be considered that while the competence of the Court to determine reparation is clear, restitution in kind might prove to be improper in circumstances different from the ones in the Chorzow Factory Case. These issues have been observed and interpreted by the Permanent Court. They shall be provided bellow.

2.3. The Merits Stage: The Primacy of Restitution in Kind

Despite the fact that the Permanent Court of International Justice in the Chorzow Factory Case concluded in its judgment on jurisdiction that reparation is the complement of a failure to apply a convention, it did not define the scope of reparation (i.e. the means through which reparation could be achieved), at this stage.

It was at the merits stage of the case that the Court analysed the scope of reparation. The finding of the Permanent Court, regarding the manner in which reparation manifests its effects, is the obiter dictum that is most often quoted when referring to restitution in kind as a remedy of international law. The Permanent Court concluded in this respect, that:

“The essential principle contained in the actual notion of an illegal act- a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals-is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.

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246 Case Concerning the Factory at Chorzow (Germany v Poland) (n 32) 21.
247 Case of the S.S. “Wimbledon” (Britain et al v Germany) (n 1); The Mavrommatis Palestine Concessions Case (Greece v United Kingdom) (n 1).
248 Gray (n 4) 96.
249 Case Concerning the Factory at Chorzow (Germany v Poland) (n 32) 21.
Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.\(^\text{250}\)

The first issue that the Permanent Court clarified is that the scope of reparation is to restore the situation which existed before the illegal act occurred, \textit{i.e.} the \textit{status quo ante}. Secondly, the Permanent Court determined the manner in which reparation could be reached, \textit{i.e.} either through restitution in kind or, if restitution would be impossible, through monetary reparation.

This finding has caused authors to consider that “\textit{the Chorzow Factory Judgment remains the cornerstone of international claims for reparations, whether presented by states or other litigants}”\(^\text{251}\) and that “\textit{its importance reflects the fact that few other international decisions carefully examine the rationales for and principles underlying the remedies for an international obligation}”.\(^\text{252}\)

The prevalent opinion is that this finding of the Court confirms the view that restitution in kind is the primary remedy in international law and that it should be given a preference when deciding upon reparation. In this view, compensation would be a secondary remedy, in the sense that it should be granted only if restitution in kind is impossible.

Authors have interpreted the \textit{Chorzow Factory Case} as one where the Court clearly established “\textit{the principles [which] are self-evident in suggesting the clear preference for restitution as the primary remedy for violations in international law}”.\(^\text{253}\) It has also been concluded that restitution is the primary remedy in international law because “\textit{it has the potential to eliminate, legally and materially, the consequences of an unlawful act rather than providing compensation which is mainly a monetary substitute for restitution}”.\(^\text{254}\) Further arguments have been raised in the sense that restitution in kind is “\textit{the form of reparation which most closely conforms to the general principle that a responsible state is obliged to wipe out the consequences of its wrongful act by re-establishing the situation that would have existed had the act not been committed}”.\(^\text{255}\)

Authors argue that the framework of remedies before the International Court of Justice “presupposes a hierarchy of remedies, one being higher in the scale than another. It is possible to establish such a hierarchy on the basis of the importance of a remedy”.\(^\text{256}\) Thus, \textit{restitutio in integrum} would be at the top of the hierarchy,

\(^\text{250}\) Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 47.

\(^\text{251}\) Takele Soboka Bulto, \textit{The Extraterritorial Application of the Human Rights to Water in Africa} (CUP 2014) 229.


\(^\text{255}\) Crawford (n 3) 509.

\(^\text{256}\) Amerasinghe (n 111) 178.
The Permanent Court of
Practice: A Tale of Two Scopes

260 As stated earlier, the


followed by specific performance, and then damages (which includes the lesser concept of compensation) which are followed by satisfaction and, finally, the declaratory judgment.

The fact that restitution in kind is considered the primary remedy in international law is further confirmed by its inclusion in the ILC Articles on Responsibility of States for Internationally Wrongful Acts,\(^{257}\) which mirror the approach of the Permanent Court in the Chorzow Factory Case. Thus, article 34 of the ILC Articles provides that full reparation is achieved by restitution, compensation and satisfaction, either singly or in combination. Further, article 35 of the ILC Articles provides that a state that is responsible for an internationally wrongful act is under an obligation to make restitution.

Even if various views which favour the primacy of restitution in kind exist, the main issue regarding the primacy of restitution in kind is that authors also generally agree that this primacy is not reflected in practice, as states rarely request restitution in kind. Certain cases that the International Court of Justice has resolved “highlight dramatically the uncertainties as to the availability of restitution in international law.”\(^{258}\) However, to argue that restitution in kind is not available to states might be a conclusion that is not reflected in the practice of the International Court of Justice.

Referring to the obiter dictum of the Chorzow Factory Case,\(^{259}\) authors have argued that restitution in kind is available before the International Court of Justice. Some go even further, by stating that “the Permanent Court of International Justice implied that restitution is the normal form of reparation and that indemnity could only take its place if restitution is not available”.\(^{260}\) Restitution in kind has been referred to as being “the ideal form of reparation”,\(^{261}\) being the sole manner in which the status quo ante could be fully restored.

The two above mentioned perspectives relating to the availability and scope of restitution in kind as a remedy before the International Court of Justice represent an interesting compromise between theory and practice: in theory, nothing appears to prohibit restitution in kind, while in practice several hurdles appear. A strict interpretation of the Chorzow Factory Case dictum might lead to an infringement of the right of a state to elect the manner in which reparation should be granted.

As stated earlier, there is no controversy as to the primacy of restitution in kind before the International Court of Justice. As a consequence, even if it has been argued that the reasons for which the Chorzow Factory Case dictum is cited “represents an over simplification of a very complex dispute”,\(^{262}\) it is mostly recognized that restitution in

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\(^{257}\) Hereinafter referred to as the “ILC Articles”.

\(^{258}\) Gray (n 16) 413.

\(^{259}\) Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) pp. 27-28.


kind is the primary remedy in international law. However, issues of practicality still remain, as restitution in kind might not be the proper remedy in certain circumstances.

2.4. The Effects of the Judgment

A. The Subject Matter of the Case

Even if the judgment in the Chorzow Factory Case established that restitution in kind is the primary remedy in international law, the restoration of the status quo ante, as such, is in most cases impossible, and “one of the problems in establishing the primacy of restitution is the large gap between practice and theory.” Thus, the principles stated in the Chorzow Factory Case appear at times abandoned in practice.

The interpretation of the obiter dictum in the Chorzow Factory Case has been questioned, as authors have cynically noted that “Chorzow Factory is the one that has survived to be cited with great frequency, often by people who would appear never to have read it.” It has also been argued that “with the exception of territory and perhaps some discrete durable items like ships, it appears that physical restitution may not be an effective practical remedy in most cases involving armed conflict, with the consequence that tribunals must typically turn to compensation as the remedy for unlawful takings.” These views appear to be justified at times.

The conclusion that the principles expressed by the Permanent Court in the Chorzow Factory Case with respect to restitution in kind should be appreciated by examining the factual framework of each case at hand seems reasonable. The Chorzow Factory obiter dictum should not be isolated from the subsequent findings of the Permanent Court, which influence its interpretation. Thus, the dictum should be interpreted systematically when determining its effects. It should be noted at this juncture that the Permanent Court made a further reference with respect to its dictum, in the sense that it:

“Particularly applies as regards the Geneva Convention, the object of which is to provide for the maintenance of economic life in Upper Silesia on the basis of respect for the status quo. The dispossession of an industrial undertaking-the expropriation of which is prohibited by the Geneva Convention - then involves the obligation to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible.”

The Permanent Court determined, therefore, that the scope of its finding with respect to restitution in kind fully applies to the Chorzow Factory Case, and, further, to cases in which the Geneva Convention is relevant. The fact that the finding of the Permanent Court with respect to restitution in kind in the Chorzow Factory Case involved illegal liquidation should not be ignored.

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263 Alina Kaczorowska, Public International Law (Routledge 2010) 483.
264 Ibid.
265 Gray (n 4) 416.
266 Crawford (n 3) 598.
267 Merkouris (n 262) 72.
269 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 47.
Thus, restitution in kind was considered as being appropriate in cases involving illegally nationalized property—this remedy being applicable upon a finding of a commission of a wrongful act.\textsuperscript{270} To apply the same principles to legal nationalization, for example, would be without merit, due to the fact that in modern international law, the right of a state to nationalize foreign property is recognized.\textsuperscript{271}

Another case in which restitution in kind was ordered, this time by the International Court of Justice, was the \textit{Temple of Preah Vihear Case}, where the Court decided as follows:

\begin{quote}
"Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities."\textsuperscript{272}
\end{quote}

However, views have been expressed that the use of this case as a justification for making any order for restitution in kind might be open to criticism. This is due to the fact that this case involved cultural artefacts that were taken away from the Temple and the only manner in which this case could arguably have been resolved was to restore the artefacts.\textsuperscript{273}

\section*{B. Assessing Compensation}

Further, the academic value of the \textit{Chorzow Factory Case} does not solely reside in the interpretation provided with respect to restitution in kind, as it contained other relevant findings regarding compensation as a remedy of international law. In this sense, it could be considered that the \textit{obiter dictum} of the Permanent Court does not necessarily refer to the primacy of restitution in kind in international law but rather to the manner in which compensation should be assessed. Due regard should be given to the reasoning of the Permanent Court in this respect, by observing the relevant passages of its judgments. The paragraph before the \textit{dictum} of the Chorzow Factory Case refers to compensation in the following terms:

\begin{quote}
"It follows that the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. This limitation would only be admissible if the Polish Government had had the right to expropriate, and if its wrongful act consisted merely in not having paid to the two Companies the just price of what was expropriated."\textsuperscript{274}
\end{quote}

The paragraph after the \textit{dictum} also refers to the manner in which compensation would be assessed:

\begin{quote}
"The impossibility, on which the Parties are agreed, of restoring the Chorzow Factory could therefore have no other effect but that of
\end{quote}

\textsuperscript{270} Muthucumaraswamy Sornarajah, \textit{The Pursuit of Nationalized Property} (Martinus Nijhoff Publishers 1986) 143.
\textsuperscript{271} ibid.
\textsuperscript{272} \textit{Case concerning the Temple of Preah Vihear (Cambodia v Thailand)} (n 71) 37.
\textsuperscript{273} Sornarajah (n 270) 142.
\textsuperscript{274} \textit{Case Concerning the Factory at Chorzow (Germany v Poland)} (n 8) 47.
substituting payment of the value of the undertaking for restitution; it would not be in conformity either with the principles of law or with the wish of the Parties to infer from that agreement that the question of compensation must henceforth be dealt with as though an expropriation properly so called was involved.”

The interpretation of the *dictum* in the context of the judgment has caused authors to consider that the finding of the Permanent Court in the *Chorzow Factory Case* refers to the substitution of restitution in kind with compensation. Thus, the finding of the Permanent Court is viewed not as a declaration of principle, but rather as a justification for the calculation of damages. This conclusion is partially correct. The fact that the Permanent Court determined the manner in which compensation should be assessed cannot be reasonably challenged. However, the Court has also concluded that restitution in kind is the primary remedy in international law and this finding should not be ignored.

C. Hierarchy Issues

A further issue that should be taken into consideration is the effects that a restrictive approach might have with respect to the hierarchy of remedies. In this vein, if the *Chorzow Factory Case dictum* were to be interpreted restrictively, it could be concluded that a state may request compensation only after requesting restitution in kind.

This interpretation would interfere with the generally accepted view that when submitting a claim before the Court, the parties have a right of election, *i.e.* “the injured state has the right to elect the form that reparation will take” as long as the choice is not abusive, since “no tribunal will be bound by a choice which is arbitrary or inappropriate in the light of the facts.” The ILC Articles confirm that the parties have a right of election concerning the means of reparation through Article 43(2) (b) which provides that the injured state may specify in particular the form of reparation which it seeks through its claim, as such:

“Article 43 Notice of a claim by an injured State

2. The injured State may specify in particular:

(a) the conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;

(b) what form reparation should take in accordance with the provisions of part two.”

Thus, if the state demonstrates the suitability of its request for reparation, which would subsequently be decided by the Court, its choice shall be respected. In the *Chorzow Factory Case*, the German government had abandoned its original claim for restitution, its reasoning being that:

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275 ibid.
276 Lauterpacht (n 42) 316.
277 Crawford (n 3) 508.
278 ibid.
“[I]t had come to the conclusion that the Chorzow factory, in its present condition, no longer corresponded to the factory as it was before the taking over in 1922.”

This justification of the German Government was sufficient for the Court to accept its choice.

It appears, therefore, that a systemic analysis of the Chorzow Factory Case dictum would lead to a more complex interpretation than may appear at first glance, and to important conclusions about the manner in which the judgment of the Permanent Court influences the application of this remedy in other cases.

3. The Availability of Restitution in Kind

Even if the parties have the right to elect their preferred remedy, which, in their view, is the suitable form of reparation, the Court has the power to censor the requests with respect to restitution in kind. The Court can decline to award restitution in kind, not because it does not have jurisdiction to do so, but because its jurisdiction extends to analysing the merits of the request for restitution. Therefore, even if the Court has the jurisdiction to grant restitution in kind, it might consider that this remedy is unavailable to the injured state.

In analysing the claim for restitution, the Court generally considers two hypotheses: whether this remedy is materially impossible and whether the weight of the burden imposed by restitution on the responsible state would be disproportionate. These elements do not touch upon the power of the Court to award restitution in kind, but influence the availability of this remedy.

3.1. Material Impossibility

Some authors have concluded that the case of material impossibility is clear and without controversy, while others have argued that the limits of claims for restitution are not at all clear.

The condition of material impossibility implies that the responsible state would be prepared to respect a judgment of the Court through which restitution in kind is ordered but, for objective reasons, such an order would be moot due to the fact that it would be materially impossible to respect it. In such a scenario, it would be in the interest of the injured state to seek compensation and not restitution in kind for if it were to request restitution in kind that was materially impossible to obtain, the judgment of the Court would be rendered otiose.

There are few examples where either the Court or the parties have argued that restitution in kind should not be granted due to the fact that it is materially

279 Case Concerning the Factory at Chorzow (Germany v Poland) (n 32) 17.
impossible. One case in which reference has been made to material impossibility is the Chorzow Factory Case, where the Permanent Court stated that reparation could be achieved through:

“Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear.”

Material impossibility was implicitly referred to as well, by the International Court of Justice, in the Corfu Channel Case where Great Britain submitted the following:

“In the Chorzow Factory Case the Permanent Court said that if restitution in kind is not possible a sum should be paid corresponding to the value which restitution in kind would bear. Restitution in kind would have been a ship exactly like the Saumarez and a sum of money corresponding to another ship like the Saumarez is her replacement value.”

This submission refers to the Chorzow Factory Case to argue that restitution in kind should be the measure through which compensation is assessed. However, Great Britain also requested the Court to determine that the object of the dispute has ceased to exist and due to the fact that the Saumarez warship had particular characteristics, it would have been impossible for the respondent to restore the status quo ante by rebuilding such a ship in a different set of circumstances.

Another contentious case in which the Court has analysed the issue of material impossibility in passing is the Bosnian Genocide Case, where it concluded that:

“In the circumstances of this case, as the Applicant recognizes, it is inappropriate to ask the Court to find that the Respondent is under an obligation of restitutio in integrum. Insofar as restitution is not possible, as the Court stated in the case of the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), “[i]t is a well established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”

In this case, where the source of the dispute was the application of the Convention on the Prevention and Punishment of the Crime of Genocide, restitution in kind was considered as being impossible of being performed due to the fact that a fundamental right was breached and, further, that this right could not have been objectively restored. Therefore, the only manner in which reparation could have been achieved in this situation was by means of compensation. Furthermore, in the Gabčíkovo-Nagymaros Case, the Court concluded that:

“The Court, however, cannot disregard the fact that the Treaty has not been fully implemented by either party for years, and indeed that their acts of commission and omission have contributed to creating the factual

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282 Crawford (n 3) 513.
283 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 47 (emphasis added).
284 Corfu Channel Case (Great Britain v Albania) (Oral Proceedings Second Part).
285 ibid 709 (emphasis added).
286 Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (n 10) 76.
situation that now exists. Nor can it overlook that factual situation - or the practical possibilities and impossibilities to which it gives rise - when deciding on the legal requirements for the future conduct of the Parties."

Thus, the factual circumstances of each case are also given due regard by the Permanent Court and the International Court when determining that restitution in kind is impossible to achieve. As a consequence, in cases such as the Gabčíková-Nagymaros, where environmental harm had been caused, the Court concluded that it could not disregard the manner in which the parties had acted.  

Another example where material impossibility was a criterion that was observed by the Court was the Wall Case, where by means of an Advisory Opinion the Court concluded the following:

"Israel is accordingly under an obligation to return the lands, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has the obligation to compensate the persons in question for the damages suffered."

Even if not in the same terminology, it appears that the Court suggested that restitution in kind is the adequate primary form of reparation, but should material impossibility occur, compensation would be the appropriate remedy. This consideration seems to allow the responsible state to determine *motu proprio* whether it would be materially possible to respect the Court’s decision with respect to restitution in kind.

The determination that the Court made in the Wall Case, was formulated as part of an Advisory Opinion lacking the binding force of a judgment. However, "the Court’s advisory opinions have been important in terms of establishing the institutional law of the UN as an international organisation, but with rather limited exceptions they have not contributed much to the law of state responsibility. Instead, the contentious cases have informed this area of international law, the main exception being the Wall opinion." Thus, the fact that the determination of the Court was a part of an Advisory Opinion should not diminish the scope of its finding, *i.e.* that material impossibility is a criterion which can be considered when granting restitution in kind.

This tendency of states to argue that restitution in kind cannot be granted by the Court is well established. As epitomized in the case-law of the Court, discussed above, examples of such material impossibility are various and they include cases where the caused environmental harm could not be restored by means of clean up or where the object of the dispute had seized to exist, or where fundamental rights had been breached. There also have been instances where the object of the dispute had been

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287 ibid.
288 ibid.
289 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.
290 ibid 66.
291 ibid.
transferred to a *bona fide* third party and, as a consequence, the applicant had considered that restitution in kind was no longer possible.\(^{292}\)

The various manners in which material impossibility manifests itself is reflected in Article 35 of the ILC Articles which does not contain an exhaustive list in which this criterion displays its effects, but only provides that:

“*A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:*

(a) *is not materially impossible;*

It can therefore be considered that the condition regarding material impossibility remains clear and logical as it protects the interests of the injured state in seeking and obtaining reparation for wrongful acts committed against it. However, that is not the case for the second criterion, discussed in the following section.

### 3.2. The Weight of the Burden Imposed on the Responsible State

Few references regarding the condition of a proportionate burden upon the responsible state exist in the case-law of the Court. Even if the ILC Articles refer to this condition within Article 35 (b), the Commentary of the ILC Articles does not refer to any case that was decided by the Court in this respect. The mentioned commentary reads as follows:

“Specifically, restitution may not be required if it would “involve a burden out of all proportion to the benefit deriving from restitution instead of compensation”. This applies only where there is a grave disproportionality between the burden which restitution would impose on the responsible State and the benefit, which would be gained, either by the injured State or by any victim of the breach. It is thus based on considerations of equity and reasonableness, although with a preference for the position of the injured State in any case where the balancing process does not indicate a clear preference for compensation as compared with restitution.”\(^{293}\)

It could be argued that the *Chorzow Factory Case* implies the conclusion that restitution in kind should not be awarded if the burden of such granting would be “out of all proportion”. This reasoning could stem from the interpretation given to the wording that “Reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”\(^ {294}\) However, to interpret the wording of the Court in such a manner where “as far as possible” would mean that the Court referred to a

\(^{292}\) *Case Concerning Barcelona Traction Light and Power Co Ltd (Belgium v Spain) (Judgment)* [1970] ICJ Rep 1, 3.

\(^{293}\) Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 98.

\(^{294}\) *Case Concerning the Interpretation of Judgments nos. 7 and 8 Concerning the Case of the Factory at Chorzow* (n 75) 47.
burden “out of all proportion” would amount to an exaggeration, as the Court did not make any reference in this respect. Further, this wording would more accurately be interpreted as referring to the material possibility standard rather than anything else.

A question that has been answered in the affirmative when referring to the burden “out of all proportion” was whether “a perpetrating state will have to render inhabitable again a region in a neighbouring state which was badly contaminated by a nuclear accident even if the expenditure was completely out of proportion to compensation that would fully satisfy”. 295

Considering the condition regarding the burden imposed on the responsible state, the affirmative answer to this question seems reasonable. However, if it can be considered that the responsible state should have foreseen the consequences of rendering the region uninhabitable that was contaminated due to its fault, the answer is no longer clear, inasmuch as the case-law of the Court leads to the conclusion that states often foresee the consequences of their actions upon the environment.

A manner in which this criterion could be analysed would also be to compare it to the criterion related to material impossibility. While material impossibility is an objective standard, the burden out of proportion is a more subjective one. Thus, what is materially impossible for a state would be the same for any other state while a burden might prove to have a certain weight for a state and a different weight for another state, depending on several factors such as economic, political or social ones.

Such an interpretation is in accordance with the Commentary to the ILC Articles which mentions that the application of Article 35 (b) is based on considerations of equity and reasonableness. 296 Authors have confirmed this view when concluding that establishing the weight of the burden is a subjective act, because proportionality should be respected when awarding restitution in kind. 297

Conclusions are yet to be drawn about the condition regarding the proportionality of the burden imposed on the responsible state, as this condition has never yet occurred in practice.

4. Types of Restitution in Kind

There is less controversy when classifying restitution in kind. Authors have stated that the Court is flexible, as it gives the state parties the ‘freedom to determine the specific modality for effecting restitution’, 298 and that “it is generally recognized that it is

296 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 98.
297 “In cases of restitution, not involving the return of persons, property, or territory to the injured State the notion of reverting the status quo ante has to be applied having regard to the respective rights and competences of the States concerned. This may be the case, for example, where what is involved is a procedural obligation conditioning the exercise of the substantive powers of the state”. See Crawford (n 3) 515.
298 Crawford (n 3) 515.
the injured state which has the choice as to the form of reparation, and, in particular, as to whether to request restitution”.  

Thus, it is generally accepted that the vast majority of the claims of states can be included, up to a certain degree, into one of the two categories of restitution in kind: material restitution and juridical restitution. For the sake of clarity, it is worth mentioning that juridical restitution has also been referred to as legal restitution by certain authors.

Material restitution may include “return of territory, persons or property, or the reversal of some juridical act, or a combination of them”. Juridical restitution often implies the modification of a legal situation. This modification could be implemented through “a declaration that an offending treaty or act of the executive judiciary or legislature is invalid”.

5. Conclusion

It appears that the inconsistencies in the interpretation of restitution in kind originate from a wide application of the findings and conclusions of the Permanent Court in the Chorzow Factory Case to disputes which do not contain similar circumstances. Such application of the judgment of the Permanent Court would rather complicate than resolve the controversies regarding the interpretation of restitution in kind as a remedy of international law.

As such, the obiter dictum of the Permanent Court in the Chorzow Factory Case should be applied in cases involving illegal expropriation, where restitution in kind could be indeed regarded as a primary remedy. Consequently, the dictum should not be applied generally, in any given dispute submitted before the International Court of Justice.

Another relevant conclusion with respect to this remedy is that while the competence of the Court to grant restitution in kind is less disputed, other topics that refer to restitution in kind, such as its primacy or its limitations remain to be further developed by the practice of the Court or by institutions such as the International Law Commission. Gray argues that the latter should not be “unduly dogmatic or over ambitious in its quest for universal rules in its draft articles.” Even if this conclusion might be too drastic, it can be reasonably concluded that the ILC Articles seem too rigid at times, especially with respect to the general prioritisation of restitution in kind as a remedy of international law.

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300 Crawford (n 3) 511; Eric De Brabandere, Investment Treaty Arbitration as Public International Law: Procedural Aspects and Implications (CUP 2014) 180.

301 Gray (n 299) 590.

302 Gray (n 4) 99.

303 Crawford (n 3) 512.

304 Kaczorowska (n 263) 483.

305 Gray (n 16) 413.
Chapter 5. Compensation

1. Introduction

The fact that the Court has the power to order compensation as a remedy has been clarified and laid down, as a matter of principle, by the International Court of Justice in the Gabčíkovo-Nagymaros Case:306

“it is a well-established rule of international law that an injured state is entitled to obtain compensation from the state which has committed an international wrong for the damage caused by it.”307

Compensation has been considered the most frequent form of reparation.308 The Commentary to the ILC Articles further provides in this respect that “of the various forms of reparation, compensation is perhaps the most commonly sought in international practice”.309 The power of the Court to give judgment regarding compensation has been questioned in a few cases310 but the general view is that “apart from special agreement cases, the power of the Court to award damages has gone unquestioned.”311

However, in practice, compensation has rarely been awarded by the Permanent Court of International Justice and the International Court of Justice. Authors have argued in this respect that “although pecuniary or monetary compensation is the most commonly sought form of remedy in international practice, it has not often featured before the ICJ, where it has made an appearance in a handful of cases.”312

Thus, although compensation was requested in approximately one third of all the cases that were decided by the Permanent Court of International Justice,313 it was awarded only once – in the Wimbledon Case.314 Further, only two cases that were adjudicated by the Court offer any guidance on the characteristics of compensation as a remedy: the Corfu Channel Case315 and the Diallo Case.316 That the Court has granted compensation in only approximately 1% of its case load, demonstrates its reserved attitude towards this remedy. Significantly, the Diallo Case is the only case where the International Court of Justice has issued an award through which it determined the amount of compensation without the aid of expert opinions. On the other hand, in the Corfu Channel Case, the Court relied on expert opinions for the determination of

306 Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (n 10).
307 ibid 81.
308 Kaczorowska (n 263) 483.
309 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 99.
310 Case Concerning the Factory at Chorzow (Germany v Poland) (n 32); The Mavrommatis Jerusalem Concessions (Greece v United Kingdom) (n 69); Corfu Channel Case (United Kingdom v Albania) (n 14) 17.
311 Brownlie (n 39) 558.
312 Quintana (n 36) 1135.
313 Crawford (n 3) 516.
314 Case of the S.S. “Wimbledon” (Britain et al v Germany) (n 1) 33.
315 Corfu Channel Case (Great Britain v Albania) (n 9) 244.
316 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18).
compensation. This has led certain authors to conclude that “the Court is rather averse to awarding compensation.”

It also appears that the Court does not yet have any clear methodology for analysing and assessing compensation claims, even though the Chorzow Factory Case obiter dictum has been interpreted as being the locus classicus for determining the amount of compensation due, i.e., the value that restitution in kind would bear. Indeed, one of the most difficult tasks before the Court is assessing the amount of compensation due.

2. The Definition and Function of Compensation

2.1. The Definition of Compensation

The ILC Articles do not provide a definition of compensation. However, a combined reading of Article 31, Article 34 and Article 36 of the ILC Articles provides sufficient insight to determine the characteristics of compensation.

The ILC Articles provide that compensation is a form of reparation, it being included within the scope of article 34, along with restitution and satisfaction. Further, Article 36 of the ILC Articles describes compensation as being the remedy that covers financially assessable damages, for which restitution cannot be granted. Expressis verbis, the role of article 36 appears to determine the scope rather than the definition of compensation. However, article 31 further clarifies the definition of compensation when describing “damages” as part of the wider notion of “reparation”.

The opinion that was provided in the Lusitania Case contributed to the interpretation of compensation as the Arbitral Tribunal concluded that compensation represents “reparation for loss suffered; a judicially ascertained compensation for wrong. The remedy should be commensurate with the loss, so that the injured party may be made whole.”

This definition was confirmed by the Permanent Court of International Justice in the Chorzow Factory Case, when it held that damages represent a form of reparation for wrongs:

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317 Crawford (n 3) 518
319 “Article 34 Forms of Reparation: Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.”
320 “Article 36 Compensation
1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”
321 “Article 31. Reparation
1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”
322 Opinion in the Lusitania Cases (United States/Germany) (1923) 7 RIAA 32.
323 The Lusitania Case (n 322) is often referred to by the Commentary to the ILC Articles.
324 Opinion in the Lusitania Cases (United States/Germany) (n 322) 33.
“Reparation must, as far as possible wipe out all the consequences of the illegal act and re-establish the situation which could in all probability have existed if the act had not been committed. Restitution in kind, or if this is not possible, payment of a sum corresponding to the value which restitution in kind would bear; the award if need be of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.”\(^{325}\)

Compensation has been defined as being “an appropriate and counterbalancing payment to somebody for some sort of loss or detriment”.\(^{326}\) Authors refer to the ILC Articles on Responsibility of States, when defining compensation as being “the offset of damage or material injury suffered by the state”.\(^{327}\) Scholars have also opined that “we will be used to describe reparation in the narrow sense of the payment of money in the measure of the wrong done.”\(^{328}\) Interpreting the above mentioned provisions, compensation could be succinctly defined as follows:

*Compensation is a form of reparation through which the injured state recovers the damages it suffered from the state that committed an international wrongful act.*

The above characteristics of compensation, provided by the Court and the doctrine, are accurate representations of this remedy. However, perhaps the definition that does most justice to the notion of compensation is the one provided by Wittich:

“\[^{329}\]Compensation denotes a form of reparation in the law of State responsibility apart from restitution and satisfaction (Reparations). It means the payment of damages as a remedy for making good the damage caused by a previous violation of an international obligation (Remedies). In this sense, compensation is also called reparation by equivalent or indemnification.”\(^{329}\)

### 2.2. Compensation and Damages

The differences between the notion of “damages” and the notion of “compensation” should be addressed, as these two notions interact with and influence one another. Authors have concluded in this sense that, traditionally, damages were defined in international law, as:

“\[^{330}\]the legal remedy in cases involving an illegal act, including acts contrary to international law. Damages denote the duty to pay for the detrimental consequences that the victim of an unlawful act has suffered.”\(^{330}\)

325 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 47.
326 Wittich (n 318) 1.
327 Quintana (n 36) 1147.
328 Brownlie (n 39) 567.
329 Wittich (n 318) 2.
Thus, for damages to be awarded, the existence of an illegal act that was contrary to international law was necessary. Compensation, however, rests upon a finding of “a lawful exercise by state of their sovereign rights, especially the right to expropriate.”

Ripinsky argues in this respect that “the rigid distinction between compensation and damages has been eroded by the International Law Commission” in the sense that “damage denotes loss, damnum, usually a financially quantification of physical or economical injury or damage or of other consequences of such a breach,” and the term compensation is used when considering reparation for injuries caused by both legal and illegal acts.

However, even if the two notions are often confused due to the fact that the definition of compensation is “very broad and has different meanings”, the Permanent Court of International Justice and the International Court of Justice have not adopted the same interpretation with respect to “compensation” and “damages”, as they are not one and the same. It might be more accurate to describe the relationship between the two concepts as one of cause and effect in the sense that damages represent the cause of compensation. Without damages (of either material or non-material nature), no compensation can be granted by the Court, satisfaction being the proper remedy in such a situation.

2.3. The Function of Compensation

The definition of compensation predicts the scope of this remedy, as reparatory and not punitive in function. This distinction is relevant because the term “punitive” implies a punishment “for the defendant acting with recklessness, malice or deceit, or otherwise reprehensibly.” The conclusion that compensation does not have a punitive role is also derived from the case-law of the Permanent Court of International Justice and the International Court of Justice. The interpretation that the Permanent Court provided in the Chorzow Factory obiter dictum with respect to reparation supports this conclusion.

The Permanent Court in Chorzow Factory concluded that “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which could in all probability have existed if the act had not been committed.” The circumstance that compensation has a reparatory nature is confirmed by the Commentary to the ILC Articles which provides the following:

“In other words, the function of article 36 is purely compensatory, as its title indicates. Compensation corresponds to the financially assessable damage suffered by the injured State or its nationals. It is not concerned to

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331 ibid.
332 ibid.
333 Brownlie (n 39) 567.
334 Ripinsky and Williams (n 330) 5.
335 Wittich (n 318) 1.
336 Crawford (n 3) 523.
337 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 47.
It is important to note that there is “not a single case in contemporary practice in which an international court or tribunal has awarded punitive damages”.

3. Types of Compensation

Compensation is among the broadest remedies under international law. Whether compensation falls within a certain category is relevant and, at the same time, difficult to determine. Brownlie illustrates the difficulty with confining compensation to a determined category when he writes that “it is not easy to distinguish between pecuniary satisfaction and compensation in the case of breaches of duty not resulting in death, personal injury or damage to or loss of property”.

The determination of the types of compensation takes place through both objective and subjective criteria. As mentioned above, compensation represents the mechanism through which states recover damages. Article 31 of the ILC Articles determines that there exist two types of damages in international law: i) material damages and ii) moral damages. Thus, the assessment and interpretation of compensation is two pronged, i.e. i) compensation for material damages and ii) compensation for moral damages.

Another categorization of compensation rests upon the nature of the injury caused to the state. In this inquiry, there are two types of injuries that are caused to states: i) direct injury and ii) indirect injury. From this perspective, the assessment and interpretation of compensation depends on the kind of injury sustained, in addition to the analysis on material or moral damages. Authors have argued in this respect that “in standard cases a state protects its own legal interests in seeking reparation for damage – material or otherwise – suffered by itself or its citizens”.

3.1. Compensation for Material Damages

The first characteristic of material damages is that they are considered as being financially assessable. Thus, the Commentary to the ILC Articles provides as follows in this respect:

“‘Material’ damage here refers to damage to property or other interests of the State and its nationals which is assessable in financial terms.”

The Commentary to the ILC Articles further clarifies the notion of “financially assessable” as such:

“The qualification “financially assessable” is intended to exclude compensation for what is sometimes referred to as “moral damage” to a

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338 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 99.
342 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 91.
State, i.e. the affront or injury caused by a violation of rights not associated with actual damage to property or persons: this is the subject matter of satisfaction, dealt with in article 37. 

A second characteristic of material damages is that they should be substantiated and are subject to valuation rules. Therefore, the Court cannot assess ex officio the amount of compensation should the applicant not submit any arguments for a certain determined amount.

A. The Corfu Channel Case

The first case brought before the Court represents one of the few instances where the Court decided upon the issue of compensation for material damages and addressed its characteristics.

The Corfu Channel Case arose from incidents that occurred as a result of two British destroyers striking mines in Albanian waters and suffering material damages, including serious loss of life. The Court rendered two judgments with respect to this case, the first regarding the merits of the case and a subsequent judgment related to compensation.

In its first judgment, the Court concluded that it had jurisdiction to assess the amount of compensation, but also stated that it could not do so through the same judgment. This was because the Albanian Government had not yet stated which items, if any, of the various sums claimed, it contested, and the United Kingdom Government had not submitted its related evidence.

Great Britain requested the Court to determine through its second judgment that Albania should pay compensation for the following heads of claim:

“in respect of H.M.S. Saumarez ................... £ 700,087
in respect of H.M.S. Volage.......................... £ 93,812
in respect of deaths
and injuries of naval personnel................. £ 50,048.”

As can be inferred from the above, Great Britain requested compensation for damage to property (the two war ships) and compensation for the damage caused to its nationals (the naval personnel). Thus, all three heads of claim that were submitted by Great Britain represented material damages.

The damages that were sought by Great Britain were financially assessable, as is demonstrated by the fact that the applicant had substantiated its claims. Further, this case is one of the rare disputes in the history of the International Court of Justice in

343 ibid 92.
345 Corfu Channel Case (Great Britain v Albania) (n 9) 4.
346 Corfu Channel Case (Great Britain v Albania) (n 9) 244, 7.
347 Even if the Corfu Channel Case was the first case on the docket of the International Court of Justice, its case-law regarding the appointment of experts for evaluating compensation remains exceptional.
which experts were employed for the verification of the valuation that was submitted by the applicant, as provided by article 50 of the Statue of the Court.\textsuperscript{348}

After assessing the reports of experts in this field, the Court concluded with respect to the Saumarez ship, that “the amount of compensation claimed by the United Kingdom Government has been justified”.\textsuperscript{349} The Court also found with respect to the Volage ship, that “the figures submitted by the United Kingdom Government are reasonable and that its claim is well founded “.\textsuperscript{350}

Considering the deaths and injuries of the naval personnel, Great Britain requested compensation related to “the cost of pensions and other grants made by it to victims or their dependents, and for costs of administration, medical treatment, etc.”\textsuperscript{351} The Court concluded that “[t]his expenditure has been proved to the satisfaction of the Court” .\textsuperscript{352}

Even if the Court did not explicitly address the characteristics of compensation for material damages, it can be concluded that the Court indirectly considered that, in this case, the damages that were allegedly caused must be substantiated. The determination that experts should be used in this respect and the further examination of their reports leads to the conclusion that the Court considers the amounts requested as compensation a sensitive issue which should be carefully approached and described by the party requesting for it, so that the judgment of the Court is accurate in this respect.

“Some authors consider the Corfu Channel case to be ‘prophetic’ in the Court’s history”\textsuperscript{353} due to its decision on responsibility. However, in terms of granting compensation “the Corfu Channel Case represents making the Corfu the only ICJ decision to award a liquidated sum of money to an Applicant State”, \textsuperscript{354} at least until the judgment in the Diallo Case, which represents the second decision in the case-law of the Court through which a determined amount of money was granted.

\textbf{B. The Diallo Case}

The second case in which the Court analysed material damages was the more recent Diallo Case. This case was initiated by Guinea, which instituted proceedings against the Democratic Republic of the Congo for breaching the protections granted by both the International Covenant on Civil and Political Rights and the African Charter on Human and People’s Rights in its actions against Ahmadou Sadio Diallo, a Guinean national.

Mr. Diallo had set up two companies in the Democratic Republic of Congo. Due to the fact that the state owed a large sum of money to his companies, he sued the state to

\begin{footnotes}
\item[348] “Article 50
\textit{The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.”}
\item[349] Corfu Channel Case (Great Britain v Albania) (n 9) 9.
\item[350] ibid.
\item[351] ibid 10.
\item[352] ibid.
\end{footnotes}
recover the debt. As a response, the state arrested Mr. Diallo in 1988. Mr. Diallo was again arrested in 1995 and 1996 with the purpose of the final expulsion from the Democratic Republic of the Congo which took place on the 31st of January 1996.

As a consequence, Guinea filed a claim with the Registry of the International Court of Justice, claiming that the Democratic Republic of the Congo has breached the rights of Mr. Diallo guaranteed by the above mentioned conventions. Thus, Guinea claimed 250,000 USD for moral damages, 6,430,148 USD for loss of earnings, 550,000 USD for material damages, 4,360,000 USD for loss of potential earnings and, finally, 500,000 USD for the costs of proceedings.

The Democratic Republic of the Congo argued that 30,000 USD were due for the non-pecuniary injuries caused to Mr. Diallo and that no compensation for material damages was owed, due to the fact that Guinea did not substantiate its claims by evidence.

Given the above mentioned circumstances, Guinea submitted three heads of claim for material damages:

“Alleged loss of personal property;

Alleged loss of professional remuneration (referred to by Guinea as “loss of earnings”) during Mr. Diallo’s detentions and after his expulsion;

And alleged deprivation of “potential earnings.””

Even though the applicant included these heads of claim under compensation for material damages, it failed to substantiate its claims. The Court rejected most of Guinea’s amounts, considering its lack of substantiation.

With respect to the alleged loss of personal property, three categories were considered by the Court: furnishings of Mr. Diallo’s apartment, certain high-value items alleged to have been in Mr. Diallo’s apartment and his assets in bank accounts.

The Court first analysed the inventory that was submitted by Guinea and concluded that “there is uncertainty about what happened to the property listed on the inventory”. As a consequence, the Court found that the evidence that was submitted by Guinea had failed to prove the extent of the loss suffered by Mr. Diallo. Further, the Court found that no evidence had been provided with respect to the valuation of the items that were allegedly lost by Mr. Diallo. For these reasons, Guinea’s claim was rejected. With respect to the allegation regarding the loss of several valuable items that were allegedly located in the apartment, the Court concluded that Guinea brought no evidence regarding the location of the said items. Thus, it held as follows:

“there are no records of purchase, even as to items allegedly purchased from well-known establishments selling high-value luxury items that can be

355 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18) 332.
356 ibid 345.
357 ibid 337.
expected to keep records of sales, and which are located outside the territory of the DRC, thus making them accessible to Mr. Diallo.”

It further held in this respect that:

“Guinea has put forward no evidence whatsoever that Mr. Diallo owned these items at the time of his expulsion, that they were in his apartment if he did own them, or that they were lost as a result of his treatment by the DRC.”

Due to the fact that Guinea did not allocate any value to the items that were allegedly lost, the Court also rejected this claim. Finally, regarding the assets alleged to have been contained in bank accounts, the Court found that Guinea had failed to provide any evidence in this respect as well. Guinea offered no details regarding the total sum held in the bank, the names in which the accounts were held or the causal link between the loss of the assets and the circumstance of Mr. Diallo leaving the Democratic Republic of Congo. Due to these factors, the Court rejected this claim as well.

Regarding the head of claim related to the loss of remuneration of Mr. Diallo, the Court concluded that Guinea did not properly address the evidence related to the total amount of USD 80,000 claimed, as no bank account or tax records were provided in support of this claim. The Court also concluded that “there is evidence suggesting that Mr. Diallo was not receiving US$25,000 per month in remuneration from the two companies prior to his detentions.” As a consequence, the Court did not grant any compensation for this head of claim either.

The analysis and questions that were raised by the Court in this case provide an insight into the manner in which evidence regarding compensation for material damage should be presented by the parties before the Court. Authors have argued in this respect that “the quantum of compensation awarded by the International Court is low in the light of the fact that Guinea had sought US $ 7,310,148. But this is understandable given Guinea’s complete failure to substantiate the alleged loss.”

The Diallo Case is one example in which the Court did not grant the amounts that were requested by the applicant state due to the fact that they were not adequately substantiated. However, its relevance for interpreting compensation cannot be denied, as this case is only the second case in which the Court has rendered a judgment in which it decided on the amount of compensation. Other cases have been resolved by the judicial body, in which compensation was part of the requested reparation, but the Court did not enter into its analysis due to the lack of substantiation. One such example is the Chorzow Factory Case, in which the Permanent Court did not analyse the quantum of compensation because “of the insufficiency of the data presented by the parties”.

C. Dispute regarding Navigational and Related Rights

The dispute between Nicaragua and Costa Rica is also relevant for the analysis of

358 ibid.
359 ibid.
360 ibid 340.
361 Crawford (n 3) 520-521.
362 Brownlie (n 39) 478.
compensation for material loss. The memorial of Costa Rica through which compensation was requested in a purely declaratory manner, is worth noting due to the manner in which this remedy was requested:

“In particular, compensation should include, inter alia:

(a) the loss caused to Costa Rican vessels arising from the so-called "departure clearance certificate" imposed on Costa Rican vessels navigating the San Juan River;

(b) the loss caused to Costa Rica for the charge of tourism cards, transit permits and immigration fees imposed on Costa Rican vessels navigating the San Juan River;

(c) the loss caused to Costa Rica for the charge of a consular visa to any Costa Rican citizen seeking to navigate the San Juan River;

(d) the losses caused to Costa Rica for the further expenses incurred by Costa Rican citizens, the consequential losses in their activities, as well as all other material and moral damage suffered by them;

(e) the expenses and costs incurred by Costa Rica as a result of Nicaragua's violations causing Costa Rica to be unable to resupply the police posts along the Costa Rican bank through the San Juan River;

(f) interest at prevailing rates from the time the claim arose until payment of the judgment;

and

(g) such other relief as the Court may deem appropriate.”363

The applicant in this case submitted the above mentioned request, further arguing that the Court has the power to declare that compensation is due, in situations in which the amounts are not determined by the party claiming this remedy. To substantiate this argument, Costa Rica referred to the previous practice of the Court, mentioning the Fisheries Jurisdiction Case, in which the Court concluded as follows in this respect:

“It is possible to request a general declaration establishing the principle that compensation is due, provided the claimant asks the Court to receive evidence and to determine, in a subsequent phase of the same proceedings, the amount of damage to be assessed.”364

However, the Court rejected the claims for compensation submitted by Costa Rica with the same reasoning as the one provided in the Diallo Case, namely that the request for compensation was unsubstantiated:

364 Fisheries Jurisdiction Case (Germany v Iceland) (Merits) [1974] ICJ Rep 175, 204.
“With regard to the claim for compensation, the Court notes that Costa Rica has not submitted any evidence capable of demonstrating that it has suffered a financially assessable injury.”

Thus, both the Permanent Court of International Justice and the International Court of Justice have given judgments in cases where the amount of compensation for material damages was not determined due to the fact that the parties did not substantiate the quantum claimed by them. These judgments rejected such claims, and rightly so.

Thus, it can be concluded that the International Court, in situations in which the applicant state requests that the declaratory judgment be issued with respect to the availability of compensation as a remedy, should provide such a judgment. The conclusion that the Court has reached with respect to this circumstance could be that the availability of compensation is conditioned on the substantiation of the claim, provided by the applicant.

However, this conclusion is perhaps too rigid, due to the fact that the issue of substantiating claims is relevant for the quantum of compensation and not for its availability as a remedy in a particular case. Therefore, in situations in which the Court receives an application through which compensation is requested in a determined but unsubstantiated amount (such as the Diallo Case) the Court should reject such a request. However, in situations in which the Court receives an application through which the applicant requests a declaration that compensation is due (such as the Dispute regarding Navigational and Related Rights) the Court should not reject this claim for not being substantiated, and should further issue a judgment through which it declares that compensation is due.

**3.2. Compensation for Moral Damages**

Compensation for moral damages is a remedy that is available before the Court. This position is generally accepted, as “scholars have followed the case law to find a general right to moral damage as a principle of international law”. The Commentary to the ILC Articles defines moral damages as:

“‘Moral’ damage includes such items as individual pain and suffering, loss of loved ones or personal affront associated with an intrusion on one’s home or private life.”

In the Lusitania Case, moral damages were described as follows:

“Mental suffering, injury to applicant’s feelings, humiliation, shame, degradation, loss of social position, or injury to his credit or reputation.”

The notion of “moral damages” is also referred to as non-material damages, in the sense that it does not affect property or other interests of the state or its nationals. Thus,
the first characteristic of moral damage is that it is more abstract than material damage and, as a consequence, cannot be financially assessed. Another characteristic of moral damage is that there is no condition of substantiation for it to be granted by the Court. Therefore, should the applicant state not submit any clarification or evidence with respect to the quantum of moral damages, the Court has the power to determine the amount ex officio.

D. The Diallo Case

The Diallo Case represents the most recent case in which the Court has rendered a judgment in which it interpreted the notion of moral damage. In this case, the applicant state argued the following:

“Mr. Diallo suffered moral and mental harm, including emotional pain, suffering and shock, as well as the loss of his position in society and injury to his reputation as a result of his arrests, detentions and expulsion by the DRC.”

It is important to stress that the applicant did not adduce any evidence in this respect. However, the Court concluded the following:

“In the view of the Court, non-material injury can be established even without specific evidence. In the case of Mr. Diallo, the fact that he suffered non-material injury is an inevitable consequence of the wrongful acts of the DRC already ascertained by the Court.”

This was the sole instance in which the Court held that a state does not have to substantiate a claim for moral damages. This finding is reasonable in light of the fact that moral damages are not financially assessable. However, the Court does not have the power to determine the amount of moral damages without justification. In this case, with respect to quantification of compensation for moral damages, the Court concluded the following:

“Quantification of compensation for non-material injury necessarily rests on equitable considerations. As the umpire noted in the Lusitania cases, non-material injuries “are very real, and the mere fact that they are difficult to measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated therefore as compensatory damages”.”

Due to the above mentioned arguments, the Court awarded the amount of USD 85,000 to Guinea, based on equity and reasonableness without providing any further explanation for the way it calculated this amount. Authors have considered this circumstance regrettable. The Court however, performed a thorough analysis of the practice of international courts and tribunals to determine the amount that was due to

370 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18) 13.
371 ibid.
372 ibid.
373 Crawford (n 3) 521.
Guinea. Thus, even if non-material damages are difficult to assess this type of remedy exists in international law, and it is applied as such.

It is important to mention at this point that non-material damages can take both the form of compensation and of satisfaction. In this respect it has been argued, and rightly so, that it is important to “distinguish between a monetary payment for symbolic damages as a form of satisfaction and the payment of compensation”.375

The difference between moral damages as satisfaction and moral damages as compensation should be analysed through the perspective of the ILC Articles which describe the difference between non-material damages to a state and non-material damages to individuals. The Commentary to the ILC Articles provides the following, in this respect:

“The qualification “financially assessable” is intended to exclude compensation for what is sometimes referred to as “moral damage” to a State, i.e. the affront or injury caused by a violation of rights not associated with actual damage to property or persons: this is the subject matter of satisfaction, dealt with in article 37.”376

Thus, the ILC Articles on State Responsibility should be interpreted as follows:

- should non-material damage occur to states, the remedy that should be granted is satisfaction;
- should non-material damage occur to individuals, the remedy that should be granted is pecuniary compensation.377

It is relevant to note in this respect that the manner in which these two types of damages are assessed has not yet been addressed by the Court as such. However, what can be concluded is that, in light of the Diallo Case, equity would govern the latter.

3.3. Compensation for Direct Injury

The notion of direct injury refers to damages which are caused to the state directly and not to its nationals. Therefore, in cases of direct injury, the state does not use the mechanism of diplomatic protection, but it stands before the Court representing its own rights. In this case, the injury for which the state seeks reparation was originally caused to the state, and not to its nationals. Authors have concluded the following with respect to this type of compensation:

“In cases of direct State wrongs, the measure of damages must relate to the actual loss suffered by the applicant State itself. In the Corfu Channel Case, the ICJ affirmed this rule upon establishing Albania’s responsibility.”378

374 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18).
375 Quintana (n 36) 1147.
376 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 99.
Opinions have been expressed regarding a “basic disagreement as to whether damages are a proper remedy for tribunals to award in cases of direct injury to a state”. 379 Thus, the question as to whether a state may “recover substantial reparation where it has been damaged in its own sovereignty or property, as distinct from the persons or property of its nationals, by the agents of another state?” 380 is relevant from the perspective of the scope of compensation for direct injury. In this respect, the issue is whether compensation should be awarded by the Court in cases other than those which involve diplomatic protection. 381

Some authors consider that compensation should be granted to states for direct injury even if no material damage has occurred. Thus, it has been argued that “cases may well arise in which a state is entitled to damages as the result of a breach of treaty though it has not suffered any actual material damage”. 382 Other authors criticize this approach, and consider that “a bare violation of sovereignty does not give rise to a right to compensation”. 383

The latter view represents a more realistic interpretation of compensation because if the injured state does not suffer any material damages, it should not be compensated for it. The function of compensation is to compensate for the loss that was suffered by the injured state and should the Court grant any amount which would be outside the function of compensation, it would be imposing a penalty upon the responsible state. 384 The only category in which such compensation for damages other than material damages is available, would be for moral damages.

The Court has not discussed compensation for direct injury to states in too many cases, even as states have attempted to pursue such heads of claim. It has been argued in this respect that “many clear instances of the payment of compensation for injury to a state in the absence of injury to its nationals” 385 do not exist, in which compensation was granted for a direct injury to a state. One example in which remedies for direct injury to states was addressed properly was the Corfu Channel Case in which the Court determined the following:

“Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.” 386

Therefore, an appropriate remedy for direct injury to states would indeed be satisfaction, both in monetary and non-monetary forms. 387 Authors confirm this view when arguing that:

379 Gray (n 4) 85.
380 ibid 86.
381 Wittich (n 318) 22-24.
382 Gray (n 4) 85.
383 ibid 86.
385 Gray (n 4) 87.
386 Corfu Channel Case (Great Britain v Albania) (n 9) 4, 36.
387 See Chapter 6.
“Accordingly where a sum of money is awarded as reparation for financially non-assessable damage, one cannot speak of compensation within the meaning of Article 36 of the Articles on State Responsibility. Such remedies must be deemed to reside under Article 37 concerning ‘satisfaction’.”

3.4. Compensation for Indirect Injury

As mentioned, the applicant state can request compensation in two situations: i) where it suffered a direct injury, i.e. where the original damages were caused to the state itself and ii) where it suffered an indirect injury, i.e. where the original damages were caused to its nationals.

When analysing the first situation, one argument that should be considered is that “damages are awarded not for the loss suffered by individuals but for the breach of an international obligation that rests on the defendant State, i.e. its own actual or imputed wrongful act”.

The Mavrommatis Case provides an accurate interpretation of the scope of diplomatic protection:

“By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own right – its right to ensure, in the person of its subjects, respect for the rules of international law.”

Furthermore, the Articles on Diplomatic Protection drafted by the International Law Commission provide the following with respect to the scope of notion:

“Article 1 Definition and scope

For the purposes of the present draft articles, diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.”

Thus, in the cases in which compensation for indirect injury is requested, the state is restricted in claiming “damages for wrongs it itself has suffered, and individuals are left to seek damages according to the defendant State’s legal system”.

4. Assessing Compensation

Article 36(2) of the Commentary to the ILC Articles provides the following:

“2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”

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388 Martha (n 344) 431.
389 Fiedler (n 378) 69.
390 The Mavrommatis Palestine Concessions Case (Greece v United Kingdom) (n 1) 12.
392 Fiedler (n 378) 69.
The Court has yet to determine a coherent methodology of quantifying compensation. One of the factors that has contributed to this uncertainty is that the Court has issued a judgment in which compensation was granted, in only two cases: the Corfu Channel Case and the Diallo Case. However the assessment of quantification of damages should take into consideration these cases, by way of example.\(^{393}\)

When analysing assessment and quantification of damages, two main categories are relevant: i) liquidated damages and ii) unliquidated damages.

The first category represents a situation in which the parties to the dispute have foreseen and quantified the damages through the governing instrument of the dispute, i.e. before the breach occurred. In this situation, the Court does not need to perform any assessment but is just required to acknowledge the agreement of the parties with respect to the compensation.

The second category represents the circumstance in which the parties to the dispute did not quantify the damages through the governing instrument. In this case, authors have opined that irrespective of the nature of the damages (be it material or moral), the process of quantifying damages involves three stages:

“First, with regard to each head of damage invoked it will be necessary to consider if an injury is established.

Second, if the answer to this question is affirmative, one must then move to ascertain whether and to what extent the injury established by the applicant is the consequence of wrongful conduct by Respondent, taking into account whether there is a sufficiently direct and certain causal nexus between the wrongful act and the injury suffered by the Applicant.

Third, if the existence of an injury and causation is established, the Court will then determine the valuation.”\(^{394}\)

The notion of “valuation” implies the attribution of value to a certain concept. With respect to the valuation process, authors have concluded that:

“the attribution of values to the objects of the attribution and the constitution of axiomatic circumstances can be performed by reference to certain explicit or implicit principles or can be completely unprincipled. In the former case the attribution and predication of values or – to use an expression embracing both – valuation is axiomatical substantiated (or founded) while in the latter case is axiomatical arbitrary.”\(^{395}\)

However, even if general conceptual frameworks could be determined when assessing the quantification of damages, the Court has not yet established a clear mechanism or

\(^{393}\) Crawford (n 3) 519: “The appropriate heads of compensable damage and the principles of assessment to be applied in quantification will vary depending on the primary obligation in question and the facts of the case. While these issues cannot be comprehensively addressed, the two awards of compensation by the International Court can be considered by way of example.”

\(^{394}\) Martha (n 344) 421.

5. Conclusion

It appears that compensation does not imply difficulties when interpreted in abstracto, as a concept. Its definition, function, categories and means of assessment are without many controversies. However, the specificities of each case and the fact that the International Court of Justice does not yet have a substantial body of case-law in this respect prove that compensation is yet to be properly addressed. This can best be summed up as follows:

“While the general principles, rationale and standards of compensation do not raise as many difficulties as in the Cold War era, material differences in the factual circumstances of each case corresponding to rule complexity make the practical application of compensation rules challenging.”

The recent case-law of the International Court of Justice and the manner in which states frame their requests for this remedy, both with respect to compensation for material and non-material damages, lead to the conclusion that further clarifications regarding it shall be made available by the Court in its future case-law.

Chapter 6. Satisfaction

1. Introduction

The availability of satisfaction before the Court is undisputed. As such, state parties to disputes which were submitted before the Court requested this remedy in several cases and the Court further granted satisfaction throughout its case-law. Authors confirm this view, and conclude that “the Court has established a practice of awarding declaratory judgments as reparation in the form of satisfaction,” and that “satisfaction is indeed the normal remedy for moral damages suffered by a State in the context of inter-state disputes.” However, even if satisfaction is available before the Court, the manner in which it is interpreted is controversial in certain respects.

The decision in the Rainbow Warrior Case is relevant, as this judgment represents an important example in which satisfaction as a remedy was analysed by an international tribunal in an inter-state dispute. The Arbitral Tribunal concluded the following with respect to the applicability of satisfaction:

“There is a long established practice of States and International Courts and Tribunals of using satisfaction as a remedy or form of reparation (in the wide sense) for the breach of an international obligation. This practice relates particularly to the case of moral or legal damage done directly to

397 McIntyre (n 38) 146.
398 Martha (n 344) 429.
399 Rainbow Warrior (New Zealand v France) (n 183) 217.
Among the remedies that are available before the Court, satisfaction is among the broadest remedies in scope, since, currently, a precise mechanism through which satisfaction is achieved cannot necessarily be drawn up. Compensation, restitution in kind and specific performance prove to be more straightforward in this respect, as these remedies have specific means of application.

Authors have argued that the measures of reparation provided by satisfaction are “geared towards state responsibility to amend violations in ways unaddressed by classic forms of restitution and compensation. On the one hand, measures of satisfaction can narrow available relief, and, on the other, can offer broad and transformative measures”. Satisfaction is therefore a more abstract remedy which can be morphed and adapted in accordance with the specificities of each case.

However, satisfaction could be considered, at times, an exceptional remedy that becomes applicable only if restitution and compensation are unavailable. This clear delimitation of the applicability of satisfaction does not necessarily represent the reality before the Court, as states seem more comfortable with satisfaction rather than with restitution or compensation.

Furthermore, the declaration of wrongfulness as satisfaction is the remedy that the Court has granted most throughout its history, either on a stand-alone basis or in conjunction with other remedies. Whilst satisfaction is a remedy that is distinct from restitution and compensation in scope, it has certain similarities with the latter, given that “satisfaction does not always represent purely moral reparation since it is also pecuniary in nature”. Therefore, one feature that sets satisfaction apart from other remedies, except from compensation, is that it can be both non-pecuniary and pecuniary in nature. The specificities of satisfaction as a remedy before the International Court of Justice shall be analysed below.

2. Definition and Function

The characteristics of satisfaction are not as tangible as that of compensation and restitution, it being considered “as an aspect of reparation in the broad sense”. The reason why satisfaction is more abstract than other remedies is that it implies that the responsible state should express its regret for its wrongdoing.

A further relevant aspect of properly interpreting and defining satisfaction is that “unfortunately, the nature and purpose of ‘satisfaction’ has not been conceived in an unequivocal way over the centuries”; expressing regret could cover a wide range of possibilities that have the final function of appeasing the injured state.

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400 ibid 272.
403 Crawford (n 341) 574.
404 McIntyre (n 38) 146.
2.1. The Definition of Satisfaction

The ILC Articles define satisfaction through Article 37, as:

“1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.”

The wording of Article 37(1) is identical to the wording of Article 36 and Article 35 of the ILC Articles in the sense that “a state responsible for an internationally wrongful act is under an obligation to” provide satisfaction, compensation or restitution. It must therefore be noted that satisfaction, first and foremost, is a form of reparation, and that, in this respect, it is no different from compensation and restitution.

It must also be noted that, in accordance with the ILC Articles, satisfaction may repair injury in ways that restitution and compensation cannot. In other words, if the injury is non-material and is caused directly to the state, since this type of injury cannot be repaired either by restitution (as there is no object to be restored) or by compensation (as moral damages caused directly to the state cannot be financially assessed), satisfaction shall suffice.

Due to its nature and given the above mentioned considerations, satisfaction has been most accurately defined as being “any measure which the responsible state is bound to take under customary international law or under an agreement of the parties to a dispute, apart from restitution and compensation.”

2.2. The Function of Satisfaction

The particularities related to the scope of satisfaction have lead authors to conclude that satisfaction is not easily interpreted, as “Amerasinghe suggests that the function of satisfaction is repairing moral injury but notes that it is not easy to determine when exactly such injury exists; Jørgensen understands satisfaction to be applicable where a State has suffered a moral injury (sometimes called a political injury) which consists in the infringement of the State’s rights per se, and in the injury to its honor, dignity and prestige”.

It has also been concluded that satisfaction is a rather exceptional remedy. Article 37(2) of the ILC Articles confirms this view, as it provides that satisfaction is appropriate insofar as reparation cannot be achieved through restitution or

405 Crawford (n 341) 574.
406 McIntyre (n 38) 147.
407 Crawford (n 341) 574.
compensation. Thus, “only if those two forms have not provided full reparation may satisfaction be required”.408

A first characteristic of the function of satisfaction could therefore be the reparation of injuries that restitution and satisfaction are unable to redress. However, satisfaction should not be limited to this exceptional role before the Court. Authors, referring to the judgment of the Court in Corfu Channel Case,409 have argued that satisfaction should not always be interpreted as an alternative to compensation, as such:

“It is nevertheless difficult to see how this form of reparation could be alternative to compensation when no compensation was claimed, as no material damage had been suffered by Albania as a consequence of Operation Retail. In other cases, satisfaction has been awarded by the ICJ in the form of a declaration, as requested by the claimant, in order to make good a non-pecuniary damage.”410

The distinction between pecuniary and non-pecuniary satisfaction is also relevant for determining its function. The Commentary to the ILC Articles provides that satisfaction is “a remedy for those injuries not financially assessable which amount to an affront to the State”.411 However, referring to pecuniary satisfaction, some authors have concluded that satisfaction is de facto compensation for moral damages to the state.412

It would be difficult to assimilate satisfaction with compensation, since, even if satisfaction takes a pecuniary form, it is a remedy that cannot be financially assessed. The amount due as pecuniary satisfaction can however be determined by the Court based on equitable considerations, given the moral character of the injury.

Therefore, even if pecuniary satisfaction has similarities with compensation, a more appropriate view is the one that considers satisfaction as an independent remedy, and that referring to satisfaction as a typology of compensation might cause difficulties of interpretation. One opinion that is relevant from this perspective states that:

“It is important to distinguish between a monetary payment for symbolic damages, as a form of satisfaction, and the payment of pecuniary compensation. The former is simply an expression of the remedy of satisfaction for non-material injury suffered by the State; the latter is a distinct remedy that is intended to offset the damage or material injury suffered by the State and addresses the actual losses incurred as a result of the breach.”413

Therefore, the function of satisfaction is best represented by the following conclusion:

“The main purpose of satisfaction is to appease the injured State, and it

408 McIntyre (n 38) 146.
409 Corfu Channel Case (Great Britain v Albania) (n 9) 244.
411 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 106.
412 Crawford (n 3) 527.
413 Quintana (n 36) 1147.
serves as an expression of regret and acknowledgement of wrongdoing by the responsible State.”

3. Types of Satisfaction

An exhaustive list of mechanisms through which satisfaction would repair the non-material injury caused to a state cannot be drawn up. Due to its function, satisfaction is a remedy that should not be limited to a given set of modalities in which it would be achieved; injured states should have the freedom to determine what action is able to satisfy them.

In this sense, while compensation is granted through monetary relief and restitution through the restoration of the status quo ante, satisfaction is represented by a wide range of forms through which non-material damage is repaired. Authors have concluded the following in this respect:

“satisfaction may take many forms, which may be cumulative: apologies, or other acknowledgement of wrongdoing by means of payment of an indemnity or a (somewhat outmoded) salute to the flag; the trial and punishment of the individuals concerned or the taking of measures to prevent a recurrence of the harm.”

Further, authors have classified satisfaction as such:

“the most common types of satisfaction [which] may be divided into four groups: apologies, punishment of the guilty, assurances as to the future and pecuniary satisfaction.”

The circumstance that satisfaction is wide in scope is further confirmed by the ILC Articles since there is no provision of an exhaustive list through which satisfaction could be achieved; the enumeration provided by Article 37 is illustrative when providing that this remedy is attained through “an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality”. However, it can be concluded that the most appropriate classification of satisfaction is into two main categories: i) non-pecuniary satisfaction and ii) pecuniary satisfaction.

It has been concluded in this respect that “a distinction should be drawn between the “typical” methods or measures [of satisfaction] and ‘pecuniary satisfaction’”. Authors therefore consider that non-pecuniary satisfaction represents the norm, while pecuniary satisfaction is rather exceptional as a remedy before the Court.

3.1. Non-Pecuniary Satisfaction

Non-pecuniary satisfaction represents the usual form of satisfaction before the Court. According to Article 37 of the ILC Articles satisfaction can take the following forms:

415 Crawford (n 341) 574.
416 Amerasinghe (n 111) 418.
417 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 106.
418 Amador, Sohn and Baxter (n 402) 103.
“i) acknowledgement of the breach; ii) an expression of regret iii) a formal apology iv) other forms deemed appropriate by the International Court of Justice.”

All the mentioned examples are non-pecuniary in nature. It could, therefore, be considered that the ILC Articles confirm the opinions that envisage non-pecuniary satisfaction as the typical form, while pecuniary satisfaction as the exception, the latter being included within the scope of “other forms deemed appropriate by the International Court of Justice”.419

However, these forms are merely illustrative. Even if not provided through Article 37, the Commentary to the ILC Articles provides that non-pecuniary satisfaction could be granted for the following:

“situations of insults to the symbols of the State, such as the national flag, violations of sovereignty or territorial integrity, attacks on ships or aircraft, ill-treatment of or deliberate attacks on heads of State or Government or diplomatic or consular representatives or other protected persons and violations of the premises of embassies or consulates or of the residences of members of the mission.”420

Although the list of examples through which satisfaction could be granted is non-exhaustive, two main mechanisms through which satisfaction has often been granted by the Court exist:

i) a declaration of wrongdoing;
and
ii) the apology of the responding state.

Authors have concluded in this respect that before the Court “the most common modality of satisfaction is declaratory relief or an apology”.421

A. Declaration of Wrongdoing

Non-pecuniary satisfaction is often granted through a declaration of the Court through which the wrongdoing of the responding state is acknowledged. Authors have argued in this respect that “in numerous cases the International Court has considered that a declaration of wrongdoing constituted an appropriate form of reparation”.422 Further, the Commentary to the ILC Articles provides that “[o]ne of the most common modalities of satisfaction provided in the case of moral or non-material injury to the State is a declaration of the wrongfulness of the act by a competent court or tribunal”.423

419 Martha (n 344) 431.
420 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 106.
421 Martha (n 344) 439.
422 Crawford (n 3) 530.
The Corfu Channel Case\textsuperscript{424} and the Application of the Genocide Convention Case,\textsuperscript{425} through which the Court determined that such a declaration was sufficient reparation, are relevant from this perspective.

a) The Corfu Channel Case

The Corfu Channel Case represents the “locus classicus for satisfaction as a form of reparation, and for a declaration of illegality as a form of satisfaction; it has of course found its way and its place in the International Law Commission’s work on State responsibility”.\textsuperscript{426} The finding of the Court in the Corfu Channel Case is often referred to when interpreting non-pecuniary satisfaction granted through declaratory relief.

The Court concluded that Great Britain was responsible for violating the sovereignty of Albania through an operation in its national waters, although no material damage was caused by this action. The Court determined the following in this respect:

“the Court must declare that the action of the British Navy constituted a violation of the Albanian sovereignty. This declaration is in accordance with the request made by Albania through her counsel and is in itself appropriate satisfaction.”\textsuperscript{427}

What is relevant in this case is that the respondent explicitly requested the Court to conclude that satisfaction should be granted by the Court. Thus, Albania requested the following:

“That the Court should find that, on both these occasions, the Government of the United Kingdom of Great Britain and Northern Ireland committed a breach of the rules of international law and that the Albanian Government has a right to demand that it should give satisfaction therefor.”\textsuperscript{428}

It is important to note that the Court did not act \textit{ex officio} when determining the appropriate remedy, this being the reason for which certain authors disagree with the finding of the Court in this case, arguing that “despite the terminology of the Court, the Corfu Channel formulation is not an instance of satisfaction “in the usual meaning of the word”, since the declaration is that of a court and not of a party”.\textsuperscript{429} Even if this view is assumed to be correct, the Court has issued several judgments in which it considered that its declaration of wrongfulness represents satisfaction. The Application of the Genocide Convention Case is such an instance.

b) The Application of the Genocide Convention Case

In the Application of the Genocide Convention Case, the Court considered that a declaration of wrongfulness was the suitable remedy even where the responding state requested compensation. The Court therefore followed the structure of the ILC Articles,

\textsuperscript{424} Corfu Channel Case (Great Britain v Albania) (n 9) 244.
\textsuperscript{425} Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (n 24).
\textsuperscript{426} D’Argent (n 410) 336.
\textsuperscript{427} Corfu Channel Case (Great Britain v Albania) (n 2) 35.
\textsuperscript{428} ibid 12.
\textsuperscript{429} McIntyre (n 38) 147.
first determining that compensation was unsuitable, and afterwards concluding that satisfaction is the appropriate remedy. The Court concluded in this respect that:

“Since the Court cannot therefore regard as proven a causal nexus between the Respondent’s violation of its obligation of prevention and the damage resulting from the genocide at Srebrenica, financial compensation is not the appropriate form of reparation for the breach of the obligation to prevent genocide.”

However, quoting the finding of the Corfu Channel Case regarding satisfaction, the Court concluded that the applicant has the right to reparation for non-material damages by means of satisfaction which would further be granted through a declaration of wrongfulness:

“It is however clear that the Applicant is entitled to reparation in the form of satisfaction, and this may take the most appropriate form, as the Applicant itself suggested, of a declaration in the present Judgment that the Respondent has failed to comply with the obligation imposed by the Convention to prevent the crime of genocide. As in the Corfu Channel (United Kingdom v. Albania) case, the Court considers that a declaration of this kind is “in itself appropriate satisfaction” (Merits, Judgment, I.C.J. Reports 1949, pp. 35, 36), and it will, as in that case, include such a declaration in the operative clause of the present Judgment. The Applicant acknowledges that this failure is no longer continuing, and accordingly has withdrawn the request made in the Reply that the Court declare that the Respondent “has violated and is violating the Convention”. The Court will therefore make a declaration in these terms in the operative clause of the present Judgment, which will in its view constitute appropriate satisfaction.”

The two above mentioned cases are examples for non-pecuniary satisfaction that was provided by the Court to the applicant state without imposing any duty of apology directed towards the responding state. The mere declaration of wrongfulness of the Court was considered sufficient, as this manner of granting satisfaction fulfils the function of this remedy, i.e. to appease the injured state.

B. Apologies

Non-pecuniary satisfaction could also be reached through an apology of the responding state by which it admits that it has breached an international obligation. It is therefore important for the purposes of non-pecuniary satisfaction that the wrongful act is acknowledged, either by the Court in the case of declaratory relief, or by the responding state in the case of apologies.

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431 ibid.
a) The Borchgrave Case

One case through which the characteristics of non-pecuniary satisfaction were expressed by the applicant state was the Borchgrave Case, in which Belgium requested the Permanent Court of International Justice to determine that the responding state should provide the following:

“(1) an expression of the Spanish Government's excuses and regrets;
(2) transfer of the corpse to the port of embarkation with military honors;
(3) the payment of an indemnity of one million Belgian francs in favor of the persons entitled
(4) just punishment of the guilty.”

The Court did not review the merits of the case in order to determine whether this remedy was appropriate, but the request of Belgium is considered by certain authors as representative of the interpretation of non-pecuniary satisfaction, as it focuses on the idea of acknowledgement of wrongdoing.

b) The LaGrand Case

Cases also exist where apologies have been expressed by the respondent state. In the LaGrand Case, in which the relevance of an apology as reparation for a wrongful act was extensively disputed by the parties to this dispute, Germany did not request apologies:

“that the United States shall provide Germany a guarantee that it will not repeat its illegal acts and ensure that, in any future cases of detention of or criminal proceedings against German nationals, United States domestic law and practice will not constitute a bar to the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations.”

However, the United States considered that the apologies that were presented to the Government of Germany were sufficient reparation for the wrongful act. Thus, the United States submitted that it “has apologized to Germany for this breach, and is taking substantial measures aimed at preventing any recurrence” and that further remedies would be inappropriate.

The Court however, concluded in this respect that “while an apology may be an appropriate remedy in some cases, it may in others be insufficient”. Therefore, even if the Court granted a different remedy, it strengthened the idea that satisfaction in the form of an apology is a remedy that can be granted in certain cases.

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432 The Borchgrave Case (Belgium v Spain) (n 243).
433 ibid 165.
434 The case was discontinued due to the fact that the parties reached an agreement.
435 Kaczorowska (n 263) 484.
436 LaGrand (Germany v United States of America) (n 154).
437 ibid 472.
438 ibid 473.
439 ibid 489.
c) The *Rainbow Warrior Case*

Even though the *Rainbow Warrior Case*\(^\text{440}\) was not resolved by the Court, but by a Commission, its relevance for the interpretation of satisfaction is undisputed. The Commentary to the ILC Articles refers to this case while interpreting Article 37.\(^\text{441}\) In this case, New Zealand requested the following:

“On the other hand it may be admitted that it has caused it moral damage which, according to international law, may be compensated by the offer of regrets or apologies. The Government of New Zealand requests the French Government to offer it such apologies. The French Government is prepared to make compensation in this manner for the moral damage suffered by New Zealand and the French Prime Minister is ready, therefore, to address to the New Zealand Prime Minister a formal and unconditional letter of apology for the attack carried out on 10 July 1985.”\(^\text{442}\)

The Arbitral Tribunal concluded that a declaration of wrongfulness would suffice,\(^\text{443}\) the scope of satisfaction being thus reached, even if the responding state did not formally express its apologies or regrets. However, this case is relevant as it further demonstrates that states often consider satisfaction through apology as being an appropriate remedy.

### 3.2. Pecuniary Satisfaction

Pecuniary satisfaction for direct injuries to states has never been granted by the Court. However, the Commentary to the ILC Articles addresses this type of satisfaction and describes it as being “the award of symbolic damages for non-pecuniary injury”.\(^\text{444}\) Thus, this remedy could be addressed in the future by the International Court of Justice.

The differences between pecuniary satisfaction and compensation are relevant from the perspective of their scope. Even if money is granted in both circumstances by the Court, authors have argued that “the payment of money by way of satisfaction serves a purpose distinct from any money paid by way of compensation: the former is paid to make good material damage and moral damage to nationals, the latter is paid in relation to moral damage to the state”.\(^\text{445}\) The opinion that a clear delimitation should be drawn between compensation and pecuniary satisfaction is more prevalent and we believe that a misinterpretation of these two concepts would indeed lead to confusion.

The distinction between pecuniary satisfaction and compensation is pertinent as “the former is simply an expression of the remedy of satisfaction for non-material injury suffered by the State; the latter is a distinct remedy that is intended to offset the damage or material injury suffered by the State and addresses the actual losses incurred as a result of the breach”.\(^\text{446}\)

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\(^{440}\) *Rainbow Warrior (New Zealand v France)* (Arbitration Tribunal) (1986) 19 RIAA 199.

\(^{441}\) *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries* (n 181) 106.

\(^{442}\) ibid 209.

\(^{443}\) ibid 215.

\(^{444}\) S. S. “I’m Alone” (Canada/United States) (Arbitration Tribunal) (1933/1935) 3 RIAA 1609.

\(^{445}\) Crawford (n 3) 528.

\(^{446}\) Quintana (n 36) 1147.
Even if the Court has not yet resolved a case in which pecuniary satisfaction was granted, the *I’m Alone Case* and the *Rainbow Warrior Case* are examples of cases in which this remedy has been granted in inter-state disputes.

### A. The *I’m Alone Case*

The *I’m Alone Case* represents one of the few cases in which pecuniary satisfaction has been granted in an inter-state dispute. In this case, the Joint Commission concluded the following:

> “The Commissioners consider that, in view of the facts, no compensation ought to be paid in respect of the loss of the ship or the cargo.

> The act of sinking the ship, however, by officers of the United States Coast Guard, was, as we have already indicated, an unlawful act; and the Commissioners consider that the United States ought formally to acknowledge its illegality, and to apologize to His Majesty’s Canadian Government therefor;

> and, further, that as a material amend in respect of the wrong the United States should pay the sum of $25,000 to His Majesty’s Canadian Government; and they recommend accordingly.”

This case represents one of the very few circumstances in which an international tribunal granted both pecuniary and non-pecuniary satisfaction. The finding of the Joint Commission has been criticized, as several authors consider that in this case pecuniary satisfaction was, in fact, punitive. However, there is no indication of such a conclusion in the merits of the case. The only reference that would lead to the conclusion that the Tribunal granted punitive damages being the word “amend” from the *disposif* of its judgment. Therefore, the view that considers the *I’m Alone Case* as a rather unusual one in which an international Tribunal has granted pecuniary satisfaction to a state is preferable.

### B. The *Rainbow Warrior Case*

In the *Rainbow Warrior Case*, New Zealand requested the Tribunal to find that:

> “New Zealand is also entitled to compensation for the violation of sovereignty and the affront and insult that that involved. The sum awarded under this heading should take account of the fact that France has refused to extradite or prosecute other persons in France responsible for carrying out the illegal and criminal act of 10 July 1985.”

The Tribunal concluded the following:

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447 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 106.

448 S. S. “I’m Alone” (Canada/United States) (n 444) 1618.


450 Gray (n 4) 43.

451 *Rainbow Warrior* (New Zealand v France) (n 440) 202.
“The Tribunal next considers that an order for payment of monetary compensation can be made in respect of the breach of international obligations involving, as here, serious moral and legal damage, even though there is no material damage. As already indicated the breaches are serious ones, involving major departures from serious treaty obligations entered into […]”

Even if the Tribunal qualified the monetary relief in this case as being compensation, it can be considered that a more appropriate approach would have been to qualify it as pecuniary satisfaction, as the injury was directly caused to the state and the damage suffered was not financially assessable.

However, it must be noted that at the time the decision was rendered, the practice of international tribunals in respect of pecuniary satisfaction was not as developed as it is now. Further, the work of the ILC-which clarified the conceptual confusion between compensation and pecuniary satisfaction—had not yet impacted the law of state responsibility.

Even if pecuniary satisfaction has never been granted by the Court or by the Permanent Court of International Justice and only rarely by other international tribunals, it is a remedy which is available to states for direct non-material damage and, in future cases, the Court might consider such a remedy appropriate.

4. Conclusion

Some authors have criticized satisfaction as a remedy, arguing that “state practice on the award of satisfaction shows the lack of objective standards in this area”. However, even if this argument is taken to be valid, a lack of objective standards does not imply that satisfaction should not be granted or that it is not a proper remedy. Indeed, the lack of objective standards or clear methodology of application has not proven to be a bar for the grant of restitution in kind or compensation, before the Court.

To conclude, “even if Graefrath considers these forms of satisfaction ‘anachronistic’, and Judge Azevedo described them in Corfu Channel as ‘mediaeval’” and the modes in which satisfaction has been granted by the Court have been broad and various, this remedy is often granted, be it in the form of apologies or in the form of declaratory relief. Further, the Corfu Channel Judgment continues to be a leading authority for other courts and tribunals for the remedy of satisfaction.

452 ibid.
453 Martha (n 344) 431.
454 Gray (n 4) 42.
456 D’Argent (n 410) 335.
Conclusions to Part I

Part I aimed to provide a general theoretical understanding of the remedies available in international law, as applied before the principal judicial body of the United Nations.

It can be concluded that the notions codified by the International Law Commission in its Articles on the Responsibility of States for Internationally Wrongful Acts, have generally been applied by the Permanent Court of International Justice and thereafter by its successor, the International Court of Justice, throughout their respective case-law.

However, the specificity of inter-state dispute resolution before the International Court of Justice raises important questions related to the manner in which the remedies available under international law are applied by it. While scholars have discussed these questions related to the remedies codified in the ILC Articles on State Responsibility, they have sometimes reached opposing conclusions regarding their interpretation (especially with respect to certain issues, such as the primacy of restitution in kind or the availability of specific performance). The said scholarly findings do not fully answer the relevant questions. This is why the practice of the International Court of Justice assumes even greater significance in determining the manner in which the remedies available under international law are applied before it.

Therefore, in the interests of a systemic and holistic study, Part II of the thesis shall provide an analysis of the practice of the International Court of Justice, encapsulating the perspectives of the state parties and those of the judicial body. This will further clarify the particularities of the remedies in international law. The following chapters will, thus, first evaluate the manner in which state parties have framed their requests for remedies before the International Court of Justice, through unilateral applications, special agreements, memorials and rejoinders. Subsequently, Part II of the thesis shall critically analyse the manner in which the Court has interpreted and clarified the relevant related notions, through its orders and judgments.
PART II. THE SPECIFIC PRACTICAL PERSPECTIVES

The Permanent Court of International Justice and the International Court of Justice have had an important role in the interpretation and clarification of international law with respect to various significant issues. In this respect, it has been argued that “the need for a tribunal ensuring, through its continuity, the development of international law was one of the main reasons for the creation of a permanent court”457. In contributing to the development of international law in general and in its interpretational role, the Court has also influenced the clarification and interpretation of the particular consequences of breaching international law, i.e. of the remedies that are available under international law. This came about due to the fact that the vast majority of the cases that were brought before the Court contained requests for reparation.

Even as the judgments of the Court contributed towards the clarification and interpretation of international law458 in general and of the law of state responsibility in particular, they did not often focus on the details of the remedies that were requested by the parties to the dispute. That is not to say that the Court has completely ignored the analysis of remedies: in a few instances, the Court has determined the principles that should be applied with respect to remedies. These decisions of the Court are ubiquitous in any discussion about the interpretation of certain remedies. The Chorzow Factory Case459, the Corfu Channel Case460 and the Diallo Case461 are examples that stand out from the Court’s limited jurisprudence on remedies.

In addition to the reluctant approach of the Permanent Court and the Court towards the clarification of the scope of remedies, the related notions have not received a detailed academic analysis either. Several opinions have been expressed in this respect, concluding that “the questions of how judicial remedies have been used in the past and may be used in the future and of the inherent limits on their role in international law are part of the larger question of the role of judicial settlement, but they have not yet received the separate consideration they deserve”462 and that “the remedies available in the International Court are a subject generally neglected in the literature of law”.463 This Part shall focus on the approach that the state parties and the Court have adopted towards the interpretation of remedies, with the aim of providing the views of the said subjects in a more comprehensive manner.

The interaction between the Court and the state parties with respect to the remedies that are available in any given dispute is essential for their interpretation; analysing the remedies strictly from the perspective of the Court or from the perspective of the state parties would be an isolated approach that would fail to give a holistic picture of the issue. Therefore, the manner in which remedies are sought by the state parties before the Court delivers its judgment and the manner in which the Court addresses the requests of the parties through its judgment influences the interpretation of the remedies of international law.

457 Lauterpacht (n 42) 8.
458 “The International Court made a tangible contribution to the development and clarification of the rules and principles of international law”, Lauterpacht (n 42) 3.
459 Case Concerning the Factory at Chorzow (Germany v Poland) (n 1).
460 Corfu Channel Case (Great Britain v Albania) (n 2) 36.
461 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 273).
462 Gray (n 4) 1.
463 Brownlie (n 39) 557.
From the perspective of the state parties, it seems that the manner in which the Court is seized—either by means of a joint notification of a special agreement or by a unilateral application—produces certain effects on the remedies that are requested. Starting with the application stage and ending with the final memorial, the requests for remedies differ, as state parties often amend the submissions that were initially brought before the Court. Further, the subject matter of the dispute influences the remedies that are available in the context of a dispute that is submitted before the Court. The parties have the right to choose the remedy that best suits their interests, as provided for under article 43 (2) (b) of the ILC Articles. Further, the Commentary to the ILC Articles states:

"In general, an injured State is entitled to elect as between the available forms of reparation. Thus, it may prefer compensation to the possibility of restitution, as Germany did in the Factory at Chorzów case, or as Finland eventually chose to do in its settlement of the Passage through the Great Belt case. Or it may content itself with declaratory relief."465

The argument that the law of state responsibility is “essentially judge made”466 is not necessarily accurate, due to the fact that the parties to the dispute often contribute to the judgments of the Court with respect to the remedies that are sought from it. Without the submissions of the parties, the Court’s task would be more onerous, as it would have to clarify and interpret international legal concepts (including remedies) ex officio, in an isolated manner.

The fact that the parties determine the competence of the Court ratione materiae is also relevant while analysing remedies. The submissions of the parties are therefore of importance, in as much as the decision of the Court regarding the merits of the case implies a decision on the remedies available. The Permanent Court’s conclusions in the Chorzow Factory Case are relevant in this regard:

“It is a principle of international law that a breach of an engagement involves an obligation to make reparation in an adequate form. Reparation is therefore an indispensable complement of a failure to apply a convention.”467

This finding of the Permanent Court related to the relationship between a breach and the obligation of reparation is important because it established the practice of the Court in the sense that there is no requirement that the parties include an express reference to remedies in order for the judicial body to have the competence to issue a judgment regarding reparation. After the finding of the Permanent Court in the judgment of the Chorzow Factory Case, the International Court of Justice faced further preliminary objections regarding its competence in this respect. However, it referred to the above mentioned dictum, confirming its relevance in its subsequent case-law.


465 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 120.


467 Case Concerning the Factory at Chorzow (Germany v Poland) (n 32) 21.
When the parties do elect the remedy that is available for the resolution of their dispute, the Court has the duty to pay due consideration to the arguments raised by them. Authors consider that certain orders made by the Court depend on the manner in which the parties request them.\textsuperscript{468} However, should the parties choose to leave the arguments for a particular remedy out of their pleadings, the Court has the power to determine and apply the remedies that it considers relevant for that particular dispute.

Therefore, even if the requests of the parties represent a relevant element for the Court to render its judgment, it is not the only factor to be considered. The judges of the Court have the authority to put forth their perspective on the dispute and the remedies requested by the parties. Therefore, the argument that the parties are “the ‘masters’ of their dispute [...] when they submit a dispute to the Court”\textsuperscript{469} is only partially correct.

Although the influence that the parties have over the proceedings cannot be disregarded while assessing the manner in which the Court interprets disputes submitted before it for adjudication, the Court remains the overseer of its own functions. In this respect, the Court has interpreted and defined its role, in the \textit{Northern Cameroons Case}, as:

\begin{quote}
“\textit{There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court’s judicial integrity.”}\textsuperscript{470}
\end{quote}

Therefore, it is the Court that provides the objective analysis when deciding the dispute. Interpreting the activity of the Permanent Court, it has been said that “\textit{even the briefest scrutiny of its case-law confirms, the Court throughout its twenty-year career remained a very committed practitioner of conceptual reasoning: it would identify the alleged ‘objective meaning’ of a principle and deduce from this principle}”\textsuperscript{471} Both the parties and the Court, therefore, influence the manner in which the remedies are interpreted.

Even though the conceptual framework of remedies remains underdeveloped, the limited clarity with respect to remedies granted by the Court has been derived from this constant dialogue between the parties and the Court. This dialogue and its outcomes will be discussed in this Part. Title I of this Part shall consider the requests of the parties when seeking a certain remedy and Title II shall consider the decisions of the Court regarding the requests of the parties.

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\textsuperscript{468} Brownlie (n 39) 565.  \\
\textsuperscript{469} Forlati (n 46) 113.  \\
\textsuperscript{470} \textit{Case concerning the Northern Cameroons (Cameroon v. United Kingdom)} (n 52) 29.  \\
\textsuperscript{471} A. Rasulov, “The Doctrine of Sources in the Discourse of the Permanent Court of International Justice”, in Christian J Tams and Malgosia Fitzmaurice (eds), \textit{Legacies of the Permanent Court of International Justice} (Martinus Nijhoff Publishing 2013) 308-309.  
\end{flushleft}
TITLE 1. THE APPROACH OF THE STATE PARTIES TOWARDS THE REMEDIES OF INTERNATIONAL LAW

1. Introduction

Before analysing the manner in which the Court has interpreted and applied the remedies that are available to states, through its judgments, it is important to analyse the requests of the parties before the Court. It bears emphasis that the submissions of the states set the stage for the judgment of the Court: the notification of the special agreement and the submission of the unilateral application being the first procedural instruments that address the issues that are finally decided by the Court. For a proper determination of a finding of the Court (which is the objective assessment of the dispute), a detailed analysis of the subjective assessment of the dispute is therefore necessary. A comprehensive understanding of the manner in which these two perspectives influence the outcome is required in order to achieve clarity on the circumstances that lead to the interpretation of certain remedies. This methodology is also followed by the Court, naturally, given that the Court observes the submissions of the parties before rendering its judgment:

“The PCIJ, in dealing with a submission formulated in a purely interrogative form and without any corresponding claim, considered that though it can construe the submissions of the parties it cannot substitute itself for them.”

Depending on the nature of the dispute and on the procedural timeline in which the submissions are brought before the Court, states are more comfortable with some remedies and less comfortable with others. Illustratively, even if restitution in kind is often considered to be the primary remedy before the Court, certain exceptions exist. For example, in disputes regarding territorial delimitation or sovereignty, restitution in kind is not, and should not be regarded as the primary remedy. Compensation has also been considered as a remedy that would most appropriately redress the wrongs caused by the breaches of international law— it being referred to as being the most frequently sought remedy before the Court. However, it will be demonstrated that compensation is a remedy that does not share the same flexibility of declaratory relief and that this could be a reason for which the Court has rarely granted it. The fact that authors consider that declaratory judgments and satisfaction are the remedies that have been most often granted by the International Court is also of certain relevance, these remedies being among the most versatile in nature.

The work of the International Law Commission, generally, has influenced the state parties and the Court in deriving and developing the understanding of remedies. Furthermore, the practice of the Court influenced the International Law Commission in clarifying certain concepts related to state responsibility. It has been argued in this respect that “the ILC, in codifying the law of state responsibility had to lay down general rules which to some extent involved inventing them. The rules of state

\[\text{Footnotes:}\]

472 Forlati (n 464) 109.
473 Kaczorowska (n 263) 507.
474 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 99.
475 McIntyre, (n 38) 107.
responsibility have been derived from cases, from practice and often from unarticulated instantiations of general legal ideas”. 476

Thus, the requests of states before the Court have been addressed indirectly in the ILC Articles, as they represent relevant perspectives through which the notions related to responsibility of states can be interpreted and clarified. Although primarily the ILC Articles deal with the interpretation and effects of internationally wrongful acts, the first paragraph of the Commentary of the ILC Articles provides the following:

“These articles seek to formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts. The emphasis is on the secondary rules of State responsibility: that is to say, the general conditions under international law for the State to be considered responsible for wrongful actions or omissions, and the legal consequences which flow therefrom.” 477

While remedies are not the main focus of the ILC Articles, the remedies that are available under international law are addressed indirectly within the ILC Articles as the consequence of internationally wrongful acts. A comprehensive analysis of the jurisprudence of the Court, over and above the more general spectrum of state responsibility, is necessary for addressing the manner in which the parties and the Court understand and interpret the remedies. Therefore, this Title shall analyse the remedies before the Court from the perspective of the state parties, with due consideration of the ILC Articles. However, it shall endeavour to provide a more holistic analysis.

A controversy exists as to the applicability and hierarchy of remedies: while the ILC Articles provide that restitution in kind is the primary remedy, in practice, states often request compensation in lieu of restitution in kind, while the Court most often delivers declaratory judgments or satisfaction. A detailed analysis of the case-law of the Permanent Court of Justice and, furthermore, of the International Court of Justice, is relevant for the purpose of providing answers with respect to the issues related to the hierarchy of remedies in international law.

The subject matter of the dispute is also relevant from the perspective of the remedies that are requested by the state parties. There is an important interplay between the remedies that are requested, the procedural stage of the dispute at which the remedies are requested, and the subject matter of the dispute. This argument shall be developed in the course of the analysis that follows.

The structure of this Title is similar to that of Part I of the thesis, in the sense that the requests of the parties regarding declaratory relief shall be analysed first, followed by the more coercive remedies, such as restitution in kind and compensation, which shall be interpreted and clarified. When submitting their disputes before the International Court of Justice, parties have also referred to “reparation” in general in their requests. This Title shall firstly introduce the particularities of declaratory relief before the Court, as interpreted by the states appearing before the judicial body.

476 Crawford (n 210) 74.
477 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 31 (emphasis added).
Chapter 1. Requests for Declaratory Judgments

1. Introduction

Declaratory relief is the remedy that is most frequently sought by applicant states before the Court. The wide majority of the disputes that are submitted before the Court contain requests for this remedy. Further, the Court itself seems most comfortable rendering declaratory judgments rather than more coercive remedies such as restitution in kind or compensation. 478

The moment at which the Court is seized of the dispute is relevant for providing the perspective of the parties related to remedies, due to the fact that the judicial proceedings are yet to commence. The submissions at the incipient procedural stage of the special agreement or the unilateral application represent the first acts through which the parties refer, in a general manner, to the remedies that are considered as applicable to their case. Article 40(1) of the Statute of the Court provides the procedural means through which the Court is seized by the parties:

“Cases are brought before the Court, as the case may be, either by notification of the special agreement or by a written application addressed to the Registrar. In either case, the subject of the dispute shall be indicated”

The fact that the parties refer the dispute through a notification of a special agreement produces certain effects on the manner in which the dispute unfolds before the Court. It is significant that, from the outset, the parties have reached an agreement related to their dispute. In this situation, the parties have been able to find common ground regarding the resolution of their contradictory views towards a certain factual and legal situation. It has been observed in this respect that:

“a political decision of two or more States to refer a matter to the Court means that the parties are in agreement upon the cardinal fact that they desire their differences to be settled not only through the application of international law but also by the operation of the judicial technique”, 479

and that:

“when a contentious case is brought before the Court it usually has a positive sense if there is an agreement or consensus (at least tacit) between the states concerned to submit the dispute to the International Court of Justice.” 480

This is also a reason for which the cases that are brought before the Court through the notification of the special agreement are procedurally less complicated than the cases that are brought before the Court through a unilateral application of a single state. Since the states have already reached an agreement prior to the Court being seized of their dispute, the procedure is not interrupted, for instance, by preliminary objections towards the jurisdiction of the Court. Similarly, the way in which the parties frame their requests

478 See Part I Chapter 1.
480 Tomka (n 50) 691.
regarding the remedies is influenced by the fact that the parties have reached an agreement regarding certain aspects of their dispute.

Further, the subject matter of the dispute is also relevant to the analysis of the remedies that are sought by the parties. Thus, certain matters call for requests for restitution in kind, and others for compensation, satisfaction or specific performance.

The manner in which the declaratory judgment produces its effects was assessed within Chapter 1 of Part I, which concluded that declaratory judgments are best categorized as i) declarations of rights, ii) declaration of title and iii) declaration of responsibility.481 The requests of the parties regarding these types of declaratory relief shall be analysed below.

2. Requests for Declarations of Rights

The declaration of rights implies that the applicant state requests the Court to determine whether a right is in existence or not. In these cases, the Court is not requested to determine whether a certain right has been breached or whether reparation is due for that breach; instead the focus is on the existence of a right. These requests often arise when the Court is seized with a boundary delimitation case - its mandate being to determine the territorial boundary between two states, even if the breach of a particular obligation has not yet occurred. Several cases have involved requests for declarations of rights before the Permanent Court of International Justice and before the International Court of Justice. This type of declaration represents a veritable remedy of international law. Brownlie considers as follows in this respect:

“Declaratory judgments in such cases are closely related to the ascertainment of the legal entitlements of the parties and involve a legitimate and constructive exercise of the judicial function.”482

The Court has exercised its jurisdiction to issue declaratory judgments of rights in territorial and maritime delimitation disputes, and, further, in disputes regarding sovereignty rights over a certain territory, considering the requests of the parties in this respect. Illustratively, in the Aegean Sea Continental Shelf, Greece requested the following from the Court:

“i) that the Greek islands referred to in paragraph 29 above, as part of the territory of Greece, are entitled to the portion of the continental shelf which appertains to them according to the applicable principles and rules of international law;

ii) what is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to Greece and Turkey in the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea;”

481 McIntyre (n 38) 131.
iii) that Greece is entitled to exercise over its continental shelf sovereign and exclusive rights for the purpose of researching and exploring it and exploiting its natural resources.\footnote{483}

Further, in the \textit{Maritime Dispute} between Peru and Chile, the applicant submitted the following request:

“Peru requests the Court to determine the course of the boundary between the maritime zones of the two states in accordance with international law, as indicated in Section IV above, and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile’s exclusive economic zone or continental shelf.”\footnote{484}

Similarly, in the \textit{Maritime Delimitation} in the Black Sea dispute, the applicant requested the following from the Court:

“Reserving the right to complement, amend or modify the present request in the course of the proceedings, Romania requests the Court to draw in accordance with the international law, and specifically the criteria laid down in Article 4 of the Additional Agreement, a single maritime boundary between the continental shelf and the exclusive economic zones of the two States in the Black Sea.”\footnote{485}

Another relevant example is the \textit{Territorial and Maritime Dispute} between Nicaragua and Colombia, in which the applicant requested the following:

“First, that the Republic of Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);

Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.”\footnote{486}

The declaratory judgments that were requested in the above mentioned cases involved requests for a decision over the \textit{existence} of a right of a certain state. What can be concluded from the above submissions is that, in the majority of cases that contain requests for declaratory judgments of rights, no breach of an international obligations

\footnote{483} \textit{Aegean Sea Continental Shelf (Greece v Turkey)} [1976] ICJ Pleadings, Application Instituting Proceedings, 11.
\footnote{484} \textit{Maritime Dispute (Peru v Chile)} [2008] ICJ Pleadings, Application Instituting Proceedings, 6.
\footnote{486} \textit{Territorial and Maritime Dispute (Nicaragua v Colombia)} [2001] ICJ Pleadings, Application Instituting Proceedings, 8.
occurred. This circumstance should not lead to the conclusion that in these cases the Court did not issue a judgment involving remedies of international law, inasmuch as through the said judgment the Court finally decided a dispute with a binding character.

However, often, requests for declaratory judgments are followed by subsequent requests for more coercive remedies. A relevant example in this respect is the Case Concerning the Temple of Preah Vihear in which the application also involved a claim for specific performance and restitution in kind, in addition to a declaration of rights, due to the fact that the respondent had breached its obligation to respect the right of the applicant over the territory. Thus, the applicant requested the following from the Court:

“(1) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear;

(2) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia.”

Similarly in the Right of Passage over the Indian Territory, the applicant requested that the Court should provide a judgment, in the following terms:

“(a) To recognize and declare that Portugal is the holder or beneficiary of a right of passage between its territory of Damão (littoral Damão) and its enclave territories of Dadrá and Nagar-Aveli, and between each of the latter, and that this right comprises the faculty of transit for persons and goods, including armed forces or other upholders of law and order, without restrictions or difficulties and in the manner and to the extent required by the effective exercise of Portuguese sovereignty in the said territories.

[...]

(c) To adjudge that India should put an immediate end to this de facto situation by allowing Portugal to exercise the above mentioned right of passage in the conditions herein set out.”

Another relevant example is the Passage through the Great Belt Case, in which the applicant requested the following from the Court:

“Accordingly, the Government of Finland asks the Court to adjudge and declare:

a) that there is a right of free passage through the Great Belt which applies to all ships entering and leaving Finnish ports and shipyards;

b) that this right extends to drill ships, oil rigs and reasonably foreseeable ships;

487 Case Concerning the Temple of Preah Vihear (Cambodia v Thailand) [1959] ICJ Pleadings, Application Instituting Proceedings, 15.
488 Case Concerning Right of Passage Over the Indian Territory (Portugal v India) [1955] ICJ Pleadings, Application Instituting Proceedings, 6-7.
c) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs (a) and (b) above;

d) that Denmark and Finland should start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs (a) to (c) above, shall be guaranteed.

The circumstance that the above mentioned requests contained other remedies, in addition to the declaration of the Court, should not determine the conclusion that the applicant sought one or the other. A more accurate conclusion would be that such requests include both a declaratory remedy and a coercive one. The ILC Articles seem to confirm this conclusion inasmuch as they do not contain any provision mentioning that the application of certain remedies excludes the application of others, the only exception in this respect being the priority given to restitution in kind, which is itself debatable.

3. Requests for Declarations of Applicable Law

A request for the declaration of applicable law implies that the parties ask the Court to determine the applicable law to their dispute, which is relevant for a particular legal relationship. This type of declaratory judgment has been described as, “allowing the parties to learn authoritatively how they are to govern themselves in the future”.

An example of such a case is the recent dispute regarding the Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast, in which Nicaragua requested the Court to adjudge and declare the following:

“First: The precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012.

Second: The principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua’s coast.”

Such a request should also be considered as including a remedy for the dispute between the two state parties. If the legal dispute exists with respect to the applicable legal principles or with respect to the applicable law regarding a certain relationship between the state parties, a judgment of the Court that would decide the law should not be considered as being different from any other remedy, as long as through this judgment

489 Passage through the Great Belt (Finland v Denmark) [1991] ICJ Pleadings, Application Instituting Proceedings, 16.
490 Borchard (n 44) 121.
491 Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia) [2013] ICJ Pleadings, Application instituting proceedings, 8.
the dispute is decided, as provided by article 38 of the Statute of the International Court of Justice. Concluding otherwise would mean to assimilate the judgments of the Court, in such instances, with an Advisory Opinion, circumstance which would undermine the requests of the parties in this respect.

4. Requests for Declarations of Responsibility

A declaration of responsibility implies that the Court determines whether a breach of an international obligation occurred, and whether the responding state is responsible for such a breach. This type of declaration raises the question of whether it is sufficient to resolve the dispute between the state parties. A more restrictive perspective would consider in this respect that this type of declaration would suffice, and that, as a consequence, there is no duty upon the Court to provide another applicable remedy of a more coercive character. A more extensive perspective could consider that a declaration of responsibility would necessarily imply a duty upon the Court to further determine a subsequent coercive remedy, as a consequence of its declaration. The answer regarding the application of this type of declaration is included in the requests of the state parties before the International Court of Justice. Illustratively, in the Application of the Convention of 1902 Governing the Guardianship of Infants Case, the applicant requested the following:

“That the measure taken and maintained by the Swedish authorities in respect of Marie Elisabeth Boll, namely the ‘skyddsuppostran’ […] is not in conformity with the obligations binding upon Sweden vis-à-vis the Netherlands by virtue of the 1902 Convention governing the guardianship of infants.”

Further, in the Lockerbie Case, the applicant state submitted the following request before the Court:

“Libya requests the Court to adjudge and declare as follows:

(a) that Libya has fully complied with all of its obligations under the Montreal Convention;

(b) that the United Kingdom has breached, and is continuing to breach, its legal obligations to Libya under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and

(c) that the United Kingdom is under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.”


The two mentioned requests seem to confirm both perspectives described above. Thus, if the applicant considers that a declaration of responsibility is sufficient for the final resolution of the dispute, the Court is mandated to provide such a judgment, the application of another remedy by the Court being excluded by the principle of *non ultra petita*. Further, if the applicant considers that a declaration of responsibility should be followed by a more coercive remedy, such as cessation, the Court is mandated to provide both remedies, if it considers the request well founded. To conclude, a relevant observation in this respect is that the declaration of responsibility can be an exclusive remedy before the International Court of Justice, the only limitation of the jurisdiction of the Court in this respect being the requests of the parties.

Further, the requests in the above mentioned cases confirm the views that the declaratory judgment is a “*particularly suitable remedy for international law as it strikes a balance between third party settlement and the sovereignty of states*”, and that “*the declaratory judgment has the further advantage that it is undoubtedly available as a remedy for injury to the state*”. In these cases, the post adjudication role of the declaratory judgement is perhaps most apparent. Therefore, once the Court has delivered its judgment declaring that a state bears responsibility in a given relationship with another state, the process of negotiation, after the judgment is given, shall commence in a more concrete manner, both parties being aware of the objective assessment regarding their situation.

### 5. Requests for Declaratory Relief and the Subject Matter of the Dispute

The majority of the territorial disputes and of the disputes regarding state sovereignty that were submitted before the Permanent Court and before the International Court of Justice have involved requests for declaratory judgments, as shall be further discussed in this section. The subject matter of the dispute seems to influence the manner in which the Court is seized. Even so, relatively few cases have been referred to the Court through the notification of a special agreement. Out of all the cases that have been brought before the Court, only seventeen have been initiated through the notification of a special agreement; out of these seventeen cases, fifteen concerned disputes over state sovereignty and territorial delimitation. The manner in which the Court is seized and the remedies sought is relevant for providing a complete analysis of the interpretation provided by the Court with respect to the related notions.

While this may point to a possible nexus between the mentioned categories and the manner in which the Court is seized, the main focus of this Chapter shall remain on the requests for remedies that are sought by state parties in i) disputes related to state sovereignty and in ii) territorial disputes.

#### 5.1. The Sovereignty Disputes

The interplay between state responsibility and the subject matter of territorial disputes has led authors to conclude that “*it is the history of state responsibility in territorial disputes which is far from eventful*”. However, relevant conclusions can be drawn

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494 Gray (n 4) 98.
495 Gray (n 4) 99.
from the requests for remedies in the territorial disputes that were submitted before the Court through special agreements.

Further, it should be noted at this point that one reason for this conclusion is that the majority of territorial disputes that were submitted before the Court involved notifications of special agreements, rather than unilateral applications.

Certain trends are discernible from the requests for relief sought by states in sovereignty disputes. Thus, the disputes involving sovereignty rights “were exclusively concerned with the determination of title” over a certain disputed area of land. As such, “in the cases concerning the sovereignty over a territory, the usual formula addressed the Court as follows: ‘the Court is requested to determine whether sovereignty over [a named territory] belongs to A or B’.”

In the Minquiers and Ecrehos Case, the United Kingdom and France submitted the dispute before the Court through a special agreement. Thus, “considering that differences have arisen between them as a result of claims by each of them to sovereignty over the islets and rocks in the Minquiers and Ecrehos groups”, the parties requested the following through the special agreement:

“The Court is requested to determine whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Ecrehos groups, respectively belongs to the United Kingdom or the French Republic.”

In the Case concerning Sovereignty over Certain Frontier Land, the Netherlands and Belgium submitted the dispute regarding the sovereignty over certain parcels of land that had arisen between them, before the Court. Through the special agreement, the two states requested the following:

“The Court is requested to determine whether the sovereignty over the parcels shown in the survey and known from 1836 to 1843 as Nos. 91 and 92, Section A, Zondereygen, belongs to the Kingdom of Belgium or the Kingdom of the Netherlands.”

Similarly, in the Case Concerning Sovereignty over Pedra Branca, Pulau Batu Puteh, Middle Rocks and South Ledge, Malaysia and Singapore submitted a dispute that had arisen between them regarding the sovereignty over certain territorial landmarks, through a special agreement. In this submission, they requested the following:

“The Court is requested to determine whether sovereignty over:

(a) Pedra Branca, Pulau Batu Puteh;

497 ibid 1.
498 Tomka (n 50) 561.
499 Minquiers and Ecrehos (France v United Kingdom) (n 63) 47.
500 ibid.
501 ibid.
502 Certain Frontier Land (Belgium v. the Netherlands) (n 26) 209.
503 ibid.
504 Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (n 63) 12.
(b) Middle Rocks;
(c) South Ledge,

belongs to Malaysia or the Republic of Singapore.”

In the Case Concerning the Frontier Dispute,\(^{505}\) which entailed a dispute that had arisen between Burkina Faso and Mali regarding the frontier between the two states, the parties concluded a special agreement through which they requested the following:

“Quel est le tracé de la frontière entre la République de Haute-Volta et la République du Mali dans la zone contestée telle qu’elle est définie ci-après?”

In the Case Concerning the Sovereignty over Pulau Ligitan and Pulau Sipadan, the parties submitted the following request before the International Court of Justice:

“The Court is requested to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia.”\(^{506}\)

From an analysis of the above cases, which revolved around the issue of territorial sovereignty, it can be seen that almost identical wording was used by states to request judgments from the Court. In all of the above cases, the Court was requested to determine whether the sovereignty over the territorial landmarks that were in dispute belonged to one state or to the other.

Thus, the state parties to the above mentioned cases requested the Court to render declaratory judgments through which the right over a certain territory was to be determined. It is also important to note at this juncture that the Court did not order any duties on the parties through an injunctive decision which could have imposed that the parties act in a specific manner. The Court allowed the parties the freedom to implement the judgment through a subsequent agreement. It has been argued in this respect that the judgments of the International Court of Justice that do not contain any orders for a specific mechanism confirm the fact that “the parties may agree to avail themselves of a judicial pronouncement, as the basis of subsequent negotiations calculated to establish a new legal situation between them”.\(^{507}\)

An example of such a determination made by the Court was the Case Concerning the Temple of Preah Vihear in which the Court ordered that Thailand should act in the following manner:

“That Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory;

\(^{505}\) Frontier Dispute (Benin/Niger) (n 63) 90.

\(^{506}\) Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v Malaysia) (n 63) 575.

\(^{507}\) Hersch Lauterpacht, The Function of Law in the International Community (OUP 1933) 340.
that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia’s fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.”

However, the sovereignty disputes did not need such an order, and, thus, the Court decided that a declaration of rights would suffice. The reasoning for this outcome is that, firstly, the states involved in the dispute were in agreement with respect to the fact that there was a legal question related to the sovereignty over a certain territory. One element that influenced this approach of the Court was, thus, the manner in which the state parties to the dispute framed the questions that were decided by the Court. The outcome of these cases (in terms of the remedies that were requested and granted by the Court), has also been influenced by the fact that these disputes were referred to the judicial body by the notification of a special agreement.

Another reasoning for which declarations of rights were suitable for these disputes was that, in the majority of these cases no state had breached an international obligation by invading the territory in dispute, in the manner in which Thailand had done in the mentioned case. Therefore, a claim for a coercive remedy in such a situation would be redundant, except for pecuniary satisfaction.

### 5.2. The Territorial Delimitation Disputes

Similarities are also discernible in the requests of the parties, in cases that involved territorial delimitation issues. Thus, “in the delimitation cases, either maritime or land delimitation, the parties either sought a decision from the Court on the applicable rules of international law for such delimitation, leaving the actual delimitation to a subsequent agreement between the parties, or asked the Court to determine or delimit the maritime boundary or the frontier line directly”.

In the North Sea Continental Shelf Cases, involving a dispute with respect to the delimitation of the continental shelf in the North Sea, the parties concluded a special agreement through which they submitted the following request before the Court:

“*What principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned Convention of 1 December 1964?*”

In the Case Concerning the Continental Shelf (between Tunisia and Libyan Arab Jamahirya), the parties submitted the following request:

“*Quels sont les principes et règles du droit international qui peuvent être appliqués pour la delimitation de la zone du plateau continental appartenant a la République tunisienne et de la zone du plateau continental appartenant a la Jamahiriya arabe libyenne populaire et socialiste.*”

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508 *Case concerning the Temple of Preah Vihear (Cambodia v Thailand)* (n 71) 35.
509 *Tomka* (n 50) 691.
510 *North Sea Continental Shelf* (n 63) 3.
511 *Continental Shelf (Tunisia/Libyan Arab Jamahirya)* (n 63) 18.
In the Case Concerning Kasikili/Sedudu Island, the parties requested the Court for the following:

“The Court is asked to determine, on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island.”

Most cases regarding territorial delimitation involved claims which originated either from a lack of proper demarcation or from differing views with respect to the interpretation of existing boundaries. Thus, unable to resolve such disputes by diplomatic means, the parties brought them before the Court through a special agreement.

As evident from the above, the requests of the parties in the territorial delimitation disputes are broader in scope than the ones regarding sovereignty. Instead of requesting the Court to decide who had the right over a determined portion of land, parties sought a decision on the principles and rules that should be applied in the determination of certain territorial limits from the Court. It is relevant that the Court was not requested to apply the rules and principles to the dispute, but to state these rules and principles which would be subsequently applied by the state parties to the dispute.

It could be argued that the international law of territory and the law of state responsibility operate in different spheres. The interaction between the law of territory and the law of state responsibility has been described by authors such as Milano as follows:

“the law of territory (we use here the term in a broad sense, comprising not only land and sea areas subject to the sovereignty of a State, but also maritime areas subject to the jurisdiction of a State) and the law of State responsibility have hardly interacted.”

This lack of interaction could be used to argue against the conclusion that requests for declaratory judgements are influenced by the fact that the parties signed a special agreement. Some authors therefore, consider that the reason why the cases that were submitted before the Court through a special agreement contained requests for declaratory judgements was that these disputes were territorial in nature. It is argued that no other remedies would have been appropriate in these cases but for declaratory judgments, as remedies such as restitution in kind or compensation are generally not feasible for territorial disputes.

This conclusion does not find support from the Court’s practice, as the Court has had cases on its docket that involved territorial disputes that were submitted by unilateral application through which the applicant state requested compensation. The Land and Maritime Boundary Dispute between Cameroon and Nigeria, in which Cameroon

512 Kasikili/Sedudu Island (n 63) 1045.
514 ibid.
requested the Court to determine that Nigeria had incurred state responsibility and had an obligation to provide reparation for the injury caused (including monetary compensation), is an example of this. Cameroon requested the following from the Court:

“(a) that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon;

[…]

(d) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;

[…]

(f) that, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] the precise assessment of the damage caused by the Federal Republic of Nigeria.”

This case was more complex and it entailed more than a mere request for a declaratory judgment regarding the sovereignty of a state over a certain portion of land. The dispute involved heads of claim related to the use of force and circumstances which contributed to the material and non-material damages that Cameroon referred to. However, the claim that was submitted by Cameroon also involved the sovereignty over the Bakassi peninsula, as this was the central element of the dispute – the fact that sovereignty rights were breached.

In this case, while the Court decided upon the issues of sovereignty, it unanimously considered that the submissions of Cameroon with respect to reparation should be dismissed. It is therefore relevant to note that the Court concluded that a declaratory judgment would suffice and would represent the proper remedy in this case. Another such case is the Case Concerning the Temple of Preah Vihear, in which Cambodia claimed the following:

“1. To adjudge and declare that the frontier line between Cambodia and Thailand, in the Dangrek sector, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex 1 to the Memorial of Cambodia);

2. To adjudge and declare that the Temple of Preah Vihear is situated in territory under the sovereignty of the Kingdom of Cambodia;

516 ibid 316.
517 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71) 6.
3. To adjudge and declare that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954, in Cambodian territory, in the ruins of the Temple of Preah Vihear;

4. To adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 are to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand.”

Similarly as in the case concerning the Land and Maritime Dispute between Cameroon and Nigeria, which contained multiple heads of claim, this dispute entailed issues of use of force as well. The request for restitution was dependent on the finding that the use of armed forces was illegal. However, in this case, the Court granted restitution, by ordering Thailand “to restore to Cambodia any objects of the kind specified in Cambodia’s fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities”.

This is an example in which a territorial dispute contained requests for restitution in kind, and such requests were granted by the Court, even if the said finding rested upon the conclusion that a certain portion of land belonged to one state or the other. There is, therefore, nothing to indicate that due to the territorial nature of a dispute, claims for restitution or compensation become inadmissible. While the Court in this case did not address this issue, it considered restitution in kind to be a proper remedy along with the issuance of a declaratory judgment regarding the territorial delimitation between the two states.

In other territorial disputes, states reserved the right to claim compensation or restitution, through their application. An example of such a case is the Territorial and Maritime Dispute between Nicaragua and Colombia, in which Nicaragua reserved the right to claim compensation through its application:

“Whilst the principal purpose of this Application is to obtain declarations concerning title and the determination of maritime boundaries, the Government of Nicaragua reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title. The Government of Nicaragua also reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.”

518 ibid.
520 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71) 6.
521 Territorial and Maritime Dispute (Nicaragua v Colombia) (Merits) [2012] ICJ Rep 624.
522 ibid 633.
One reasoning for this approach could be that, often, states use the declaratory judgment and, further, the said reservation to claim other more coercive remedies, as a post adjudication negotiation tool.

Another case which contradicts the view that compensation and restitution are not available for territorial disputes is the Legal Status of the South-Eastern Territory of Greenland, in which the applicant also reserved its right to claim reparation through the application instituting proceedings. However, this case was discontinued due to the fact that Denmark withdrew its application.

There is, therefore, a tendency of states to request remedies other than the declaratory judgment in sovereignty and territorial delimitation disputes, and the Court has not rejected these pleas as inadmissible. However, the Court indeed appears to be more inclined towards issuing declaratory judgments in cases of this nature.

5.3. Requests for Declaratory Relief and the Manner in which the Court is Seized

A. Effects of the Special Agreement

The special agreement has been referred to as being “the classic method by which the parties refer a case or a matter to the Court”. Its origins lie in international arbitration practice, where an agreement is the normal method of invoking arbitral proceedings. Further, the cases that were brought before the Court through this method have the most recognisable profile, as the dispute is defined by the parties through this instrument, and the jurisdiction of the Court is established from the outset.

However, “relatively few cases are ever instituted through special agreement” before the International Court of Justice, due to the fact that states rarely agree on the identification and definition of the dispute and also due to a certain reluctance of states to refer their disputes to the International Court of Justice when the factual framework of the case is favourable to them and less favourable to their opposing state.

Even if rarely used, when the parties agree that the notification of the special agreement is the appropriate means of seizing the Court, it produces effects both from a substantive perspective and from a procedural one.

a) The substantial influence of the special agreement

A relevant conclusion regarding the influence of the special agreement from a substantive perspective is that it “enables the parties to cooperate in defining the dispute and in working out the modalities for it to be resolved by the Court”. The signing of a special agreement regarding the referral of the dispute before the Court influences the manner in which the parties frame the questions to be decided by the Court. The manner in which the parties define the ratione materiae competence of the Court is determined in this way. Thus, “as we have seen it is dependent upon the parties to set out the

524 Rosenne (n 478) 643.
525 ibid.
526 Kolb (n 46) 535.
527 Llamzon (n 143) 818.
528 Kolb (n 46) 536.
subject matter of the dispute [...] before the ICJ. Such subject matter is usually identified either in the special agreement or in the unilateral application and in the defendant states response and in the counterclaims (if any).”

The determination of the characteristics of the dispute influences the manner in which the parties request the remedies that are available for that particular case. Usually, the preamble of the special agreement identifies the dispute that has arisen between the two states, and, pursuant to this identification, the parties further request the Court to resolve the dispute by delivering a judgment. Often, the parties abandon remedies such as restitution or compensation in favour of the declaratory judgment. Therefore, the initiation of the dispute through the special agreement and the request for remedies, as part of the question that is brought before the Court, influence one another.

The disputes that were referred to the Court through the notification of a special agreement are considered by scholars as being not as politically sensitive as the ones that were referred to the Court through a unilateral application. It has been observed in this sense that “none of the great political conflicts which the Court had to rule upon—the Anglo-Iranian Oil Co. case, the Nuclear Tests cases, the Tehran Hostages case, the dispute between the United States and Nicaragua, the Legality of Use of Force case, the Genocide cases—found their way to the Court through a compromise”.

While the lack of political sensitivity regarding a given case might prove to be one of the reasons for which the parties did not seek restitution or compensation (as these remedies imply a certain degree of coercion), the fact that not all the cases that were referred to the Court through the notification of a special agreement were less politically sensitive must also be considered.

Thus, the majority of the disputes that were referred to the Court through the notification of a special agreement were territorial in nature, and such disputes are usually factually and legally complex. The conclusion that: “boundary and territorial disputes are politically sensitive issues, especially when one or more countries or groups of people concerned adopt a confrontational strategy. If governments, or people, have a stake in a disputed area then they are very sensitive about how this area is portrayed in maps”, is in fact more apposite, in this context.

Considering, ad arguendo, that all territorial disputes are not politically sensitive, it can be concluded that the parties’ agreement with respect to the definition of their dispute is a relevant factor which justifies, to a certain degree, that the cases described within this section contained requests for declaratory judgments. While political sensitivity might be considered an element that further influences the requests for remedies, a conclusion that has merit in this sense is that this latter circumstance is not as relevant an element as the first, i.e. that the parties reached prior agreement regarding their dispute.

b) The procedural influence of the special agreement

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529 Forlati (n 464) 113
530 Kolb (n 46) 535
532 Rongxing Guo, Territorial Disputes and Conflict Management: The art of avoiding war (Routledge 2012) 9.
Procedurally, “a special agreement gives the parties the greatest possible influence over the Court, so it approaches the case in line with their wishes.” The positive impact of a special agreement on the procedural side of the disputes submitted before the International Court of Justice, arises from the fact that the parties also determine the framework of the proceedings of the case through their special agreement. Illustratively, the parties agree upon issues such as the timeline related to the written and oral proceedings or the evidentiary stage. For example, in the Minquiers and Ecrehos Case, Article 2 of the special agreement provided the following:

“Without prejudice to any question as to the burden of proof, the Contracting Parties agree, having regard to Article 37 of the Rules of Court, that the written proceedings should consist of:

(1) a United Kingdom memorial to be submitted within three months of the notification of the present Agreement to the Court in pursuance of Article III below;

(2) a French counter-memorial to be submitted within three months of delivery of the United Kingdom memorial;

(3) a United Kingdom reply followed by a French rejoinder to be delivered within such times as the Court may order.”

It is also important to note that in a number of cases, the parties agreed through the special agreement that they shall reach a subsequent agreement with respect to the Court’s decision, once delivered. Thus, in the North Sea Continental Shelf Case between Germany and Denmark, Article 1 of the special agreement contained the following provisions:

“(1) The International Court of Justice is requested to decide the following question: What principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned Convention of 9 June 1965?

(2) The Governments of the Kingdom of Denmark and of the Federal Republic of Germany shall delimit the continental shelf in the North Sea as between their countries by agreement in pursuance of the decision requested from the International Court of Justice.”

This approach was pursued in other cases, such as the Case Concerning the Continental Shelf Case between Tunisia and Libya and in the Case Concerning the Continental Shelf between Libya and Malta. In the latter, the parties requested the Court to determine the rules and principles that were applicable to the delimitation of the area in

533 Kolb (n 46) 535.
534 The Minquiers and Ecrehos Case (France v United Kingdom) [1951] ICJ Pleadings, Special Agreement, 9.
535 North Sea Continental Shelf (n 63) 6.
536 Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (n 63).
537 Continental Shelf (Libyan Arab Jamahiriya v Malta) (n 63).
dispute and, through a separate Article III of the special agreement they also included the following provision:

“Following the final decision of the International Court of Justice the Government of the Republic of Malta and the Government of the Libyan Arab Republic shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court.”

The manner in which the parties referred the questions before the Court and the fact that they agreed that the judgment of the Court shall be implemented by means of negotiations and subsequent agreement, supports the view that the parties are most comfortable with remedies such as declaratory judgments (rather than restitution or compensation) in cases that were referred to the Court by special agreement. There is no case that was brought before the Court in which the parties agreed that compensation should be paid or that restitution in kind is applicable.

**B. Effects of the Unilateral Application**

The possibility of seizing the Court through the submission of a unilateral application can be included in a treaty that the state parties conclude. Two types of clauses regarding the seizing of the Court can be referred to in a treaty: i) the parties may expressly provide in the treaty that either of them can seize the Court through a unilateral application or ii) the parties may seize the Court through unilateral application if such mode was not expressly provided for, but was not expressly excluded through the treaty. It has been observed in this regard that an express provision regarding the possibility of unilaterally seizing the Court “is the most common type, and it’s the best way to ensure that the Court will have jurisdiction, without any obstacle.”

The unilateral application is the most used mechanism through which the Court is seized: out of all the cases that have been submitted before the Permanent Court of International Justice and International Court of Justice the majority commenced through the notification of unilateral applications. This circumstance has influenced the Court’s jurisprudence regarding the remedies requested by the applicant states.

The reason why the cases in which the unilateral application was submitted before the Court have a bearing on the requests for remedies is that in this situation the state parties do not cooperate for a common definition of their dispute. In these cases, the applicant state defines its own claims through the unilateral application, as opposed to the notification of the special agreement in which the parties jointly define the dispute, where they reach prior consensus before the Court is seized. As a consequence, the parties that have been involved in the disputes that commenced with unilateral applications have tended to show a more aggressive approach than the ones where parties referred the dispute to the Court through a special agreement, due to the fact that the relationship between the parties is hostile from the outset of the pre-dispute negotiation process.

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538 ibid 16.
539 Kolb (n 46) 755.
This conclusion applies to the requests that the parties submit before the dispute. In this sense, the claims submitted before the Court through a unilateral application contain requests for remedies such as compensation and restitution more often than the disputes referred through the notification of a special agreement, which almost exclusively contain requests for declaratory relief. This is not to say, however, that declaratory judgments are not requested through unilateral applications. On the contrary, as this Title shall demonstrate, the claims for compensation and restitution are also exceptional remedies in cases initiated through unilateral application. Thus, it shall be further demonstrated that declaratory relief remains the norm before the Court.

Another significant feature of the submission of a unilateral application is that the applicant state often includes a multitude of remedies within the prayer for relief, and does not substantiate the specific manner in which the injury could be repaired. States request the Court to grant restitution, compensation or satisfaction without mentioning the mechanism through which the remedies sought should be implemented by the losing state.

What this translates to, in the practice of the Court, is that states end up providing no specific lists of items regarding restitution, do not substantiate quantum claims regarding compensation, and omit to specify the means through which satisfaction would be achieved. While the majority of these claims involve requests that the Court determine the appropriate reparation either at the merits stage of the case, or at a subsequent stage, several other issues also arise regarding these types of submissions.

The submission of a dispute by unilateral application has procedural ramifications on the grant of remedies as well. The cases that are referred to the Court through the submission of a unilateral application involve a more complicated procedure than the ones that are initiated through a special agreement. In these cases “it is quite common for the respondent state to raise an objection to the jurisdiction or admissibility of the case”540 and “nearly half of the disputes submitted to the Court required separate hearings on jurisdictional issues”.541 These preliminary objections are often upheld by the Court and the Court does not end up analysing the remedies sought by the applicant state, since the dispute is dismissed for want of jurisdiction or on the basis of inadmissibility.

However, even in these cases, the requests of applicant states are useful to analyse in order to better understand the interpretation of remedies before the Court.

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540 Tomka (n 50) 259.
541 Vanda Lamn, Compulsory Jurisdiction in International Law (Edward Elgar Publishing 2014) 244.
Chapter 2. Requests for Restitution

1. Introduction

Restitution in kind is a remedy that has not been frequently sought by states in their unilateral applications. Even though the Chorzow Factory Case\(^{542}\) represents the *locus classicus* for the interpretation of restitution in kind, this remedy remains an exceptional one before the Court, due to the fact that it has been invoked in relatively few cases. Thus, even though initial requests for restitution in kind were included in the unilateral applications, they have been replaced by requests for compensation or declaratory relief through the subsequent pleadings, such as the memorial or through the final oral arguments.\(^{543}\)

One such example is the Chorzow Factory Case\(^{544}\) within which the applicant first requested restitution in kind, but later abandoned this claim and considered that compensation is a more appropriate remedy. Thus, even if Germany requested restitution in kind through its memorial, both parties later agreed that this remedy is not appropriate given the particular circumstances of the dispute.

Despite the exceptional nature of this remedy, the applications of states seeking restitution in kind have contributed to the contemporary interpretation of this remedy. Issues such as the primacy of restitution over compensation, types of restitution and the manner in which restitution in kind can be utilised as a compensation valuation tool, have been addressed in the unilateral application cases before the Court.

2. The Primacy of Restitution

As mentioned, the conclusion that restitution in kind is the primary remedy of international law is provided by the ILC Articles on State Responsibility,\(^{545}\) which consider the judgment of the Permanent Court of International Justice in the Chorzow Factory Case\(^{546}\) as being a confirmation of this outcome. However, this conclusion has rarely been confirmed by the jurisprudence of the Court. Further, it is not reflected in the manner in which the applicants frame their requests for remedies. Indeed, in the majority of cases before the International Court of Justice, other remedies have been considered as being appropriate.

However, the primary character of restitution in kind was referred to in cases initiated through unilateral applications in certain disputes before the Court. Thus, in the Nottebohm Case, the subsidiary character of compensation was included in the request of the applicant, which sought that the Court determine that restitution in kind is the appropriate remedy for illegal expropriation. Compensation was requested as a

\(^{542}\) *Case Concerning the Factory at Chorzow (Germany v Poland)* (n 1).

\(^{543}\) *LaGrand Case (Germany v United States of America)* [1999] ICJ Pleadings, Memorial of the Federal Republic of Germany.

\(^{544}\) *Case Concerning the Factory at Chorzow (Germany v Poland)* (n 1).

\(^{545}\) In accordance with Article 36 of the ILC Articles: “The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as damage is not made good by restitution”.

\(^{546}\) The Judgment of the Permanent Court of Justice in the *Case Concerning the Factory at Chorzow (Germany v Poland)* (n 8) 47 states that “Restitution in kind, or if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear” is the appropriate manner in which the interaction between restitution in kind and compensation should manifest.
replacement of restitution in kind (in the alternative) should the latter be impossible to perform:

“That in case such restitution should prove impossible for reasons of physical destruction or for other reasons, the Government of Guatemala pay Mr. Friedrich Nottebohm compensation in respect of the property in question, such compensation.”^547

This submission was further explained through the memorial that was submitted by Liechtenstein, in the following terms:

“Further, the Government of Guatemala should restore to Mr. Nottebohm all his property which they have seized and retained together with damages for the deterioration of that property. Alternatively, they should pay to the Government of Liechtenstein the sum of 6,510,596 Swiss francs representing the estimated present market value of the seized property had it been maintained in its original condition.”^548

The request of Liechtenstein with respect to restitution in kind and compensation represents a confirmation of both Article 35 (1) of the ILC Articles on State Responsibility (which provides that the responsible state is under an obligation to make restitution insofar as this remedy is not materially impossible)^549 and Article 36 of the ILC Articles (which specifies that compensation is available if the damage is not repaired by restitution). As a consequence, the request of Liechtenstein contained a detailed list of items (including movable and immovable assets) to be restored to Mr. Nottebohm, that was enclosed with its submissions.\(^550\) However, it must be noted that this case involved issues concerning illegal expropriation in which restitution in kind is capable of being the primary remedy.

The primary character of restitution in kind was also evidenced in other cases that were submitted before the Court. Thus, in the Certain Phosphate Lands Case the primary character of restitution and, consequently, the subsidiary character of other remedies, was emphasized through the application of Nauru, which requested the Court to decide as follows:

“Nauru [...] requests the Court to adjudge and declare that Australia has incurred an international legal responsibility and is bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered.”^551

However, the primacy of restitution in kind was ignored in cases that entailed different heads of claim: each one entailing corresponding remedies. Thus, in the Armed

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^548 Nottebohm Case (Liechtenstein v Guatemala) [1952] ICJ Pleadings, Memorial submitted by the Government of the Principality of Liechtenstein, 70.
^549 Article 35 of the ILC Articles states that, “A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: (a) is not materially impossible”.
^550 Nottebohm Case (Liechtenstein v Guatemala) (n 547) 17.
Activities on the Territory of the Congo, restitution in kind was treated at par with compensation, as the request of the applicant state included both remedies. Congo reserved the right to "to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed". 552

The Memorial on Compensation submitted by Nicaragua in the Military and Paramilitary Activities in and against Nicaragua is also relevant from the perspective of the availability of compensation in case the remedy of restitution in kind is unavailable, once again highlighting their nature as alternatives to each other, inasmuch as restitution in kind is no longer materially possible. In this case Nicaragua submitted the following arguments:

"The only appropriate reparation for damages suffered as a result of the embargo would, in the view of the Nicaraguan Government, be the payment of an amount equivalent to the loss sustained. Any other form of reparation would be unsuitable in the present case. No satisfaction could compensate for the material damage caused by the embargo to Nicaragua’s economy." 553

The reason for which the International Court of Justice has refrained from giving judgment on the request for compensation submitted by Nicaragua is relevant for understanding the view of the Court with respect to the impact of a judgment providing for this remedy. The Court concluded as follows in this respect:

"Furthermore, in a case in which the respondent State is not appearing, so that its views on the matter are not known to the Court, the Court should refrain from any unnecessary act which might prove an obstacle to a negotiated settlement." 554

The Court therefore considered that a declaration is preferable to a judgment granting a coercive remedy, the latter being capable of further amplifying the dispute, rather than resolving it. It is relevant to note at this juncture that the Court is mindful of the post adjudication phase of the disputes submitted before it.

Even if these requests in unilateral application cases could be interpreted as arguments for considering restitution as the primary remedy, they remain rather exceptional. In the majority of the cases that were submitted before the Court through unilateral application, compensation has been requested in lieu of restitution in kind. Thus, even though the ILC Articles give primacy to restitution in kind when assessing the responsibility of states for illegal acts, the conclusion that a discrepancy exists between theory and practice with respect to the primacy of restitution in kind has merit. 555

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552 ibid.
553 Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) [1988] ICJ Pleadings, Memorial of Nicaragua, 287.
554 Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (n 26) 143.
555 Gray (n 299) 589.
3. Restitution in Kind and Restitutio in Integrum

The analysis of the case-law of the Court highlights that states often request *restitutio in integrum*, but that this is not considered synonymous to “restitution in kind”. The ILC Articles do not mention the concept of restitution in kind; they refer to restitution with the more general meaning of *restitutio in integrum*. Article 35 of the ILC Articles contains the following provision:

“A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed.”

A plain reading of Article 35 establishes that the notion of restitution embodied in the ILC Articles is one of *restitutio in integrum*, and not restitution in kind. The main difference between *restitutio in integrum* and restitution in kind is that while the former requires that the injured party be restored to the situation which would have prevailed had no injury occurred, the latter implies that the injuries should be restored in their material form.

Thus, states understand the notion of *restitutio in integrum* to be a restoration of the *status quo ante*—which is not to be confused with restitution in kind as it has a more limited scope. In the few cases in which *restitution in integrum* was requested, the meaning that the applicant states attributed to their requests for remedies was the restoration of the situation prior to the occurrence of the illegal act, and not that of restitution in kind. However, restitution in kind is often included within the more general notion of *restitutio in integrum*—thereby leading to the mistaken conflation of the two concepts. As stated above, although restitution in kind is an element that often contributes to the restoration of the *status quo ante*, the pleadings in which *restitutio in integrum* was requested did not include requests for restitution in kind.

Illustratively, *restitutio in integrum* was requested in the *Case Concerning the Vienna Convention on Consular Relations*. This case originated from an illegal arrest of a Paraguayan national, Mr. Angel Francisco Breard. In the municipal proceedings that ensued, he was charged, tried and sentenced to death without having been informed of his rights under Article 36, subparagraph 1 (b) of the Vienna Convention for Consular Relations. The unilateral application of Paraguay contained the following request:

“2) Paraguay is therefore entitled to restitutio in integrum;

The United States should restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place;”

The meaning that Paraguay attributed to *restitutio in integrum* can be further gleaned from its memorial, which was submitted after the restoration of the *status quo ante* became impossible. The memorial contained the following submission:

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As a result, the case returns to this Court in a fundamentally different posture than it had at the time Paraguay filed its Application. The United States’ violation of the Order has rendered it impossible for the Court to grant Paraguay restitutio in integrum in the form of a new trial for Mr. Breard or, in the alternative, reconveyance of the plea offer.”

Thus, the remedies that were sought by Paraguay were considered restitutio in integrum in the sense of restoration of a national legal framework and the consequences thereof, i.e. an invalidation of all national proceedings that were undertaken against Mr. Breard, so that the notification under the Vienna Convention for Consular Relations could be performed and the rights of the prosecuted could be respected.

Rexitutio in integrum was also sought in the Avena Case and involved claims for legal restitution. In this dispute, Mexico instituted proceedings against the United States of America due to the fact that its nationals were arrested, detained, tried, and sentenced to death without the fulfilment of the obligations found in the Vienna Convention on Consular Relations. Consequently, restitutio in integrum was requested by Mexico in its unilateral application, as follows:

“(2) that Mexico is therefore entitled to restitutio in integrum

The United States must restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico’s nationals in violation of the United States international legal obligations.”

The factual framework and the request for remedies in the Avena Case is almost identical as the one in the Case Concerning the Vienna Convention on Consular Relations. Thus, in two of the three cases that involved requests for restitutio in integrum, this remedy had a wider interpretation than restitution in kind. The meaning attributed to restitutio in integrum in these cases contained the following elements: i) a restoration of the legal framework prior to the illegal act, through the invalidation of a law; ii) the invalidation of a judgment issued by a national court, through a new trial; iii) the re-establishment of a situation that existed before the illegal convictions.

A case that included restitution in kind as a remedy was the Temple of Preah Vihear Case, in which the applicant state requested the Court “to adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 are to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand.” By requesting the return of certain determined objects, the applicant requested restitution in kind in this case, rather than restitutio in integrum.

The fact that restitutio in integrum can encompass both restitution in kind and compensation (and any other remedy), is demonstrable by reference to the unilateral applications that were submitted before the Court. However, even if the requests were

557 Vienna Convention on Consular Relations (Paraguay v United States of America), Memorial, 6-7.
558 Avena and Other Mexican Nationals (Mexico v United States of America) ICJ Pleadings, Application Instituting Proceedings, 44.
559 Vienna Convention on Consular Relations (Paraguay v United States of America) (n 556).
560 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71) 6.
not worded as such, the manner in which *restitutio in integrum* was sought, indicated that the states were seeking the full restoration of the *status quo ante*. It must also be noted that in certain cases, *restitutio in integrum* implied a legal restitution.

This is discernible from the request that was submitted by Nicaragua in the *Case Concerning the Construction of a Road in Costa Rica along the San Juan River*. In this case, the applicant requested the Court to conclude that Nicaragua had invaded and occupied Costa Rican territory, and that it illegally constructed a channel on this territory. These activities were considered by the applicant state as being contrary to the international obligations of the responding state. Thus, Costa Rica requested the Court to declare that Nicaragua should:

“a) Restore the situation to the status quo ante;

b) Pay for all damages caused including the costs added to the dredging of the San Juan River,”\(^{561}\)

The same understanding of *restitutio in integrum* by the applicant appears from the Dispute regarding Navigational and Related Rights. The applicant state considered that Nicaragua wrongfully denied the free exercise of certain rights of navigation regarding the San Juan River. The application contained the following prayer for relief:

“Accordingly, Costa Rica seeks the following remedies in the present proceedings:

[...]

(3) the obligation of Nicaragua to make reparation to Costa Rica for all injuries caused to Costa Rica by the breaches of Nicaragua's obligations referred to above, in the form of (a) the restoration of the situation prior to the Nicaraguan breaches and (b) compensation in an amount to be determined in a separate phase of these proceedings;”\(^{562}\)

The restoration of the *status quo ante* was also sought in the request of the applicant in the *Barcelona Traction Case*. This case represents the most accurate request for remedies with respect to the interaction between *restitutio in integrum* and other remedies, as the Court was requested the following:

“That the state of Spain is consequently liable to restore Barcelona Traction in the entirety of its properties, rights and interests, as they existed before the 12th February 1948, and, in addition, to ensure the compensation to this company for any prejudices resulting from the said bankruptcy and related procedures [...]

subsidiarily, to rule that in case that “restitutio in integrum” proves to be totally or partially impossible, namely to constitutional obstacles the State of Spain would be liable to pay to the State of Belgium an indemnity


\(^{562}\) *Dispute Regarding Navigational and Related Rights (Costa Rica v Nicaragua) [2005] ICJ Pleadings, Application Instituting Proceedings.*
equivalent to the value of the properties, rights and interests of which Barcelona Traction has been deprived.”

The three cases mentioned above demonstrate that even when not referred to as such, *restitutio in integrum* was requested together with compensation, as part of the same request for remedies. This manner of framing remedies demonstrates that the notion of *restitutio in integrum* is wider in scope than restitution in kind, and that the former could encompass a multitude of remedies in order to fully restore the *status quo ante*. This conclusion is also borne out from the request in the *Avena Case*, in which, once restitution in kind became impossible, the applicant mentioned that the full restoration of the *status quo ante* became impossible; compensation being the only remaining remedy available. Thus, these applications were in line with the judgment of the Court in the *Chorzow Factory Case*, in which it “implied that restitution in kind is the normal form of reparation and indemnity could take its place if restitution in kind is not possible”.

4. Restitution in Kind as a Valuation Tool

The value of restitution in kind was also considered by the Permanent Court of International Justice as a reference for the determination of the amount of compensation due in certain cases where the first is not available. Therefore, where restitution in kind is not materially possible, the Court has the possibility to use this remedy as a valuation tool. Restitution in kind is the only remedy of international law which has this scope.

The judgment of the Permanent Court in the *Chorzow Factory Case* established that compensation should be assessed as the value that restitution in kind would bear. This finding has been confirmed by other cases that were submitted before the Court. The *Anglo Iranian Oil Co.* is one of the most relevant cases as to the framing of remedies regarding restitution in kind. In this case, compensation was requested as a primary remedy and, further, restitution in kind was relied upon as a valuation method. Thus, the applicant state requested the Court to find:

“[T]hat the Company is entitled to compensation for all loss and damage suffered by it as the result of all acts by the authorities of the Imperial Government of Iran which are contrary to the provisions of the Convention of 29th April 1933 [...].

In the alternative [...] the Imperial Government of Iran should pay compensation to the Government of the United Kingdom, on behalf of the Anglo-Iranian Oil Company, Limited [...] such compensation including:

(i) A sum corresponding to the value which a restitution in kind would bear (or in other words the value of the undertaking expropriated and of the loss of future profits);”

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564 Aréchaga and Tanzi (n 260) 369.
(ii) Damages for loss sustained which would not be covered by a restitution in kind (or by payment in place of it);\(^{565}\)

Another case that considered restitution in kind as the valuation tool for compensation was the *Nottebohm Case*, in which the applicant requested that the amounts requested represented “the estimated present market value of the seized property had it been maintained in its original condition”.\(^{566}\)

In *Chorzow Factory*, the Permanent Court stated that: “the obligation to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible”.\(^{567}\) However, it should be noted that this does not mean that the International Court of Justice is necessarily limited to the “value” of restitution in kind when assessing the amount of compensation due. The Permanent Court of International Justice confirmed this conclusion in the *Chorzow Factory Case*, when it stated that:

“It follows that the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. This limitation would only be admissible if the Polish Government had had the right to expropriate.”\(^{568}\)

The manner in which the requests in the above mentioned cases were phrased, regarding the use of restitution in kind as a valuation tool for the determination of compensation, is similar to the one used by the Permanent Court in the *Chorzow Factory Case dictum*. This reliance also confirms the legacy of the *obiter dictum* and its relevance in the practice of the Court.

Concluding this Chapter, it can be said that the requests that the parties submit before the International Court of Justice with respect to restitution in kind are sometimes confusing. The reliance on the *Chorzow Factory Case* is apparent in most of these pleadings, even if restitution in kind, *restitutio in integrum* or compensation is sought, further demonstrating that this historical case, resolved by the Permanent Court of International Justice, influences the manner in which states frame their requests. However, what is also apparent is the necessity that the International Court of Justice provides further clarifications with respect to this remedy so that state parties understand the manner in which the remedy applies before the judicial body. The development of the practice of the Court in this respect would undeniably impact the requests of the state parties for restitution in kind. Presently, the state parties do not seem to fully grasp the notion and legal consequences of this remedy.

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\(^{565}\) *Anglo-Iranian Oil Co Case (United Kingdom v Iran)* [1951] ICJ Pleadings, Memorial submitted by the Government of the United Kingdom of Great Britain and Northern Ireland, 125.

\(^{566}\) *Nottebohm Case (Liechtenstein v Guatemala)* (n 548) 69.

\(^{567}\) *Case Concerning the Factory at Chorzow (Germany v Poland)* (n 8) 48.

\(^{568}\) ibid 47.
Chapter 3. Requests for Compensation

1. Introduction

The terminology used by applicant states when requesting compensation is not necessarily consistent; compensation has been variously referred to as “damages”, “indemnity” or even as the more general notion of “reparation”. One such example is the Anglo Iranian Oil Company Case, in which the applicant did not explicitly refer to compensation as such, but requested that indemnity should be paid:

“The Imperial Government of Iran should give full satisfaction and indemnity for all acts committed in relation to the Anglo-Iranian Oil Company, Limited, which are contrary to international law or the aforesaid Convention, and to determine the manner of such satisfaction and indemnity.”\(^{569}\)

Another example of a case in which the applicant state referred to compensation differently, as the wider notion of reparation, is the recent Certain Iranian Assets Case, in which the applicant requested that “full reparations to Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings”\(^{570}\). The only element that leads to the conclusion that compensation, and not reparation generally, was requested in this case was the fact that the applicant referred to the amounts due to be paid by the respondent state.

Even if compensation was requested using different terminology, compensation is generally defined as “reparation for loss suffered; a judicially ascertained compensation for wrong”,\(^{571}\) and it seems that the parties requested it with the same definition in mind, when submitting a claim for reparation before the Court.

The manner in which compensation is presently interpreted has been influenced by the requests of the applicant states before the Court. The Corfu Channel Case\(^ {572}\) and Ahmadou Sadio Diallo Case\(^ {573}\) are the most referred to cases when analysing and interpreting compensation. These cases are considered the most relevant because the Court reached a decision in disputes involving requests for compensation and granted this remedy. However, other cases are also relevant from the perspective of interpreting and categorizing compensation, even though the Court did not reach a final decision and thus, did not give a judgment upon the remedies requested by the parties.

Requests for compensation are of various types, and its categories may be discerned from an analysis of the requests submitted before the Court. While in certain cases states include the amount due as compensation within their pleadings, in other cases states do not include the amount of compensation, but request the Court to determine it, either at the merits stage, or in a subsequent procedural stage. The former kind of compensation shall be referred to as “determined compensation”, while the latter type of compensation shall be referred to as “undetermined compensation”. There is also a

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\(^{569}\) Anglo-Iranian Oil Co Case (United Kingdom v Iran) (Judgment) [1952] ICJ Rep 93, 96.

\(^{570}\) Certain Iranian Assets (Islamic Republic of Iran v United States of America) [2016] ICJ Pleadings, Application Instituting Proceedings, 17.

\(^{571}\) Opinion in the Lusitania Cases (United States/Germany) (n 322) 32-44.

\(^{572}\) Corfu Channel Case (Great Britain v Albania) (n 9).

\(^{573}\) Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18).
third type, which is the vaguest of the three categories, in which states request compensation as the more general notion of reparation. These three types of compensation and how they have fared before the Court shall be analysed below.

2. Requests for Determined Compensation

Certain disputes that were submitted before the Court through a unilateral application involved requests for compensation in which the amount was determined by the applicant state in its application. However, relatively few cases have contained such claims; this manner of requesting compensation has only been found in six cases. Determined compensation was requested in the following cases: Nottebohm, Aerial Incident of 10 March 1953, Aerial Incident of 7 October 1952, Aerial Incident of 27 July 1955, Aerial Incident of 4 September 1954 and Ahmadou Sadio Diallo. These cases have some common features, and for ease of analysis, shall be divided into two categories (a. The illegal expropriation disputes; and b. The aerial incidents disputes), and shall be assessed below.

2.1. The Illegal Expropriation Disputes

Two unilateral applications involved determined compensation with respect to illegal expropriation disputes before the Court. These cases are similar both with respect to their subject matter and the remedies that were requested. Both included submissions that harm was caused to individuals and their property by acts of alleged illegal expropriation undertaken by the states on whose territory they performed their activities. These cases are the Nottebohm Case and the Ahmadou Sadio Diallo Case.

In the Nottebohm Case, Liechtenstein claimed compensation for the measures that were undertaken by Guatemala against an individual—Mr. Nottebohm—and against his property. As a consequence, Liechtenstein requested the Court to find “that the Government of Guatemala has acted contrary to international law and has incurred international responsibility by the unjustified detention, internment and expulsion of Mr. Nottebohm and by the sequestration and confiscation of his property”. Thus, along with requesting a declaration of wrongfulness, Liechtenstein requested determined compensation, in the following terms:

575 Aerial Incident of 10 March 1953 (United States of America v Czechoslovakia) [1955] ICJ Pleadings, Application instituting proceedings.
577 Aerial Incident of 27 July 1955 (Isreal v Bulgaria; United States of America v Bulgaria; United Kingdom of Great Britain and Northern Ireland v Bulgaria) [1957] ICJ Pleadings, Application instituting proceedings.
579 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18).
580 Nottebohm Case (Liechtenstein v Guatemala (n 547) 10.
“That the Government of Guatemala pay Mr. Friedrich Nottebohm compensation for the use of and for profits derived from the sequestrated properties and assets to the amount of U.S.D. dollars 70,000 p.a.”581

This claim was further substantiated through the Memorial of Liechtenstein, and the amount claimed was increased to include:

“i) special damages amounting, according to the data received so far, to not less than 20,000 Swiss francs;

(ii) general damages to the amount of 645,000 Swiss francs.

Further, the Government of Guatemala should restore to Mr. Nottebohm all his property which they have seized and retained together with damages for the deterioration of that property. Alternatively, they should pay to the Government of Liechtenstein the sum of 6,510,596 Swiss francs representing the estimated present market value of the seized property had it been maintained in its original condition.”582

Compensation was requested by Liechtenstein for the nationalized property of Mr. Nottebohm which was seized and retained by Guatemala without adequate compensation. Liechtenstein therefore considered this case as a dispute involving illegal expropriation on the basis that Guatemala: i) provided no compensation and ii) acted in a discriminatory manner towards Mr. Nottebohm. For these reasons, the unilateral application of Liechtenstein contained a request for declaratory relief regarding the responsibility of Guatemala, and a subsequent claim for restitution in kind, followed by a claim for compensation, in the alternative, should restitution in kind prove to be impossible.583

In the Ahmadou Sadio Diallo Case, the factual framework is similar to the one in the Nottebohm Case: Guinea instituted proceedings against the Democratic Republic of Congo claiming that certain measures taken by the Democratic Republic of Congo were against the freedom and property of an individual—Mr. Diallo. Guinea requested determined compensation through its unilateral application in the following terms:

“To order that the Congolese State pay to the State of Guinea on behalf of its national, Mr. Diallo Ahmadou Sadio, the sums of US$31,334,685,888.45 and Z 14,207,082,872.7 in respect of the financial loss suffered by the latter;”584

Guinea sought compensation for a similar reasoning that had motivated Liechtenstein to seek compensation — illegal expropriation. However, the difference between these two cases is that Guinea did not seek restitution from the Court for the breaches of international law committed by the Democratic Republic of Congo.

581 ibid 15.
582 Nottebohm Case (Liechtenstein v Guatemala) (n 548) 70.
583 Nottebohm Case (Liechtenstein v Guatemala) (n 547) 9-10.
584 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) ICJ Pleadings, Application Instituting Proceeding, 37.
It is important to note that determined compensation was requested in these cases due to the fact that a substantiation of the claim was relatively uncomplicated. The enumeration of the assets and the corresponding values for which Liechtenstein requested determined compensation were included in its unilateral application through which the proceedings were instituted. The argument that the claims for determined compensation were of a lesser degree of complexity (given that it was easy to quantify and substantiate the claims), is valid for the aerial incident disputes as well, discussed below.

2.2. The Aerial Incident Disputes

The Aerial Incident Cases are almost identical, both with respect to the facts and the requests for remedies contained in the unilateral applications of the applicant states. These cases involved claims for determined compensation regarding damages that were caused to certain aircrafts and for injuries caused to individuals, i.e., the pilots and persons who were killed as a result. In the Case Concerning the Aerial Incident of March 10th 1953 between the United States of America and Czechoslovakia, the applicant requested the Court to find that:

“the Czechoslovak Government is liable to the United States Government for the damage caused; that the Court award damages in favor of the United States Government against the Czechoslovak Government in the sum of $271,384.16, with interest, and such other reparation and redress as the Court may deem to be fit and proper; […]”

The determined compensation that was requested by the United States Government in this case consisted of i) the replacement value of the airplane and ii) the damages that were caused to individuals as a result of damaging the airplane. Similarly, in the Case Concerning the Aerial Incident of 1952, the United States submitted the following claim:

“It will request that the Court find that the Soviet Government is liable to the United States Government for the damages caused; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of $1,620,295.01.”

The determined compensation that was requested by the United States Government in this case consisted of i) the damages that were caused to the United States airplane and its contents, and ii) the damages that were caused to the families of the crew members who were killed in the incident. The United States of America also requested determined compensation in the case concerning the Aerial Incident of 27 July 1955, in the following terms:

“that the Court award damages in favor of the United States Government against the Bulgarian Government in the sum of $257,875.00, with interest,

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585 Nottebohm Case (Liechtenstein v Guatemala) (n 547) 17-18.
587 Aerial Incident of 7 October 1952 (United States of America v Union of Soviet Socialist Republics) (n 576) 25.
and such other reparation and redress as the Court may deem to be fit and proper.”

The determined compensation that was requested by the United States Government consisted of the damages that were caused to the descendants of the crew members who were killed in the incident.

In the Aerial Incident Cases it is important to note that restitution in kind was not included in any of the unilateral applications due to the fact that this remedy was no longer materially possible - the objects that were destroyed, as a consequence of the respondent’s illegal acts, were impossible to restore. Furthermore, a claim regarding restitution in kind with respect to the loss of human life would have been redundant, compensation being the only suitable remedy in this circumstance.

The first conclusion that can be drawn after analysing the requests that were submitted by the applicant states in the above mentioned cases is that the Court was not requested to assess the amounts of compensation due, but to accept the amounts that were presented by the applicant state through its unilateral application.

In the Aerial Incident Cases, the quantum of compensation was determined and included in the pleadings with respect to the damage that was caused to i) the individuals and property thereof and ii) the replacement value of the airplanes that were attacked. By contrast, in the illegal expropriation disputes, the determined compensation was calculated for i) the sequestration and confiscation of certain goods and for the ii) loss of profits.

The second conclusion is, therefore, that the claims that determined the request for compensation were easily identifiable. Thus, in the Aerial Incidents Cases, the evidence regarding the fact that the airplanes were destroyed or damaged could be provided by the applicant. Also, the physical injuries and costs thereof for the individuals who were involved in the relevant incidents were easily identifiable.

However, in other disputes which involved loss of human life, the quantification of compensation was more difficult to be submitted before the Court. The reason for this issue was that the disputes involving requests for determined compensation were not as complex as the ones involving the use of force. In this sense, one such example is the Memorial on Compensation that was submitted by Nicaragua in the case concerning Military and Paramilitary Activities in Nicaragua,589 which aptly noted that the complexity of the dispute has certain effects over assessing amounts of compensation due, as such:

“No amount of monetary compensation can truly compensate for the devastation brought upon Nicaragua by the unlawful conduct of the United States. No such reparation can revive the human lives lost or repair the physical and psychological injuries suffered by a population that has endured an unrelenting campaign of armed attacks and economic strangulation for over seven years. Nor can monetary reparation fully

588 Aerial Incident of 27 July 1955 (Israel v Bulgaria; United States of America v Bulgaria; United Kingdom of Great Britain and Northern Ireland v Bulgaria) (n 577) 23-24.
589 Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America) (n 553).
restore the Nicaraguan economy to the state it would have attained in the absence of a United States policy of military and economic aggression. The full impact of such a policy on a small, impoverished nation is simply incalculable.”

The cases in which determined compensation was requested through unilateral applications did not deal with such complex issues as the impact of a certain illegal activity on the entire economy of a state, or with several breaches of fundamental rights. These disputes involved simpler claims, such as the value of determined damaged goods. The more complex cases involved requests for compensation as well, but, as will be discussed below, the applicant states in these cases requested undetermined compensation and left the determination of quantum for a subsequent stage of proceedings.

The third conclusion is that the cases in which requests for determined compensation were made included, mainly, disputes in which material damage has been caused. The Ahmadou Sadio Diallo Case is an exception to this, in as much as the claim for determined compensation also sought moral damages.

3. Requests for Undetermined Compensation

States seem more comfortable with requesting the Court to determine the amount of compensation, instead of taking the task of assessing the amounts on their own. Thus, out of all the cases that were brought before the Court by means of a unilateral application, the requests for undetermined compensation represent the majority. It is important to note that in the cases that involved this type of compensation, the amount was not determined by the applicant and, as such, the Court was requested either to:

i) determine the amount of compensation due,
or to
ii) declare that compensation is due, without any further request regarding its determination.

The applicant, therefore, has two possibilities with respect to this type of remedy: i) to request that the determination of compensation is made by the Court through its judgment or ii) to submit a more general claim in which the Court is not requested to determine it and which renders compensation as undetermined throughout the proceedings. The claims that fall within the first category are represented by cases such as the Case Concerning Elettronica Sicula in which the applicant requested that:

“that the Government of Italy is responsible to pay compensation to the United States in an amount to be determined by the Court as measured by the injuries suffered by United States nationals as a result of these violations [...].”

It could be concluded that, in this case, the applicant requested a declaration of responsibility from the Court, albeit one that would also determine the consequence

590 ibid 246.
591 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18) 333.
thereof. However, to be more precise, what the applicant sought was that the Court gives judgment through which it decides that compensation is due. A similar request was submitted by the United States in the \textit{United States Diplomatic and Consular Staff in Tehran}, where the Court was requested to find that:

“the Government of Iran shall pay to the United States, in its own right and in the exercise of its right of diplomatic protection of its nationals, reparation for the foregoing violation of Iran’s international legal obligations to the United States, in a sum to be determined by the Court.”

Although the request of the United States in this case cannot be considered as being a request for a declaration of responsibility, the fact that compensation was undetermined by the applicant state remains, even if the Court was requested to endeavour in determining its quantum. Finally, another example is the \textit{Certain Property Case}, in which Liechtenstein requested the Court:

“...to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered. Liechtenstein further requests that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary in a separate phase of the proceedings.”

As it can be observed, the Court in this case was requested to determine the amount of compensation due at a subsequent stage of the proceedings. This request is not singular throughout the practice of the International Court of Justice. In the \textit{Certain Iranian Assets Case}, the applicant requested “full reparations [be made to] to Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings”. Also, in the more recent case of \textit{Immunities and Criminal Proceedings}, Guinea requested the Court:

“to order the French Republic to make full reparation to the Republic of Equatorial Guinea for the harm suffered, the amount of which shall be determined at a later stage.”

However, merely because the applicant state included within its application a request that the Court determine the amount of compensation, does not absolve the applicant from the responsibility of substantiating its claim for compensation. For compensation to be granted by the Court in any amount, it must be substantiated by the party requesting it. A failure to do so entails that the Court rejects the grant of this remedy. An example that confirms this rather drastic approach is the \textit{Ahmadou Sadio Diallo Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)}, ICJ Pleadings, Application Instituting Proceedings, 8.


\textit{Certain Iranian Assets (Islamic Republic of Iran v United States of America)} (n 570) 17.

Case in which, even though the applicant included three heads of claim related to compensation for material and moral damage, it failed to substantiate its claims. For this reason, the Court rejected most of Guinea’s claims. An exception from this approach were the moral damages sought by the applicant state, for which the Court considered that no substantiation was required.

Thus, it is not sufficient for a state to request that the Court determines that compensation is due for the Court to grant determined compensation; the applicant state must also submit relevant details and evidence substantiating its claim. As such, in certain cases, the submission regarding determined compensation was fully substantiated through the memorial. Thus, in the Elettronica Sicula Case, the applicant amended its initial submission and requested the Court to find that the respondent state “should pay to the United States the amount of US$12,679,000, plus interest, computed as described above” 598 and also filed detailed calculations related to the requested amount.

The claims in which the Court is requested to declare that compensation is due, without issuing a judgment on quantum, are cases such as the Case Concerning the Electricité de Beyrouth Company, in which the applicant requested the Court to find:

“That the Lebanese Government is under an obligation to enter into negotiations with the Société Électricité de Beyrouth in respect of any modifications of its situation and to make good the damage suffered until the date of the Court's decision as the result of the measures which have prevented the Société Électricité de Beyrouth from operating according to the rules which the Lebanese Government was under an obligation to observe.” 599

Another such example is the LaGrand Case, in which the Applicant requested that “the United States should provide reparation, in the form of compensation and satisfaction for the execution of Karl LaGrand on 24 February 1999” 600. Also, in the Armed Activities on the Territory of the Congo the applicant requested the Court to find that “the Democratic Republic of the Congo is entitled to compensation from Burundi in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Burundi” 601.

In the Fisheries Case, the Court’s power to determine the amount of compensation was implied through the application, in which the Court was requested to “award damages to the Government of the United Kingdom in respect of all interferences by the Norwegian authorities with British fishing vessels outside the zone which, in accordance with the Court's decision under”. 602 In the Franco-Egyptian Case, France requested the Court to conclude that “compensation for the damage suffered by the

598 Case Concerning Elettronica Sicula SpA (ELSI) (United States of America v Italy) [1987] ICJ Pleadings, Memorial of the United States of America, 116.
599 Electricité de Beyrouth Company Case (France v Lebanon) [1953] ICJ Pleadings, Application Instituting Proceedings, 15.
600 LaGrand Case (Germany v United States of America) (n 213) 6.
602 Fisheries Case (United Kingdom v Norway) [1949] ICJ Pleadings, Application Instituting Proceedings, 12.
French Government in the person of the victims of the said measures is due by the Government of Egypt”. 603

These above mentioned cases involved claims through which the Court was not requested to determine the compensation due and the applicant did not determine the amount of compensation through the unilateral application. Thus, the Court was requested to declare that compensation was due, without being requested to determine the amount of compensation and without any prior determination made by the applicant.

A relevant conclusion would be that in the cases that involved such claims, the remedy requested by the applicant was not necessarily compensation, even if such terminology found its place in the request of the applicant. It is reiterated that the applicant state cannot ignore its duty to substantiate its claims for compensation, due to the fact that without proper substantiation, the Court cannot grant this remedy. As a consequence, when a state requests that the Court “adjudges and declares” that compensation is due, without determining the amount, the remedy that the applicant is actually seeking is a declaratory judgment. In such a situation, the judicial body would not issue a judgment through which the respondent state receives a clear indication of the action that it should perform, i.e. the payment of a determined amount of money, but would rather declare that money is, generally, due. There is no reason to consider that such a declaration would not fall within the judicial function of the International Court of Justice.

This argument is further supported by the judgments of the Court and the subsequent pleadings of the applicant states in this respect. Thus, for example, in the LaGrand Case, the applicant requested through the application that compensation is due without substantiating the amounts:

“that, pursuant to the foregoing international legal obligations,

(1) the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should provide reparation, in the form of compensation and satisfaction for the execution of Karl LaGrand on 24 February 1999; 604

However, it later amended its submission in its subsequent pleadings in the Memorial to request for the declaration of illegality and for assurances of non-repetition of such conduct in the future, and did not further pursue its claims for financial compensation and an apology. In lieu of undetermined compensation, the applicant state requested declaratory relief and guarantees of non-repetition, in the following terms:

“Republic of Germany respectfully requests the Court to adjudge and declare

[…] and, pursuant to the foregoing international legal obligations,

603 Case Concerning the Protection of French Nationals and Protected Persons in Egypt (France v. Egypt) [1949] ICJ Pleadings, Application instituting proceedings, 12.
604 LaGrand Case (Germany v United States of America) (n 213) 6 (emphasis added).
(4) that the United States shall provide Germany a guarantee that it will not repeat its illegal acts and ensure that, in any future cases of detention of or criminal proceedings against German nationals, United States domestic law and practice will not constitute a bar to the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations.\textsuperscript{605}

This change within the pleadings of the applicant through which a declaration that compensation is due was replaced with a more general declaratory judgment followed by assurances and guarantees of non-repetition further demonstrates that requests for undetermined compensation can be assimilated to declaratory judgments.

However, it is significant to note that with respect to undetermined compensation, the case-law of the Court shows that these claims cannot lead to a judgment that would grant compensation in a determined amount. Thus, the consequences of such claims are either that the compensation is determined at a later stage (through the memorial or through the reply), or at a subsequent stage (a later judgment regarding the amount of compensation). The only other possibility is that compensation remains undetermined and, as a consequence, the applicant state receives a declaratory judgment.

4. Requests for Reparation

As mentioned above, in certain cases, compensation was sought through a claim in which the Court was requested to grant reparation. However, even if the request in the unilateral application did not expressly mention compensation, the intention of the applicant was that the Court should find that compensation was due. The conclusion that compensation was requested in this manner is confirmed by the pleadings of the applicant states in this respect. Thus, the unilateral applications contain certain elements that lead to the conclusion that compensation was the requested remedy.

Illustratively, in the Certain Property Case, Liechtenstein requested the Court to determine that reparation was the remedy that should be granted by the Court. However, the interpretation of its request leads to the conclusion that when referring to reparation, Liechtenstein actually requested undetermined compensation:

“make appropriate reparation to Liechtenstein for the damage and prejudice suffered. Liechtenstein further requests that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings.”\textsuperscript{606}

The link between reparation and the notions of “damages” and “injuries” firstly point to the conclusion that Liechtenstein sought compensation. Further, its request that certain “amounts” should be determined by the Court, should the parties not reach an agreement in this respect, leads to the same conclusion. It is this last submission that undoubtedly confirms the fact that the applicant requested compensation from the International Court of Justice, even if it did not nominate the remedy as such. The Certain Property Case is not singular from this perspective, as the same approach regarding requests for compensation was followed in other cases before the

\textsuperscript{605} LaGrand Case (Germany v United States of America) (n 543) vol I, 161-162.
\textsuperscript{606} Certain Property (Liechtenstein v Germany) (n 594) 18.
International Court of Justice. Thus, in the Territorial and Maritime Dispute, the applicant requested the following through its Reply:

“Colombia is under an obligation to make reparation for the damage and injuries caused to Nicaragua by the breaches of the obligations referred to above;

The amount of this reparation shall be determined in a subsequent phase of these proceedings.”

Again, the references to the concepts of “damages” and its link with “injuries” firstly point out that the applicant requested compensation and not reparation generally. Similarly to the previously described case, the reference to “amounts of reparation” clearly indicates the sought remedy. The implicit intention for requesting undetermined compensation was again expressed in the Oil Platforms Case, in which Iran requested that certain amounts of reparation are provided by the International Court of Justice:

“the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings.”

It is therefore worthy to conclude that several elements should be observed when determining whether a request for reparation is for determined or undetermined compensation due to the fact that, often, the applicant does not refer to this remedy as such. Thus, requests related to the payment of reparation or to the payment of compensation, without mentioning the quantum, are different from the requests related to certain amounts of reparation or certain amounts of compensation in which an express quantum is provided by the applicant. Further, these different types of requests for compensation should be considered by the Court when determining whether it should grant a certain amount of damages or whether it should render a declaratory judgment through which it would find that compensation is due.

While these determinations do not entail a complex analysis of the requests of the application, they are relevant for the proper identification of the remedy that was requested by the applicant states. In this manner the Court best addresses the claim and provides relevant remedies in the disputes that are submitted before it.

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608 Oil Platforms (Islamic Republic of Iran v United States of America) (n 595) 5.
Title 2. The Approach of the Court Towards the Remedies of International Law

The Permanent Court of International Justice and the International Court of Justice have manifested a restrictive approach towards the interpretation and clarification of remedies. This does not entail that the Court has ignored the subject. In fact, the Court’s jurisprudence has clarified the manner in which certain remedies should be interpreted. It has been argued, and rightly so, that the judicial bodies have acted as the “pivotal players” in “the process of shaping the contemporary law of State responsibility”.609

Title 2 shall focus on the approach of the Court towards the remedies that were requested by the state parties. It is not intended to provide an exhaustive analysis of all cases that were resolved by the judicial body, but instead focusses on the ones that made a substantial contribution to the clarification and interpretation of the relevant remedies. Illustratively, it will aim to focus on issues such as the jurisdiction of the International Court of Justice to grant remedies, in situations in which there is no express provision agreed upon by the parties in this respect. Further, controversial issues such as the primacy of restitution in kind and the methods of quantification of compensation, among other aspects relevant to the interpretation of the remedies of international law, shall be clarified, through the perspective of the judgments given in this respect by the Permanent Court of International Justice and by the International Court of Justice. Thus, this Title shall be structured as follows: i) The Jurisdiction of the Court to Grant Remedies; ii) Specific Performance; iii) Cessation and Assurances and Guarantees of Non-Repetition; iv) Restitution in Kind; v) Compensation; vi) Satisfaction.

The analysis of the above mentioned notions, provided through the approach of the Permanent Court of International Justice and the International Court of Justice, shall complete the systemic analysis of remedies before the judicial body. The first Chapter shall focus on the jurisdiction of the Court to grant remedies.

Chapter 1. The Jurisdiction of the Court to Grant Remedies

1. Introduction

The jurisdiction of the Permanent Court of International Justice and of the International Court of Justice to grant remedies has often been challenged, especially when the Permanent Court of International Justice first commenced its activities. Today however, this issue is largely moot.

A recurrent issue that was raised by applicant states in this respect was whether the Court had the jurisdiction to grant a particular remedy when the parties did not provide an instrument that would confer such powers to the Court. “...[T]he extent of the World Court’s power to give remedies in those cases where its jurisdiction is derived from an agreement not containing any express provision on this question of remedies”610 merits

610 Gray (n 4) 59.
brief assessment, as without such competence, the Court might not have the power to resolve the dispute in a final manner. Shaw opines in this respect that “[t]he reference in the Court’s Statute to remedies is less than clear. Article 36(2) (d) provides that States parties may in their optional declaration recognise the compulsory jurisdiction of the Court with regard to inter alia ‘the nature or extent of the reparation to be made for the breach of an international obligation’.” 611 He further argues that in such a situation “the scope of the Court’s power to order remedies has not been well defined whether one is considering damages, restitution, satisfaction or even the extent of a statement of the consequential legal situation for the parties” 612.

Evidently, it is possible for the parties to expressly include a provision in a treaty granting the Court the power to order a remedy in case of a breach of an international obligation. Even if the scope of the Courts’ power to order remedies is not necessarily well defined, both the Permanent Court of International Justice and the International Court of Justice have manifested a rather clear view regarding their competence to grant remedies even in the absence of agreement in this respect.

2. The Permanent Court of International Justice

The Permanent Court of International Justice first addressed, albeit implicitly, the issue regarding its jurisdiction to grant remedies in the Wimbledon Case. 613 It delivered a judgment that included an order for compensation within its dispositif even though the treaty that was signed by the parties appearing before it did not contain any express provision related to remedies. The Court concluded that compensation is due in the following terms:

“3. that the German Government is bound to make good the prejudice sustained by the vessel and her charterers as the result of this action;

4. that the prejudice sustained may be estimated at the sum of 140,749 frs. 35 centimes, together with interest at 6 % per annum from the date of the present judgment;

5. that the German Government shall therefore pay to the Government of the French Republic, at Paris, in French francs, the sum of 140,749 frs. 35 centimes with interest at 6 % per annum from the date of this judgment; payment to be effected within three months from this day;” 614

Even in its later judgements, the Permanent Court reached a similar conclusion regarding its power to order reparation. Illustratively, the Free Zones of Upper Savoy and District of Gex 615 is similar in this respect. The Permanent Court issued an order through which it concluded that France should perform certain acts in order to fulfil its international obligations:

612 ibid.
613 Case of the S.S. “Wimbledon” (Great Britain et al v Germany) (n 1).
614 ibid 33.
615 Free Zones of Upper Savoy and District of Gex (France v Switzerland) (second phase) [1932] PCIJ Rep Series A/B No 46.
“That the French Government must withdraw its customs line in accordance with the provisions of the said treaties and instruments; and that this régime must continue in force so long as it has not been modified by agreement between the Parties; That the withdrawal of the customs line does not affect the right of the French Government to collect at the political frontier fiscal duties not possessing the character of customs duties;”

Though the Permanent Court had previously granted remedies in disputes where the underlying treaty was silent in this respect, it was in the Chorzow Factory Case that the Permanent Court concluded, as a matter of principle, that it has the power to order remedies. This case is one of the first in which the issue of jurisdiction to order remedies was assessed by the Permanent Court. Here, Poland argued that the clause through which the parties agreed to refer the dispute to the Court did not provide for remedies and that, therefore, the parties’ consent did not extend to granting of remedies.\textsuperscript{617} Poland thus interpreted the dispute resolution clause in a restrictive manner, and requested that the Permanent Court considers the same approach. The Permanent Court undertook a different interpretation and concluded that the parties did not have to include an express provision regarding its competence to grant remedies. As a consequence, the Permanent Court considered that a remedy is a natural consequence of a breach of international law, as such:

“[T]he Court observes that it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation. In Judgment No. 8, when deciding on the jurisdiction derived by it from Article 23 of the Geneva Convention, the Court has already said that reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself. The existence of the principle establishing the obligation to make reparation, as an element of positive international law, has moreover never been disputed in the course of the proceedings in the various cases concerning the Chorzów factory.”\textsuperscript{618}

The Permanent Court pursued an argumentum a contrario rationale by analysing the potential negative effects of a restrictive interpretation. It found that an isolated decision on a point of law without a subsequent judgment regarding reparation would amplify the dispute rather than resolve it—creating the possibility of various future disputes. Thus, the Court concluded as follows in this respect:

“An interpretation which would confine the Court simply to recording that the Convention had been incorrectly applied or that it had not been applied, without being able to lay down the conditions for the re-establishment of the treaty rights affected, would be contrary to what would, prima facie, be the natural object of the clause; for a jurisdiction of this kind, instead of settling a dispute once and for all, would leave open the possibilities of further disputes.”\textsuperscript{619}

\textsuperscript{616} ibid 80.
\textsuperscript{617} \textit{Case Concerning the Factory at Chorzow (Germany v Poland)} (n 32) 20.
\textsuperscript{618} \textit{Case Concerning the Factory at Chorzow (Germany v Poland)} (n 8) 29.
\textsuperscript{619} \textit{Case Concerning the Factory at Chorzow (Germany v Poland)} (n 32) 25.
The conclusion reached in the *Chorzow Factory Case* was that the jurisdiction to resolve a particular dispute implies jurisdiction to resolve and determine any related issues involving the applicable remedies. In other words, not only was the Court empowered to state whether a certain remedy is applicable as reparation, but also had the power to determine if, in that case, reparation was due:

“It may be admitted, as the Court has said in Judgment No. 8, that jurisdiction as to the reparation due for the violation of an international convention involves jurisdiction as to the forms and methods of reparation. If the reparation consists in the payment of a sum of money, the Court may therefore determine the method of such payment. For this reason it may well determine to whom the payment shall be made, in what place and at what moment; in a lump sum or maybe by instalments; where payment shall be made; who shall bear the costs, etc. It is then a question of applying to a particular case the general rules regarding payment, and the Court's jurisdiction arises quite naturally out of its jurisdiction to award monetary compensation.”**620**

The Permanent Court therefore concluded, in the *Chorzow Factory Case*, that it has jurisdiction to grant remedies even if the parties did not refer to such jurisdiction expressly in the underlying treaty. Its findings were further confirmed by its successor, as shall be provided below.

3. The International Court of Justice

The conclusion that the Court has an implicit jurisdiction to grant remedies has been maintained and confirmed by the jurisprudence of the International Court of Justice, in cases where the question has been raised by responding states in a more concrete manner than the *Chorzow Factory Case*.

One such example is the *Corfu Channel Case*, in which the Court was requested by Albania to find that it had the jurisdiction to decide on the available remedies, but that it did not have the power to decide upon the amounts due. In other words, Albania argued that the Court had a partial jurisdiction to declare that compensation was due, but that it lacked the jurisdiction to decide upon the quantum of the compensation. The Court rejected this argument and concluded that should it be accepted, an important part of the dispute would not be resolved. It held:

“If, however, the Court should limit itself to saying that there is a duty to pay compensation without deciding what amount of compensation is due, the dispute would not be finally decided. An important part of it would remain unsettled.”**621**

The reasoning of the Court in the *Corfu Channel Case* was, therefore, not as drastic as that of the Permanent Court in the *Chorzow Factory Case* which concluded that a decision void of remedies would amplify the dispute. This approach has been

**620** ibid 61.

**621** *Corfu Channel Case* (Great Britain v Albania (n 2) 26.
maintained throughout the years in cases such as the *Iranian Hostages Case*,\textsuperscript{622} the *Nicaragua Case*\textsuperscript{623} and the *Right of Passage Case*.\textsuperscript{624}

While this issue has arisen in different forms, the Court has constantly reiterated its finding from the Chorzow Factory Case, that the jurisdiction to resolve the dispute implies the jurisdiction to decide issues regarding reparation. Perhaps the most unequivocal statement is seen in the *Nicaragua Case*, in which the responding state requested the Court to find that it did not have jurisdiction to grant a certain remedy. The Court concluded that “*i*n general, jurisdiction to determine the merits of a dispute entails jurisdiction to determine reparation.”\textsuperscript{625} It must be noted that, in this case, the mechanism through which the parties accepted the Court’s jurisdiction was through unilateral declarations, in which no reservation was made with respect to remedies.

4. Conclusion

It is therefore clear, at present, that the practice of the Court is established in the sense that it has an inherent jurisdiction to grant remedies and to decide upon the specific manner in which a certain remedy should be implemented. However, even if the Court has decided in several of its cases that it has the jurisdiction to grant remedies, it has rarely issued judgments through which certain remedies, such as restitution, have been provided to the applicant state. The reasoning behind the approach of the Court regarding particular remedies shall be presented below.

**Chapter 2. Specific Performance**

1. Introduction

Specific performance is a remedy that has never been addressed as such by the Permanent Court of International Justice, nor by the International Court of Justice. The ILC Articles on State Responsibility, however, consider it as being a natural consequence of an unlawful act. Thus, article 29 of the ILC Articles provides that “*the legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached*”. The Court seems to have avoided approaching this issue explicitly throughout its case-law.

The disputes submitted before the Permanent Court involved specific performance as a remedy, but it did not clarify the particulars of specific performance through its judgment in the same manner in which the Permanent Court clarified issues related to restitution in kind, for instance. The only case of the International Court of Justice that dealt directly with this remedy was the *Gabcikovo Nagymaros Case*, which involved the effects of non-performance of a treaty. In other cases, the Court issued judgments through which the specific performance of the obligations of the parties would be

\textsuperscript{622} United States and Consular Staff in Tehran (United States of America v Iran) (n 14).

\textsuperscript{623} *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (n 26).

\textsuperscript{624} Case Concerning Right of Passage over Indian Territory (Portugal v India) (Merits) [1960] ICJ Rep 6.

\textsuperscript{625} *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (n 26) 142.
implied, either by mentioning that a certain treaty has been dully entered into or by ordering the parties to perform the particular obligations that were agreed upon in the said treaty.

There are various opinions regarding the characteristics of specific performance as a remedy of international law. Illustratively, while Sornarajah considers that specific performance is illusory due to the impossibility of enforcing a judgment that provides for it, other authors consider that specific performance is an important remedy that contributes to the re-establishment of the status quo ante, being the first effect of a breach. Crawford further describes the conceptual framework of specific performance and concludes that even if its terminology is not necessarily used before the Court, the judicial organ has the power to order it and it has done so, in certain cases:

“The considerations that dispose of the idea sometimes expressed that the Court cannot make orders which equate to orders of specific performance against states. Of course, the language of specific performance (peculiar to the common law) is not used, but, in principle international courts and tribunals can make orders having mandatory effect whether by way of declaration or otherwise.”

Even if the doctrine is slightly controversial with respect to specific performance as a remedy, the case-law of the International Court of Justice lacks controversy as it provides few arguments regarding the interpretation and clarification of this remedy.

2. The Case-law of the International Court of Justice

2.1. The Gabčíkovo - Nagymaros Case

In 1977, Hungary and Czechoslovakia signed a treaty that provided for the construction and operation of a barrage system on the River Danube, which constituted their common border. The parties began the construction of the said project in 1978. However, the project was not finalized due to the fact that in 1989 political and economic turmoil manifested effects on the project. The main element of the dispute, which was later submitted before the International Court of Justice, was that Hungary first suspended its part of the construction of the project in 1989 and later abandoned it. In response, Czechoslovakia started construction works in 1991 regarding a new version of the initial plan.

Following the separation of Czechoslovakia into two separate states in 1993, Hungary and Slovakia jointly submitted a dispute to the International Court of Justice. Through this special agreement the two states requested the court to determine, on the basis of international law, whether Hungary was entitled to suspend and then abandon its part of the performance of the Danube projects:

626 The Societe Commerciale Belge Case (Belgium v. Greece) [1939] PCIJ Rep Series A/B 78.
627 Lighthouses Case (France v. Greece) (n 27).
628 Sornarajah (n 270) 298.
629 Crawford (n 3) 277.
630 ibid 468.
631 Diplomatic and Consular Staff in Tehran (United States of America v. Iran) (n 14); Avena and Other Mexican Nationals (Mexico v. United States of America) (n 153).
“(a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary:

(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the ‘provisional solution’ and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 185 1.7 on Czechoslovak territory and resulting consequences on water and navigation course);”\(^{632}\)

The International Court was therefore faced with issues regarding both the non-performance and the performance of the treaty. Even if the Court did not refer to specific performance as such, this judgment represents one of the very few in which the Court provided certain conclusions leading to a better understanding of specific performance as a remedy of international law.

A. Notion and Particulars of Specific Performance

Before analysing the judgment of the Court in the Gabčíkovo Nagymaros Case, it is relevant to note that the state parties referred to this remedy in their pleadings, and thus, asserted that specific performance is not only an obligation which should be observed throughout the life of the treaty, but also a remedy that the Court has the power to order in case of a breach. Thus, the Slovak Republic submitted the following request before the Court:

“\[That, in consequence of its breaches of the 1977 Treaty, the Republic of Hungary shall, in addition to immediately resuming performance of its Treaty obligations, pay to the Slovak Republic full compensation for the loss and damage, including loss of profits, caused by those breaches together with interest thereon.\]”\(^{633}\)

Even though the Slovak Republic referred to performance as such, the Republic of Hungary submitted arguments in this respect, without referring to specific performance directly, but by requesting the Court to conclude that it had the right to “suspend and subsequently abandon the works on the Nagymaros Project”.\(^{634}\) However, it can be concluded that irrespective of the terminology used by the parties, their claims and arguments represent requests regarding the specific performance of the treaty. Crawford agrees with the fact that this case involved specific performance, and concludes the following with respect to the obligation of performance:

“Another example is Gabčíkovo-Nagymaros, in which the Hungarian non-performance of its agreement with Slovakia regarding the damming of the Danube river constituted a continuing breach for as long as the

\(^{632}\) Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (n 10) 11.

\(^{633}\) ibid 16 (emphasis added).

\(^{634}\) ibid 11.
Although the judgment did not fully address the concept of specific performance as such, the Court analysed and interpreted the requests of the parties, as mentioned above. As a consequence, the judgment contains important findings that contributed to the current interpretation of specific performance.

The wording of the notion of “specific performance” might lead to the conclusion that the Court has the possibility of ordering the parties to perform their obligations in a specific manner. In other words, an argument could be formulated in the sense that the Court has the possibility to order the parties to perform a certain specific conduct which, in the Court’s view, would lead to the performance of the obligations in question.

However, it can be considered that the terminology used for this remedy might be misleading, as used before the International Court of Justice. As a consequence, this notion should be interpreted widely, by giving the parties the freedom of choice with respect to the manner in which the said obligations should be performed. Thus, the term “specific” is not necessarily related to the means through which the parties choose to perform their obligations, but to the fact that the obligations should be performed as agreed by the parties within their treaty.

This conclusion is confirmed by the dispositif of the International Court of Justice in the Gabcikovo Nagymaros Case. Even if the Court did not refer to specific performance as such, the judicial body concluded that the parties should respect and fulfill the obligations that were agreed upon through the treaty, without mentioning the mechanism through which these obligations should be performed. Thus, the Court referred to the obligation of the parties to “ensure” that the objectives of the treaty are fulfilled, as follows:

“B. By thirteen votes to two, Finds that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation, and must take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they may agree upon;”

This finding of the Court regarding the modality in which specific performance should be achieved by the state parties is confirmed by a previous paragraph of the same judgment. The Court therein concluded that due to the general scope of the obligations, the performance of the treaty should be achieved by the parties and should not be ordered by the Court:

“The responsibility to do this was a joint responsibility. The obligations contained in Articles 15, 19 and 20 are, by definition, general and have to be transformed into specific obligations of performance through a process of consultation and negotiation.”

The Court, in the Avena Interpretation Judgment, further confirmed the fact that a judgment for specific performance should not provide the mechanism through which the

635 Crawford (n 3) 260.
636 Gabcikovo-Nagymaros Project (Hungary/Slovakia) (n 10) 83
637 ibid 68.
remedy should be implemented by the parties in the post adjudication stage, and that the mechanism through which such an order would be complied with is for the parties to agree upon, not for the Court to impose. The Court concluded in this respect:

“The Avena Judgment nowhere lays down or implies that the courts in the United States are required to give direct effect to paragraph 153(9). The obligation laid down in that paragraph is indeed an obligation of result which clearly must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct. However, the Judgment leaves it to the United States to choose the means of implementation, not excluding the introduction within a reasonable time of appropriate legislation, if deemed necessary under domestic constitutional law.”

Brownlie states that this approach is natural, due to the fact that the Court has no instrument that would grant it the power to do so:

“In other respects the Court has had to make its own way because the formulation in article 36 provides no express guidance in respect of declaratory judgments, specific performance and injunctive relief.”

This conclusion is further supported by the fact that the Permanent Court of International Justice had a similar approach regarding the manner in which it ordered specific performance. The terms of its judgments in this respect were also quite vague with respect to the mechanisms through which performance would be achieved. The Permanent Court, in the Lighthouses Case, issued a judgment through which it concluded that the treaty in dispute was validly entered into, implying that the obligations contained therein should be specifically performed, as follows:

“that the contract of April 1st/14th 1913, between the French firm Collas & Michel, known as the "Administration générale des Phares de l'Empire ottoman", and the Ottoman Government, extending from September 4th, 1924, to September 4th, 1949, concession contracts granted to the said firm, was duly entered into and is accordingly operative as regards the Greek Government in so far as concerns lighthouses situated in the territories assigned to it after the Balkan wars or subsequently.”

Confirming the above mentioned approach, the Permanent Court issued the following finding in the Socobelge Case:

“I. Admits submission A of the Belgian Government and submission No. 3 of the Greek Government and, noting the agreement between the Parties, states that the arbitral awards made on January 3rd and July 25th, 1936, between the Greek Government and the Société commerciale de Belgique are definitive and obligatory.”

639 Brownlie (n 39) 558.
640 Lighthouses Case (France v. Greece) (n 27).
641 The Societe Commerciale Belge Case (Belgium v. Greece) (n 626).
These two findings of the Permanent Court of International Justice could be read as being orders for specific performance. Gray confirms this view and concludes that “in those cases such as the Serbian Loans, Lighthouses and Socobelge cases where the Court declares that a contract has been duly entered into and is binding on the parties or that an arbitral award is binding, although this is not formally an order for specific performance it is clear what the parties ought to do.” 642

Another relevant issue with respect to specific performance is that this remedy is sometimes confused with cessation. This confusion occurred in the past, due to the fact that the duty to specifically perform the obligations of a treaty is often confused with the duty to cease the breach of the said obligations. Thus, even if cessation and specific performance might lead to the same effect, i.e. conforming to the obligations, these notions are different. As mentioned in the previous chapters, while cessation manifests its effects when a breach occurs and stops its effect once the ceasing occurs, the duty to specifically perform the obligations is continuous and permanently linked with the treaty. An example where this confusion arose is the Iranian Hostages Case. Certain authors have concluded that the Court in the Iranian Hostages Case ordered specific performance, when stating that:

“Finding the Iranian Government’s inaction during the Iranian hostage situation to constitute a violation of international law, the ICJ ordered Iran to redress this unlawful omission by specific performance of its legal obligations.”643

However, this conclusion is rather divorced from the finding of the Court which issued a judgment of cessation rather than a judgment for specific performance, in the following terms:

“must immediately terminate the unlawful detention of the United States Chargé d’affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power.”644

To say that this finding represents an order for cessation exclusively would be overreaching. A more accurate interpretation would be that the Court, in this case, ordered both cessation and specific performance, as it firstly requested that the unlawful act is terminated and, further that it must specifically perform its international obligations by releasing the hostages and entrusting them to the protecting power.

In the Gabčíkovo Nagymaros Case, the Court provided further elements through which the parties would achieve specific performance: it stressed that in agreeing upon the manner in which specific performance should be achieved, the parties should not disregard the treaty. Moreover, the judgment referred to the fact that both parties were involved in the operation regime regarding the construction of the Gabčíkovo Nagymaros project and also stated that any settlement of accounts should be performed in accordance with the treaty that was signed between the parties:

642 Gray (n 4) 98.
643 Martin, Schnably, Wilson, Simon, Tushnet (n 129) 302.
644 Diplomatic and Consular Staff in Tehran (United States of America v. Iran) (n 14) 45; Avena and Other Mexican Nationals (Mexico v. United States of America) (n 153) 12, 44.
C. Finds that, unless the Parties otherwise agree, a joint operational régime must be established in accordance with the Treaty of 16 September 1977;

E. By thirteen votes to two, Finds that the settlement of accounts for the construction and operation of the works must be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as will have been taken by the Parties in application of points 2 B and 2 C of the present operative paragraph.

The wording that the International Court of Justice included in its finding is sufficient for concluding that in this case specific performance was provided. Thus, the fact that the Court mentioned that the parties must act in accordance with the Treaty of 1977 implies that they should specifically perform the international obligations contained therein. The second quoted paragraph of the dispositif further substantiates the conclusion that the remedy of specific performance was ordered by the Court, as it referred to an effective implementation of the provision of the treaty that was signed by the state parties.

3. Conclusion

Even if the Court concluded that an obligation of performance exists, and to a certain degree ordered the parties to comply with this said obligation, the Court could have pursued a more detailed analysis of the obligation to specifically perform the said treaty.

The vague approach of the Court with respect to this remedy could be considered, at times, as being justified, firstly, because enforcing an order for specific performance would prove almost impossible and secondly, because this remedy is perhaps the most sensitive due to the fact that it re-establishes the status quo ante and forces the parties to comply with a treaty. However, the fact that the International Court of Justice failed to pursue a detailed analysis of this remedy, even if it had the opportunity to do so, remains. This conclusion is further confirmed by Crawford:

“In Gabcikovo-Nagymaros the Court found that the parties had accepted ‘obligations of conduct, obligations of performance, and obligations of result’: ICJ Rep. 1997 p. 7, 77. But the Court does not seem to have derived any conclusion from these descriptions.”

It can be concluded that in the future, the Court should endeavour to better clarify and interpret the manner in which specific performance applies when a dispute in this respect is submitted before it. Without a proper analysis of specific performance by the Court, its case-law regarding this remedy would remain uncertain. More so, the Court could refer to specific performance as such, in its future practice, in order to clarify that it is available before it and that state parties have the possibility of requesting it, if the case so requires. Its application is presently determined implicitly. Thus, although specific performance is not sufficiently clarified, its availability as a remedy before the International Court of Justice is currently established.

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645 Gabcikovo-Nagymaros Project (Hungary /Slovakia) (n 10) 82-84.
646 Crawford (n 3) 224.
Chapter 3. Cessation and Assurances and Guarantees of Non-Repetition

1. Introduction

Cessation and assurances and guarantees of non-repetition represent the remedies of international law through which the Court decides that the breach of an international obligation should not be continued. These remedies have been rather ignored by the Permanent Court and by the International Court of Justice throughout their case-law, as opposed to compensation or restitution in kind, in respect of which both judicial bodies have issued certain findings of principle that contributed to their clarification. However, unlike the judgments providing for specific performance, although rare, the judgments of the Court on the remedies described in this Chapter provide a clearer picture.

The most relevant cases in this regard are the Avena Case, the Case Concerning Military and Paramilitary Activities in and against Nicaragua and the LaGrand Case, which entailed cessation and assurances and guarantees of non-repetition. The joinder of these remedies occurs due to the fact that they often work together towards the restoration of the status quo ante. The fact that the two remedies are complementary is confirmed by article 30 of the ILC Articles which provides the following:

“Article 30.

Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

(a) to cease that act, if it is continuing;

(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.”

The commentary to the ILC Articles indicates that the motivation for this formulation is that “both are aspects of the restoration and repair of the legal relationship affected by the breach. Cessation is, as it were, the negative aspect of future performance, concerned with securing an end to continuing wrongful conduct, whereas assurances and guarantees serve a preventive function and may be described as a positive reinforcement of future performance.”

However, this should not be interpreted in the sense that there are no situations in which only one of the remedies may be requested. In other words, there is no general obligation for a state to request both remedies as means of reparation; the state has the freedom to choose either one of them, or both.

647 Avena and Other Mexican Nationals (Mexico v. United States of America) (n 153).
648 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) (n 26).
649 LaGrand (Germany v. United States of America) (n 154).
650 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181) 88.
2. Case Concerning Military and Paramilitary Activities in and against Nicaragua

The Case Concerning Military and Paramilitary Activities in and against Nicaragua entailed a dispute where cessation was requested by the applicant and was granted, as such, by the Court. This case is singular from the perspective that the Court did not shy away from determining that an obligation of cessation exists on behalf of the United States and that this obligation should be complied with.

2.1. The Facts of the Case

On the 9th of April 1984, this case was submitted before the International Court of Justice by Nicaragua. The application referred to a dispute which concerned the responsibility of the United States for certain military and paramilitary activities in and against Nicaragua. On the 10th of May 1984 an order was issued by the Court through which it indicated provisional measures. One of these measures required the United States immediately to cease and refrain from any action restricting access to Nicaraguan ports, and, in particular, the laying of mines. Nicaragua requested the Court to order the following:

“That, in view of its breaches of the foregoing legal obligations, the United States is under a particular duty to cease and desist immediately: from all use of force - whether direct or indirect, overt or covert - against Nicaragua, and from all threats of force against Nicaragua.”

Owing to the United States’ failure to comply with the above mentioned order, Nicaragua submitted the following request in its memorial:

“Nicaragua’s Application asserts that the United States has breached and continues to breach specific legal obligations under existing multilateral and bilateral treaties as well as general and customary international law. On this basis, Nicaragua seeks a judgment from the Court declaring that the United States is under a particular legal duty to cease its unlawful conduct and make reparation to Nicaragua for injuries suffered as a result of such conduct.”

It can be concluded that Nicaragua used the request it submitted at the provisional measures stage to further demonstrate through its memorial that the obligation was continuously breached by the responding state. The Court decided to follow the argumentation provided by the applicant state.

2.2. The Judgment of the Court

Taking note of Nicaragua’s arguments, the Court ruled the following with respect to cessation:

651 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) [1984] ICJ Pleadings, Application instituting proceedings, 16 (emphasis added).
“Decides that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations.”

This case is probably the most straightforward circumstance in which the Court herein expressly ordered cessation. In fact, this case is also relevant from the perspective of the object of the obligation of cessation. The Court remained general in its approach and did not order the United States of America to refrain from certain specific acts, but ordered a rather general obligation of cessation with respect to any act which might amount to a breach of the international obligations of the United States. Whether this approach is advisable, because it enforces the idea that the parties of a treaty should perform their obligations as agreed upon, or unwise, because it could be used as a justification for the continuance of the breach, due to its vagueness, is debatable. It could be considered that, given the factual framework of the case at hand (involving violations of human rights), and the particularities of the obligations that were breached (substantial violations of the fundamental principles of international law), the International Court could have provided Nicaragua with a more contextualized dispositif.

3. The LaGrand Case

The LaGrand Case represents the locus classicus for cessation and assurances of non-repetition. This case was also referred to by the Court when it received requests for cessation and for assurances of non-repetition in other cases. It is of certain relevance that LaGrand is the only case that is referred to by the ILC Articles on State Responsibility. The reason for this is that the Applicant requested both the remedies for the breaches of international law performed by the responding state.

3.1. The Facts of the Case

On the 2nd of March 1999, this case was submitted before the Court by Germany. In its application, Germany submitted that the United States failed to comply with articles 5 and 36 of the Vienna Convention on Consular Relations. This breach occurred due to the fact that the United States of America had detained, tried and sentenced to death two German nationals without providing them with the right of consular protection. Thus, Germany submitted the following request before the Court, inter alia:

“(4) that the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory [...];

(4) the United States should provide Germany a guarantee of the non-repetition of the illegal acts.”

Germany did not substantiate its claims regarding cessation and guarantees of non-repetition included in the above mentioned application. However, it submitted the

653 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) (n 26) 149.
654 Avena and Other Mexican Nationals (Mexico v. United States of America) (n 153) 12, 59.
655 LaGrand Case (Germany v. United States of America) (n 213) 6.
following arguments in its Memorial, providing well structured arguments regarding its request for guarantees of non-repetition:

“Thus, Germany wants to repeat that it has limited its requests to those remedies which it considers as the minimum requirements, but also as absolutely necessary, to ensure that German nationals in the United States will have access to adequate consular assistance in the future, as prescribed by the Vienna Convention.”656

Thus, even if initially Germany sought compensation through its application, it amended its claims by requesting solely a declaration of wrongfulness and guarantees of non-repetition, as follows:

“Thus, Germany now limits its claims - and correspondingly its submissions - to requests for the pronouncement of the illegality and for assurances of non-repetition of such conduct in the future, and does not wish to pursue further its claims to financial compensation and an apology. More specifically, Germany now requests the Court to pronounce:

(1) that the United States violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals; and

(2) that the United States shall provide Germany a guarantee that it will not repeat its illegal acts.”657

The arguments of Germany with respect to the mechanism through which the requested remedies would be complied with is one of the few instances in which guarantees of non-repetition were interpreted and clarified. Thus, Germany indicated that the requested guarantees must be formally delivered, and further, that specific measures should be taken by the responding state through which it would make sure that the international obligations will not be breached in the future. Although lengthy, it is relevant at this juncture to provide the arguments of Germany in this respect:

“State practice knows two kinds of demands for guarantees: (1) demands for safeguards against the repetition of the wrongful act without any specification, and (2) demands for specific measures to secure that the future conduct of the wrongdoing State will be in compliance with international law.

In precise terms, Germany demands formal assurances that the United States will bring its practice in conformity with the requirements of international law, without laying out in detail whether these modifications are to be brought about by formal changes in its domestic law or simply by changing the practical application of its respective legislation. Nevertheless, Germany wishes to emphasise that the result of the endeavour

656 LaGrand (Germany v. United States of America) (n 543) para 1.11.
657 ibid para 6.25.
must be complete conformity of United States conduct with Art. 36 of the Vienna Convention on Consular Relations.”

The arguments of the applicant show that these remedies are complex, particularly assurances and guarantees of non-repetition. However, even if the applicant provided sufficient elements for the Court to issue a judgment through which it could further interpret and clarify the described notions, the Court failed to address these matters.

3.2. The Judgment of the Court

Although the Court was seized with issues that could have been clarified at length, such as the manner in which assurances apply, whether formally or informally, and the circumstances which would fall in one category or the other, the Court merely “took note” of the commitment undertaken by the United States in this respect:

“Takes note of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Convention; and finds that this commitment must be regarded as meeting the Federal Republic of Germany's request for a general assurance of non-repetition;

The United States has provided the Court with information, which it considers important, on its programme. If a State, in proceedings before this Court, repeatedly refers to substantial activities which it is carrying out in order to achieve compliance with certain obligations under a treaty, then this expresses a commitment to follow through with the efforts in this regard. The programme in question certainly cannot provide an assurance that there will never again be a failure by the United States to observe the obligation of notification under Article 36 of the Vienna Convention. But no State could give such a guarantee and Germany does not seek it.

The Court considers that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), must be regarded as meeting Germany's request for a general assurance of non-repetition.”

Whether this represents a veritable judgment for assurances of non-repetition could be debated. Similarly, in its declaratory judgment in the Corfu Channel Case, the Court considered that the promise of the responding state during the course of the proceedings represents appropriate satisfaction. The fact that the Court considered guarantees of non-repetition as a remedy of international law can be read implicitly from its judgment. This is one of the few conclusions that can be reached by analysing this finding.

Further, the delivery of a judgment in which the claim of the applicant regarding assurances of non-repetition is considered as granted by referring to certain documentary evidence submitted by the respondent is not sufficient for reaching the conclusion that this remedy has been granted. A preferable approach would be that the Court orders the respondent to provide an express declaration that the illegal act will

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658 ibid para 6.71.
659 LaGrand Case (Germany v. United States of America) (n 154) 513 (emphasis added).
660 Corfu Channel Case (Great Britain v. Albania) (n 2) 36.
not occur in the future. If it decides to reject the well detailed arguments raised by the applicant state in this respect, the Court should at least provide a justification in this respect.

The wording of the Court with respect to this remedy, included in the dispositif of the judgment, cannot necessarily be considered as an order for complying with a certain remedy. This approach contributes to the opinions that assurances cannot be deemed a veritable remedy of international law before the International Court of Justice due to the fact that it cannot be enforced and, further, its implementation by the responding state is not necessarily an obligation, since the Court merely “took note” of the promises provided by the responding state.

It is clear from the Memorial of Germany that it sought that the Court orders the United States to take certain formal measures, for the future, to prevent further breaches of the Vienna Convention on Consular Relations. However, the Court failed to meet the requirements of Germany provided in its memorial quoted above, as it did not issue a judgment through which formal assurances of non-repetition were ordered, nor did it explain its decision. Instead, it issued a declaratory judgment through which it considered that a promise submitted during the pleadings satisfied the request of Germany.

Thus, even if LaGrand might be the case where the clarification and interpretation of assurances could have been discussed at length by the Court, it decided to ignore the possibility of clarifying the characteristics of these remedies. However, the fact that the Court considered this remedy as being available before it and that it applied it as such is relevant for its future practice.

4. Case Concerning Avena and Other Mexican Nationals

4.1. The Facts of the Case

On 9th of January 2003 this case was submitted before the International Court of Justice by Mexico. The applicant submitted arguments with respect to an alleged breach of the Vienna Convention on Consular Relations by the United States of America. Mexico requested the Court to find that the United States of America committed breaches of article 5 and article 36 of the said treaty, due to the fact that its nationals were sentenced to death without being provided with the right to consular assistance. Therefore, Mexico submitted the following claims, inter alia, before the Court:

“that the United States, in arresting, detaining, trying, convicting, and sentencing the 54 Mexican nationals on death row described in this Application, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided by Articles 5 and 36, respectively of the Vienna Convention;

(2) that Mexico is therefore entitled to restitutio in integrum;

(3) that the United States is under an international legal obligation not to apply the doctrine of procedural default, or any other doctrine of its
municipal law, to preclude the exercise of the rights afforded by Article 36 of the Vienna Convention;”663

Following the above mentioned prayer for relief, Mexico also submitted arguments on cessation as a remedy concluding that without this remedy, the status quo ante would not be fully restored:

“Mexico seeks, instead, only that relief which is essential to ensure that any of its nationals who are put in jeopardy of their lives in capital criminal proceedings in the United States receive the procedural safeguards that, by its adherence to the Vienna Convention, the United States has agreed to provide. Specifically, Mexico seeks reparations in the form of appropriate declarations, restitutio in integrum, an order of cessation, and guarantees of non-repetition.”664

As such, Mexico concluded that cessation represents a “fundamental concern for compliance with international obligations”.665 Further, Mexico also requested that guarantees and assurances of non-repetition should be provided by the Court, as follows:

“Second, the United States must not only cease its current wrongful conduct, but it must also take steps to prevent future violations of the same kind. Guarantees of non-repetition are sought as a preventive measure so that future violations of the same type will not occur again, especially in the face of a pattern of international law violations.”666

In the same manner in which the Court was provided with a well structured argumentation regarding the mechanisms through which guarantees of non-repetition should be performed, Mexico also requested the Court to determine that an informal or formal apology would not suffice regarding the order for assurances of non-repetition and submitted the following in this respect:

“Here, an apology or simple verbal assurance of non-repetition would not suffice. Mexico recognizes that the United States cannot guarantee that no future violations of Article 36 will ever occur. But international law requires that the United States take concrete steps designed to ensure that it will achieve regular compliance with its Article 36 obligations.”667

The conclusion that can be drawn from the above mentioned arguments regarding reparations for violations of the Vienna Convention is that the Court was seized with a number of important issues relevant for the interpretation and clarification of the said remedies. Firstly, and most importantly, the Court was provided with arguments which described the manner in which guarantees of non-repetition can be categorized (as being either i) an apology or ii) formal instruments). Secondly, the Court was provided

663 Avena and Other Mexican Nationals (Mexico v. United States of America) [2003] ICJ Pleadings, Application of Mexico, 44.
664 Avena and Other Mexican Nationals (Mexico v. United States of America) [2003] ICJ Pleadings, Memorial of Mexico, 5.
665 ibid 169.
666 ibid 170.
667 ibid 171.
with the possibility to interpret the function of cessation, i.e. that it has the potential to resolve a fundamental concern of compliance with international obligations. The Court therefore, had the opportunity to determine the intricacies of these remedies through a finding of principle which would clarify and interpret both notions. The manner in which the Court answered these questions shall be provided below.

4.2. The Judgment of the Court

It can be considered that the Court was rather reluctant to clarify the details regarding cessation, assurances and guarantees of non-repetition. The Court was seized with the problem of whether it should grant the said remedies or not, and decided to ignore the particularities of the requests, without providing a proper justification to the applicant. The Court delivered its judgment with respect to cessation rather bluntly, without addressing the arguments raised by the applicant with respect to assurances and guarantees of non-repetition and concluded as follows:

“Mexico emphasizes the necessity of requiring the cessation of the wrongful acts because, it alleges, the violation of Article 36 with regard to Mexico and its 52 nationals still continues, The Court considers, however, that Mexico has not established a continuing violation of Article 36 of the Vienna Convention with respect to the 52 individuals referred to in its final submissions; it cannot therefore uphold Mexico's claim seeking cessation.

The Court would moreover point out that, inasmuch as these 52 individual cases are at various stages of criminal proceedings before the United States courts, they are in the state of pendente lite; and the Court has already indicated in respect of them what it regards as the appropriate remedy, namely review and reconsideration by reference to the breach of the Vienna Convention.”

As such, the Court merely stated that cessation cannot be granted due to the fact that the fundamental condition of a continuing breach of an international obligation was not met. The principle that the breach must be continuous for cessation to operate was previously established by the Court in the LaGrand Case. Thus, the finding of the Court in the Avena Case merely represents a confirmation of its previous case-law.

The Court pursued a similar approach towards guarantees and assurances of non-repetition. Its finding is not necessarily a contribution to the interpretation of this remedy. The Court seemed to consider that, because the United States demonstrated that it undertook certain efforts to prevent further breaches of the Vienna Convention, assurances and guarantees of non-repetition were no longer appropriate, as such:

“The Mexican request for guarantees of non-repetition is based on its contention that beyond these 52 cases there is a "regular and continuing" pattern of breaches by the United States of Article 36. In this respect, the Court observes that there is no evidence properly before it that would establish a general pattern. [...]”

668 Avena and Other Mexican Nationals (Mexico v. United States of America) (n 153) 68.
Especially at the stage of pre-trial consular information, it is noteworthy that the United States has been making good faith efforts to implement the obligations incumbent upon it under Article 36, paragraph 1, of the Vienna Convention, through such measures as a new outreach programme launched in 1998, including the dissemination to federal, state and local authorities of the State Department booklet mentioned above in paragraph 63.\textsuperscript{669}

The Court therefore considered that the factual circumstances of the case indicated that the responding state was making its best efforts to respect its obligations and that, therefore, an order for guarantees of non-repetition would have been redundant. However, the fact that the Court did not provide sufficient details regarding the interpretation of the requested remedies still remains an issue that should be resolved by the judicial body in the future.

5. Conclusion

All the above mentioned cases demonstrate the fact that the International Court is not necessarily comfortable with ordering cessation or assurances and guarantees of non-repetition. The reason for this approach might be that these remedies have similar characteristics with injunctive relief, which is rarely granted by the Court.\textsuperscript{670} Another reason could be that the Court considers that an order through which it would specifically provide for these types of remedies would not be complied with. Moreover, the Court might consider that negotiations and diplomatic relations would be preserved and encouraged by approaching these remedies in the manner that it does.

However, even if all the above mentioned reasons are meritorious, it can be concluded that an attitude towards a better clarification and interpretation of these remedies would be advisable for the future case-law of the Court. Nothing would prevent the Court to provide certain general principles that would apply in this respect even in situations in which it decides not to grant these remedies, such as the \textit{Case Concerning Avena and Other Mexican Nationals}.

**Chapter 4. Restitution in Kind**

1. Introduction

Restitution in kind has rarely been granted by the Court. Due to this reason, this remedy has not yet received a proper and detailed interpretation or clarification by the Court. Few cases can be identified in which this remedy has been granted\textsuperscript{671} or in which the Court laid out principles with respect to restitution in kind. The finding of the Permanent Court regarding the primacy of restitution in kind\textsuperscript{672} has never been contradicted throughout its case-law, the judgment in the \textit{Chorzow Factory Case} being mostly relied upon when interpreting this remedy. These principles refer mainly to the

\textsuperscript{669} ibid.
\textsuperscript{670} Gray (n 4) 95.
\textsuperscript{671} \textit{Case concerning the Temple of Preah Vihear (Cambodia v Thailand)} (n 71) is the only case in which the Court granted restitution in kind.
\textsuperscript{672} \textit{Case Concerning the Factory at Chorzow (Germany v Poland)} (n 8) 47.
applicability of restitution in kind and its interaction with other remedies such as compensation or specific performance.

Even though the Permanent Court established certain applicable principles related to restitution in kind, its analysis of this remedy is not substantial due to the fact that few cases have entailed the granting of this remedy. As restitution has not received much consideration from the Court, its clarification was substantiated by doctrine, with several contradictory views being expressed. For example, Gray does not consider the arguments which support the view of the Permanent Court with respect to the primacy of restitution to be very convincing, whereas Kaczorowska considers restitution as being the primary remedy in international law.

Although the opinions expressed by the doctrine cannot be ignored in the analysis and interpretation of restitution in kind as a remedy before the Court, this chapter shall address the case-law of the Court exclusively, with the scope of determining the approach of the Court towards this remedy.

The first and probably most relevant case that established the principles applicable to restitution in kind was the Chorzow Factory Case. Even though the Permanent Court did not grant restitution in kind in this case, its findings are relevant for the interpretation of restitution in kind and its *obiter dictum* has been cited in several other cases that were resolved by the Court. The Case Concerning the Temple of Preah Vihear is another dispute which is of relevance for restitution in kind. In this case, although the Court’s judgment did not substantiate the reasoning for which it granted restitution in kind, it is one of the few instances where this remedy has been awarded by the International Court of Justice.

The Wall Advisory Opinion is also relevant for determining the applicability of restitution in kind as a remedy before the Court. Here, the Court delivered an Advisory Opinion rather than a judgment. Yet, this case is often cited with respect to the interpretation of restitution in kind and its interaction with compensation, when the former proves to be materially impossible.

The above mentioned cases are fundamental in understanding the manner in which restitution in kind applies before the Court. These cases shall be critically analysed below in order to arrive at certain relevant conclusions for the interpretation of restitution in kind as a remedy before the Court.

2. The Principles of Reparation as Provided by the Chorzow Factory Case

2.1. The Facts of the Chorzow Factory Case

The Chorzow Factory Case concerned a contract that was signed between the Chancellor of the German Empire, on behalf of the Reich and a company called Bayerische Stickstoffwerke Aktiengesellschaft of Trotsberg, Bavaria. The object of the contract was the construction of a nitrate factory at Chorzow and Bayerische

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673 Gray (n 4) 96.
674 Kaczorowska (n 263) 483.
675 For observing a more detailed analysis of the approach of scholarly writings, see Part I Chapter 4.
676 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8).
677 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71) 37.
678 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (n 289) 136.
Stickstoffwerke Aktiengesellschaft had the duty to manage the factory until 31 March 1941. On 24 December 1919, Oberschlesische Stickstoffwerke A.G. was formed so that the Reich could sell the factory at Chorzow to it. On 29 January 1920, Oberschlesische was registered as the owner of the property. On 1 July 1920, the Polish Courts nullified the registration and decided that the property should be registered by the Polish Treasury. As a consequence, the Polish Government took possession of the land and factory at Chorzow, including movable property, patents and licenses. These actions of Poland became the source of the dispute before the Permanent Court of International Justice, among other forums in which Germany sought reparation.

Thus, on 10 November 1922, Oberschlesische submitted a claim before the Germano-Polish Mixed Arbitral Tribunal and requested the Tribunal to order that the Polish Government should restore the factory at Chorzow. The same company also submitted a claim before the Civil Court of Kattowitz.

During the time in which the above mentioned suits were pending, Germany filed an application before the Permanent Court, through which it requested the Court to find that Poland was responsible for illegal liquidation and thus, was liable to pay compensation. The most important issue at hand was whether Poland had the right to expropriate the German Reich with respect to the Chorzow factory.679

2.2. Lawful and Unlawful expropriation

The Chorzow Factory Case involved the issue of expropriation, the legality and the consequences thereof. The Court first analysed whether the source of the dispute was a lawful or an unlawful expropriation, so that its determination with respect to the applicable remedies would follow this essential difference. Ratner mentions that “if we had to assign a birth date to the lawful/unlawful distinction, it would probably be September 13, 1928, when the Permanent Court of International Justice (PCIJ) issued its ruling on the indemnity Poland had to pay to Germany” 680

Thus, the first issue that shall be addressed is the general notion of expropriation and its characteristics. This will help evaluate whether the Permanent Court’s finding regarding restitution should be regarded as a veritable principle of international law which applies irrespective of the subject matter of the dispute or whether it should be addressed in a more contextualised manner, by appreciating it closely with the factual framework of the case. The Court did not expressly conclude that its findings with respect to restitution in kind should apply indiscriminately throughout its case-law. It further contextualised its finding by linking it with the notions of lawful and unlawful expropriation.

Unlawful expropriation has been characterised as occurring “in cases where the state is expressly forbidden to take such action under a treaty or international convention”.681 Thus, if the state does not fulfil the conditions that it should comply with when expropriating, it performs an unlawful expropriation. As a consequence, if the state does not fulfil the conditions of the expropriation ante factum, its obligation is to fulfil those

679 The facts of the dispute can be found in Case Concerning the Factory at Chorzow (Germany v Poland) (n 32).
681 ibid 48.
conditions *post factum*. For example, if a state does not pay a fair amount of compensation while expropriating, under international law, the Court can only order that state to provide adequate and fair compensation. However, if the state did not have the right to expropriate in the first place, and unlawfully expropriated property, the Court may choose to order restitution in kind, as a primary form of redress, or compensation, if restitution proves to be materially impossible.

It is therefore established that there is a difference between lawful expropriation and unlawful expropriation under international law, and there are certain consequences that result from this difference, which manifests itself both with respect to restitution and to compensation. However, at this juncture, it is relevant to discuss the manner in which this difference influences restitution.

Therefore, it is of importance to assess whether the state had the right to expropriate in the first place. If the answer to this question is in the affirmative, the conclusion is that the expropriation is legal. However, for this legal expropriation to manifest its effects towards the expropriated property, the state should fulfil certain conditions, which are generally provided by the treaty that the parties concluded. The *Chorzow Factory Case* judgment is relevant for determining whether restitution in kind is an appropriate remedy for expropriation in general or whether this remedy is available exclusively for unlawful expropriation. Further, this case is the *locus classicus* for differentiating lawful and unlawful expropriation.

The Permanent Court explained the difference between these two forms of expropriation through the *Chorzow Factory Case*. As the extract from the judgment below demonstrates, the Permanent Court did not expressly make the distinction between lawful and unlawful expropriation but considered that the latter is an unlawful act under international law. The Permanent Court issued the following finding with respect to the distinction between lawful and unlawful expropriation:

“The action of Poland which the Court has judged to be contrary to the *Geneva Convention* is not an expropriation – to render which lawful only the payment of fair compensation would have been wanting; it is a seizure of property, rights and interests which could not be expropriated even against compensation, save under the exceptional conditions fixed by Article 7 of the said Convention. As the Court has expressly declared in Judgment No. 8, reparation is in this case the consequence not of the application of Articles 6 to 22 of the *Geneva Convention*, but of acts contrary to those articles.”

The conclusion that the Permanent Court reached in this case provides that the consequence of lawful expropriation is the payment of fair compensation and that if unlawful expropriation occurs, a different set of remedies would be applicable, due to the fact that the latter implies that the international obligations assumed by the responding state were not complied with. This finding leads to the conclusion, which was confirmed by the Permanent Court within the same case, that in the situation of unlawful expropriation, remedies such as restitution in kind would not only be available, but would also become primary.

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682 *Case Concerning the Factory at Chorzow (Germany v Poland)* (n 32) 21.
Having established that the case involved a seizure of property, the Permanent Court further described the manner in which reparation for this breach would operate. It seems that the Permanent Court considered that the concept of “expropriation” implies that it is lawful, while “seizure of property” actually meant what we today understand as “unlawful expropriation”. This terminology should be clarified. Thus, while the finding of the Permanent Court regarding the remedies available for the two different types of remedies mentioned above has merit, the fact that the action of Poland was what is today considered as being unlawful expropriation is relevant.

2.3. The Obiter Dictum of the Permanent Court of International Justice

First of all, the Permanent Court concluded that the case involved an expropriation and that Poland had the obligation to repair the harm that it had caused to Germany through the seizure of the factory at Chorzow. The Permanent Court decided, through its first judgment issued in this case, that the following principle applies with regard to reparation:

“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”

This finding of the Permanent Court has been reiterated and confirmed by the International Court in several of its judgments, when it decided upon both the issues of restitution in kind and compensation. This demonstrates that this finding of the Permanent Court of International Justice influenced the manner in which the International Court of Justice interprets the same notions.

Following this finding, the Permanent Court analysed the manner in which the injury caused could be repaired by Poland. Even though the parties agreed that restitution in kind was no longer possible, the Permanent Court concluded that it was worth establishing what would amount to reparation in this case. The Court concluded the following in this respect:

“Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.

This conclusion particularly applies as regards the Geneva Convention, the object of which is to provide for the maintenance of economic life in Upper Silesia on the basis for respect for the status quo.”

683 ibid.
684 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (n 289); Corfu Channel Case (Great Britain v Albania) (n 2).
685 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 47 (emphasis added).
The first paragraph of the dispositif clarifies that should a breach of an international obligation occur, restitution in kind would be the primary remedy. This finding is often isolated from its second contextualising paragraph, and as such it is perceived in the sense that restitution in kind is the primary remedy in international law, irrespective of the nature of the obligations breached. Thus, the second, explanatory paragraph which provides that its finding applies “particularly” with respect to the Geneva Convention is relevant because it provides important clarifications with respect to the application of restitution in kind. This finding further confirms the conclusion that restitution in kind should not be considered as the primary remedy of international law generally, but in certain disputes which contain specificities related to the breached international obligations.

What is also important to note is that, in the Chorzow Factory Case, the parties agreed that the undertaking could not be restored. In other words, the applicant abandoned any claims with respect to restitution in kind and maintained the ones related to compensation:

“To this obligation, in virtue of the general principles of international law, must be added that of compensating loss sustained as the result of the seizure. The impossibility, on which the Parties are agreed, of restoring the Chorzow factory could therefore have no other effect but that of substituting payment of the value of the undertaking for restitution; it would not be in conformity either with the principles of law or with the wish of the Parties to infer from that agreement that, the question of compensation must henceforth be dealt with as though an expropriation properly so called was involved.”

It can be considered that this agreement of the parties is one of the main reasons for which the Court could render a judgment through which it established certain principles related to reparation in general, and to restitution in kind and compensation in particular. This approach is preferable and the International Court of Justice should follow it, in the sense that when it is faced with issues that need clarification, even if not applicable to that particular case, it should do so.

It is worth mentioning at this point that, following the finding of the Permanent Court of International Justice, the notion of expropriation was also further addressed by the United Nations, through Resolution 1803 of the General Assembly, which concluded the following in this respect:

“Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.”

686 ibid (emphasis added).
Thus, a state has the right to expropriate if it fulfils certain conditions. It has been concluded in this sense that “the right of expropriation, even in its widest sense is recognised by international law irrespective of the patrimonial rights involved.” As a consequence, the expropriation is legal if it is grounded upon reasons of public utility, for example. Without a proper demonstration of such legal grounds, the expropriation is unlawful.

While the availability of restitution in kind is therefore clarified in disputes related to lawful and unlawful expropriation, the issue regarding its availability in cases which involve territorial issues remains. Clarifications in this respect shall be provided below.

3. Restitution in Kind in Sovereignty Disputes - Case Concerning the Temple of Preah Vihear

3.1. The Facts of the Case

The main issue in this dispute was the sovereignty over the region of the Preah Vihear Temple. In this sense, Cambodia considered that the Kingdom of Thailand had unlawfully occupied an area that appertained to the Cambodian State, situated in the province of Kompong Thom. As such, Cambodia requested the Court to find that it had sovereignty over the territory in question and further, to order Thailand to restore to Cambodia all the objects that were removed from the Temple of Preah Vihear.

3.2. The Judgment of the Court

The Temple of Preah Vihear Case concerned a different subject matter from the Chorzow Factory Case. Thus, while the latter concerned questions which were related to the legality of expropriation, or the lack thereof, in the former, the subject matter concerned issues of sovereignty over a certain determined portion of land. Thus, if the Court was to find that Thailand was responsible for breaching international law, and as a consequence, the Temple of Preah Vihear had been illegally occupied by Thailand, from the perspective of remedies, the Temple could have been restored in its entirety, along with the religious objects that were included in it.

The Court did not provide any explanation regarding the granting of Cambodia’s request with respect to the objects that were present in the Temple. One argument that could be inferred is that it chose to pursue this approach seemingly because it considered the restitution of the said artifacts as a natural consequence of the restoration of the status quo ante. The Court found in this respect that:

“Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.”

This case represents one of the few cases in which the Court ordered restitution in kind. This is the reason why a majority of writers refer to this case when addressing the case-law of the court regarding this remedy. This finding of the Court confirms the fact

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688 Amador, Sohn and Baxter (n 402) 46.
689 Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (n 71) 37.
690 Crawford (n 3) 511; Shelton (n 449) 94; Kaczorowska (n 263) 483.
that restitution in kind could be applicable in cases involving sovereignty disputes, if the particularities of the case render it appropriate. In other words, the judgment of the International Court of Justice in the Case Concerning the Temple of Preah Vihear further contributes to the idea that restitution in kind is available for disputes other than the ones involving unlawful expropriation and that its primacy regarding the latter does not imply that it is not available in disputes involving the former.

4. Restitution in Kind in Advisory Proceedings - The Wall Advisory Opinion

4.1. The Facts of the Case

In this case, the General Assembly of the United Nations adopted its resolution ES – 10/14, through which the Court was requested to answer the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

4.2. The Advisory Opinion

Restitution in kind was a remedy that was included in the pleadings. Thus, the League of Arab States concluded as follows with respect to this remedy:

“Furthermore, Israel is under a duty to make full reparation for the injury caused by this unlawful act (art. 31 ILC Draft). This reparation includes, first, restitution.”

The Court noted in this respect that “It was submitted that such reparation should first of all take the form of restitution, namely demolition of those portions of the wall constructed in the Occupied Palestinian Territory and annulment of the legal acts associated with its construction and the restoration of property requisitioned or expropriated for that purpose.” The Court opined that due to the fact that unlawful expropriation had occurred in this case, restitution in kind would necessarily be the primary remedy that should be expected from Israel.

It is important to note at this point that the Court referred to the principle that the Permanent Court had enunciated in the Chorzow Factory Case. The Court cited the obiter dictum of the Permanent Court with respect to restitution in kind in the Chorzow Factory Case. The Court, therefore, confirmed the view of the Permanent Court and determined that restitution in kind is the primary remedy for unlawful expropriation and, should that prove to be materially impossible, that compensation is appropriate. It stated:

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691 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (n 289) 141.
692 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [2004] ICJ Pleadings, Written Statement of the League of Arab States, 104.
693 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (n 289) 19.
694 ibid 198, para. 153.
“Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall’s construction.”

This case further demonstrates that the dictum of the Permanent Court in the Chorzow Factory Case, manifests its effects on the Court’s advisory opinions as well and that the finding of principle related to the application of restitution in kind as a remedy is, and will be, relevant for the practice of the International Court of Justice.

5. Restitution in Kind Regarding Individuals - The Tehran Hostages Case

5.1. The Facts of the Case

On 4th November 1979, during the course of a demonstration, the United States Embassy in Tehran was attacked by demonstrators. The fact that the Iranian Government’s security personnel performing their duty at the United States Embassy did not make any effort to deter or discourage the demonstrators from taking over the Embassy also contributed to the dispute. Access to the compound and Chancery building was gained by cutting chains and removing bars from a Chancery basement window, and control of the first floor of the Chancery was rapidly seized. In the process, security offices were held hostage. A large group of Embassy personnel, including consular and non-American staff and visitors, took refuge on an upper floor of the Chancery.

Given these circumstances, the United States submitted an application before the Court, through which the following was requested:

“(b) That pursuant to the foregoing international legal obligations, the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals currently being detained within the premises of the United States Embassy in Tehran and to assure that all such persons and all other United States nationals in Tehran are allowed to leave Iran safely;

(c) That the Government of Iran shall pay to the United States, in its own right and in the exercise of its right of diplomatic protection of its nationals, reparation for the foregoing violation of Iran’s international legal obligations to the United States, in a sum to be determined by the Court,”

695 ibid.
696 United States and Consular Staff in Tehran (United States of America v Iran) (n 14).
697 ibid.
698 United States and Consular Staff in Tehran (United States of America v Iran) [1979] ICJ Pleadings, Application instituting proceedings, 7.
5.2. **The Judgment of the Court**

The Court also made an order for restitution in kind in the *Tehran Hostages Case*, where it concluded the following:

“Decides that the Government of the Islamic Republic of Iran must immediately take all steps to redress the situation resulting from the events of 4 November 1979 and what followed from these events, and to that end:

(a) must immediately terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power (Article 45 of the 1961 Vienna Convention on Diplomatic Relations); [...]  

(c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy in Tehran and of its Consulates in Iran;”  

Similarly as the *Case Concerning the Temple of Preah Vihear*, the *Tehran Hostages Case* is another example in which the International Court of Justice ordered restitution in kind, this case being a demonstration that this remedy applies to individuals as well.

6. **Restitution in Kind under Customary International Law - Pulp Mills on the River Uruguay**

6.1. **The Facts of the Case**

This dispute concerned the alleged breach by Uruguay of certain obligations of the Statute of the River Uruguay, a treaty signed by Argentina and Uruguay at Salto (Uruguay) on 26 February 1975 and having entered into force on 18 September 1976. The treaty that was signed by the parties concerned the authorization, construction and future commissioning of two pulp mills on the River Uruguay. Due to these above mentioned circumstances, Argentina submitted an application before the Court, through which it requested the following:

1. that Uruguay has breached the obligations incumbent upon it under the 1975 Statute and the other rules of international law to which that instrument refers

...  

2. that, by its conduct, Uruguay has engaged its international responsibility to Argentina;  

3. that Uruguay shall cease its wrongful conduct and comply scrupulously in future with the obligations incumbent upon it; and

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699 United States and Consular Staff in Tehran (United States of America v Iran) (n 14) 44 (emphasis added).  
700 Crawford (n 3) 512.
4. that Uruguay shall make full reparation for the injury caused by its breach of the obligations incumbent upon it.”

Even if the application did not contain any reference to restitution in kind, the applicant submitted several arguments with respect to this remedy through its Memorial. Thus, Argentina requested the Court to decide that restitution in kind was the appropriate remedy. Firstly, the annulment of authorisations was requested (implying legal restitution) and further, the dismantling of the mills (implying material restitution).

6.2. The Judgment of the Court

The Court issued its judgment on 20th April 2010, through which it concluded that restitution represents a form of reparation for injury under customary international law. It stated:

“The Court recalls that customary international law provides for restitution as one form of reparation for injury, restitution being the re-establishment of the situation which existed before occurrence of the wrongful act. The Court further recalls that, where restitution is materially impossible or involves a burden out of all proportion to the benefit deriving from it, reparation takes the form of compensation or satisfaction, or even both.”

It is telling that the Court did not grant this remedy in this case. The Court further concluded that “ordering the dismantling of the mill would not, in the view of the Court, constitute an appropriate remedy for the breach of procedural obligations”. This finding re-affirms the condition provided by article 35 (b) of the ILC Articles which mentions that other remedies should be applicable if the burden is “out of all proportion to the benefit deriving from restitution instead of compensation”. Further, the International Court of Justice followed the same approach of its predecessor, and concluded that restitution in kind is applicable in certain specific circumstances, and not in a general manner without a proper consideration of the particularities of the case at hand. Thus, the Court concluded that restitution in kind is not applicable where a breach of substantive obligations cannot be found.


7.1. The Facts of the Case


703 ibid 203.
704 Pulp Mills on the River Uruguay (Argentina v Uruguay) [2010] (Judgment) ICR Rep 14, 93.
705 ibid 104.
The People and State of Bosnia and Herzegovina submitted arguments before the Court with respect to the breach of the Genocide Convention. The Court was requested to conclude the following in this respect:

“...that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro).”

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7.2. The Judgment of the Court

Firtly, the Court recalled the obiter dictum provided by the Permanent Court of International Justice in the Chorzow Factory Case and concluded as follows in this respect:

“The principle governing the determination of reparation for an internationally wrongful act is as stated by the Permanent Court of International Justice in the Factory at Chorzow Case: that ‘reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which, in all probability, have existed if that act had not been committed’.”

Having established that restitution in kind manifests its effects as long as this remedy is materially possible, the Court further concluded, following the Chorzow Factory principle, that as restitution in kind is not the appropriate remedy, compensation would be applicable to the case at hand. In the words of the Court:

“In the circumstances of this case, as the Applicant recognizes, it is inappropriate to ask the Court to find that the Respondent is under an obligation of restitutio in integrum. Insofar as restitution is not possible, as the Court stated in the case of the Gabcíkovo-Nagymaros Project (Hungary/Slovakia), “[i]t is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”

The Court further followed its finding in the Chorzow Factory Case and concluded that the applicant state recognized that inasmuch as restitution in kind is materially impossible, other remedies, such are compensation are applicable.

710 ibid.
8. Conclusion

Referring to the obiter dictum of the Chorzow Factory Case, it can be concluded that restitution in kind is available before the International Court of Justice for a variety of disputes. Some go even further by arguing that “the Permanent Court of International Justice implied that restitution is the normal form of reparation and that indemnity could only take its place if restitution in kind ‘is not available’”. Restitution in kind has been referred to as “the ideal form of reparation”, being the sole manner in which the status quo ante could be fully restored. The Court concluded in the Avena Case that “what constitutes ‘reparation in an adequate form’ clearly varies depending upon the concrete circumstances surrounding each case and the precise nature and scope of the injury, since the question has to be examined from the viewpoint of what is the ‘reparation in an adequate form’ that corresponds to the injury”.

The reasons for which restitution in kind is rarely granted by the International Court of Justice are various. Firstly, it bears emphasis that this remedy is not often requested by applicant states, the Court being limited by the submissions of the parties when it gives its decisions. Thus, if the applicant state requests compensation, the Court cannot give a judgment through which it would provide for restitution in kind. Secondly, the particularities of the disputes submitted before the International Court of Justice render restitution in kind either impossible to perform or inappropriate. In this respect, it seems that restitution in kind is appropriate in a rather limited range of disputes, such as the ones involving illegal expropriation.

Therefore, the conclusion that restitution in kind is the primary remedy in international law, without any contextualization, seems rather divorced from the practice of the Court, as it does not provide any circumstantial qualifications. Thus, although it can be agreed that restitution in kind is the normal type of relief in cases in which unlawful expropriations or illegal dispositions of territory have occurred, in other circumstances restitution in kind becomes exceptional.

Chapter 5. Compensation

1. Introduction

The Permanent Court of International Justice and the International Court of Justice have issued various judgments interpreting and clarifying compensation as a remedy. The right of a state to claim compensation is established and has never been contested in the Courts’ recent practice. The Gabčíkovo Nagymaros Case was one case in which the right to claim compensation was contested. The Court therein further confirmed that receiving compensation is a principle of international law, by stating that:

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711 Case Concerning the Factory at Chorzow (Germany v Poland) (n 8) 27-28.
712 Aréchaga and Tanzi (n 260) 369.
713 Lefebre (n 261) 132.
714 Avena and Other Mexican Nationals (Mexico v. United States of America) (n 153) 12, 56.
715 The Court issued judgments through which compensation were granted in other cases as well, such as: Corfu Channel Case (Great Britain v. Albania) (n 9); Amahdou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (n 18).
“It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”

The details that are most relevant with respect to this remedy, such as the burden of proof, the qualification of damages as being material or moral, or issues with respect to the principles that apply to the quantification of compensation, have all been raised both before the Permanent Court and before the International Court. The practice of the International Court of Justice is of paramount importance for determining the manner in which compensation is interpreted and applied by the judicial organ.

The doctrine is not necessarily coherent in determining the relevance of compensation before the International Court of Justice. While some authors conclude that compensation is the most frequent form of reparation, other authors have concluded that compensation represents an exceptional remedy, as follows:

“Perhaps surprisingly the Permanent Court and the International Court have very rarely awarded compensation. It has been suggested that this is because ‘[m]any sovereign interests do not lend themselves to quantification, but this is neither here nor there.’”

This latter conclusion supports the argument that compensation is rather exceptional. The Permanent Court has granted compensation in one case: The S.S. Wimbledon. Furthermore, the International Court of Justice has granted this remedy in two cases, namely in the Corfu Channel Case and the Diallo Case, the latter being the only case in the history of the Court in which compensation for moral damages was granted. It can thus be considered that compensation is not the most frequent form of reparation and that an opposite conclusion would artificially detach practice from theory.

However, even though the case-law where compensation was granted is scarce, the Permanent Court of International Justice and the International Court of Justice have issued relevant findings which have contributed to the interpretation and clarification of compensation as a remedy of international law. In the Chorzow Factory Case, the Permanent Court laid out important principles with respect to the quantification of compensation; in the Corfu Channel Case the Court issued its first judgment with respect to the possibility of nominating experts for the quantification of damages, while in the Gabcikovo Nagymaros Case, the Court set out the principle that a state has a right to receive indemnity when it is damaged.

The relevant case-law of the Permanent Court of Justice and of the International Court of Justice with respect to compensation and its various issues shall be analysed in this Chapter.

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716 Gabcikovo-Nagymaros Project (Hungary/Slovakia) (n 10) 81.
717 Kaczorowska (n 263) 483.
718 Crawford (n 3) 518.
719 Corfu Channel Case (Great Britain v. Albania) (n 9).
2. The Permanent Court of International Justice

2.1. The SS Wimbledon Case

The SS Wimbledon Case is the first case that was submitted before the Permanent Court, which involved a successful claim for compensation. In the morning of March 21st 1921, the British steamship "Wimbledon", chartered by the French armament firm "Les Affréteurs réunis", proceeding to Danzig with a cargo of 4,000 tons of goods (military material), was refused access to, and free passage through the Kiel Canal by the German authorities. The argument that was brought forward by Germany was that that the cargo of the steamship "Wimbledon" consisted of war material destined for Poland. However, the applicant states requested the Court to conclude that the circumstance under which the free passage was not granted constituted a breach of the Treaty of Versailles. Furthermore, the applicant states sought compensation, requesting the Court the following in this respect:

“That the German Government shall make reparation for the loss incurred by the aforementioned vessel in consequence of this action, a loss which is estimated at francs 174,082.86, together with interest at 6% per annum as from March 20th, 1921.”

Even if the Permanent Court did not specifically address the particularities of compensation as a notion, several conclusions could be drawn from the judgment in the Wimbledon Case. Most of these principles were expressly confirmed by the subsequent practice of the Permanent Court and the International Court. A relevant conclusion that could be drawn by interpreting the judgement of the Permanent Court in the Wimbledon Case was with respect to the valuation of compensation. The Court granted the said amounts, accepting the arguments that were brought by the applicant in this respect.

Authors have further confirmed that the Wimbledon Case established, despite the absence of a detailed analysis of compensation, certain relevant issues with respect to the assessment of compensation:

“[i]Indeed, if one were to take the view that in Wimbledon the Court aimed to ensure payment of a sum corresponding to the value which restitution in kind would bear in accordance with the standard later articulated in Chorzow Factory standard, the universal applicability in all cases of state responsibility.”

Another issue that had arisen before the Permanent Court in the Wimbledon Case, and has been later confirmed by the International Court of Justice, was with respect to the currency of the amounts of compensation that would be granted. It has been argued in this respect that “in the absence of any mandatory rule regarding the currency of account for measuring secondary obligations under international law, the Wimbledon Judgment must be deemed to suggest that where the currency which the claimant party expresses its request for damages is not contested by the respondent, the international

721 Case of the S.S. Wimbledon (Great Britain et al v Germany) (n 1) 16.
722 Gray (n 4) 77.
723 Martha (n 344) 98.
The Permanent Court decided that the German authorities were wrong in refusing access to the Kiel Canal and that the German Government was bound to repair the injury caused to the French Republic and further concluded that specific amounts were due as compensation. It can therefore be concluded that the findings of the only case in which compensation was granted by the Permanent Court was confirmed by the subsequent judgments of the International Court with respect to the approach towards compensation, in the sense that, firstly, it is available as a remedy of international law.

2.2. The Chorzow Factory Case

The Chorzow Factory Case decided by the Permanent Court has also influenced the manner in which compensation is interpreted. This case is relevant with respect to the manner in which restitution in kind and compensation interact with each other, in order to reach the restoration of the status quo ante. It is also pertinent with respect to various issues that involve the clarification of compensation. The facts of this case have been previously provided.

A. Damages to Third Parties

First of all, the Court pursued a legal rationale regarding the connection between compensation and the damage caused to the German companies. It concluded that this remedy should not include damages that were caused to third parties, and that it should be limited to the direct damage that was caused to the applicant. Thus, the Court held the following in this respect:

"On approaching this question, it should first be observed that, in estimating the damage caused by an unlawful act, only the value of property, rights and interests which have been affected and the owner of which is the person on whose behalf compensation is claimed, or the damage done to whom is to serve as a means of gauging the reparation claimed, must be taken into account. This principle, which is accepted in the jurisprudence of arbitral tribunals, has the effect, on the one hand, of excluding from the damage to be estimated, injury resulting for third parties from the unlawful act and, on the other hand, of not excluding from the damage the amount of debts and other obligations for which the injured party is responsible."

The Permanent Court also observed the practice of other arbitral tribunals, in establishing the principle that compensation can be claimed with respect to the damages caused to property. The Permanent Court did not refer to a particular international judicial body or to a particular arbitral tribunal, as the International Court did in the Diallo case when analysing compensation for moral damages. It referred, generally, to the practice of arbitral tribunals. This approach demonstrates that since inception, the

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724 ibid.
725 Case of the S.S. “Wimbledon” (Great Britain et al v Germany) (n 1) 33.
726 See Part I Chapter 5.
727 Case Concerning Factory at Chorzow (Germany v. Poland) (n 8) 31 (emphasis added).
728 Amahdou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (n 18).
Permanent Court of International Justice has not acted in an isolated manner by referring exclusively to its own previous case-law but paid due consideration to the general practice regarding remedies of international law.

This approach has been maintained throughout its activity and its effects can be considered positive for the predictability and coherence of the application of international law. However, it can also be considered that a more specific reference to the practice of other international courts and tribunals would be of greater impact.

**B. Lawful and Unlawful Expropriation**

In the *Chorzow Factory Case*, the Permanent Court also analysed the manner in which compensation applies differently with respect to lawful and unlawful expropriation. This was the first case where the Permanent Court determined the manner in which compensation applies to a dispute which involves issues of unlawful seizure of property. In its judgement, the Permanent Court held that there is a difference between lawful and unlawful expropriation and that this difference produces certain effects with respect to the quantification of the amount of damages that should be granted as compensation.

The Permanent Court first assessed the legal qualification of an expropriation that contravenes a treaty in force. In this respect, the Court concluded that an expropriation that is not lawful, as was in the circumstances of the case, is not an expropriation at all, but a seizure of property:

> “The action of Poland which the Court has judged to be contrary to the Geneva Convention is not an expropriation- to render which lawful only the payment of fair compensation would have been wanting; it is a seizure of property, rights and interests which could not be expropriated even against compensation, save under the exceptional conditions fixed by Article 7 of the said Convention. As the Court has expressly declared in Judgment No. 8, reparation is in this case the consequence not of the application of Articles 6 to 22 of the Geneva Convention, but of acts contrary to those articles.”

Following this conclusion, the Permanent Court analysed the manner in which such a breach would be repaired through compensation. It held that it should not apply the same standard for quantifying compensation regarding seizure of property (unlawful expropriation) as it did for quantifying lawful expropriation. Thus, the Permanent Court concluded that compensation for seizure of property, or for unlawful expropriation, should not be limited to the value of the undertaking as if the responding state had legally expropriated, albeit without paying fair compensation:

> “It follows that the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. This limitation would only be admissible if the Polish Government had had the right to

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729 *Case Concerning Factory at Chorzow (Germany v. Poland)* (n 8) 46.
expropriate and if its wrongful act consisted merely in not having paid to the two Companies the just price of what was expropriated.”

The manner in which compensation applies differently with respect to lawful and to unlawful expropriation was further substantiated and confirmed by the doctrine. One opinion was expressed in the following terms:

“In the case of lawful expropriation (including when the granted compensation amount is disputed), the adversely affected investor is entitled only to “compensation” equating to the damnum emergens, or losses suffered upon the date of expropriation. These losses are limited to the static value of the investment’s assets. In the case of wrongful expropriation, the adversely affected investor shall have the right, beyond “compensation,” to “reparation.”

It is therefore worth mentioning that for the situation in which unlawful expropriation occurs, the value of compensation would be higher in comparison with the amounts granted by the Court for acts of lawful expropriation. The Court found the following in this respect:

“The impossibility, on which the Parties are agreed, of restoring the Chorzow factory could therefore have no other effect but that of substituting payment of the value of the undertaking for restitution; it would not be in conformity either with the principles of law or with the wish of the Parties to infer from that agreement that the question of compensation must henceforth be dealt with as though an expropriation properly so called was involved.”

However, after providing that compensation for lawful expropriation differs in quantum from compensation for unlawful expropriation, the Court analysed the submissions of the parties in this respect and concluded that it cannot determine the amounts due to the fact that the parties did not supply sufficient data. The Court therefore, concluded as follows:

“Faced with the task of determining what sum must be awarded to the German Government in order to enable it to place the dispossessed Companies as far as possible in the economic situation in which they would probably have been if the seizure had not taken place, the Court considers that it cannot be satisfied with the data for assessment supplied by the Parties.”

One reason why the Permanent Court did not go as far as suggesting the mechanism that should be applied for unlawful expropriation could be the high degree of technicality regarding the precise calculation of damages. This deduction is further

730 ibid 47.
732 Case Concerning Factory at Chorzow (Germany v. Poland) (n 8) 48.
733 ibid 49.
supported by the fact that, in this case, the Permanent Court considered that an expert opinion would be useful for a proper quantification of damages:

“This being the case, and in order to obtain further enlightenment in the matter, the Court, before giving any decision as to the compensation to be paid by the Polish Government to the German Government, will arrange for the holding of an expert enquiry, in conformity with Article 50 of its Statute and actually with the suggestions of the Applicant.”

Even if the Court did not necessarily suggest a concrete manner in which compensation would be quantified differently depending on the nature of expropriation (lawful or unlawful), the conclusion that the consequences of an unlawful expropriation should be more drastic than the ones for legal expropriation is of interest.

C. Compensation and Restitution in kind

As mentioned above, in the Chorzow Factory Case the parties agreed that restitution in kind was no longer possible and therefore concluded that the proper remedy for the dispute would be compensation. Thus, the Permanent Court was limited to granting or rejecting compensation. The Permanent Court concluded that it is a principle that indemnity is a form of reparation:

“It is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law. This is even the most usual form of reparation; it is the form selected by Germany in this case and the admissibility of it has not been disputed.”

The Permanent Court also concluded that indemnity is the most usual form of reparation without explaining or providing any further arguments to substantiate this assertion. The conclusion that the Permanent Court reached in this respect seems rather isolated from its own interpretation due to the fact that, in the history of the Permanent Court, compensation was requested in approximately one-third of its cases and it was granted only in the Wimbledon Case.

The finding with respect to compensation being the usual form of reparation also seems to contradict the Permanent Court’s subsequent findings in the Chorzow Factory Case, which are considered as being obiter dictum regarding reparation in general, and restitution in kind as being the primary remedy in international law. Thus, even if the Permanent Court considered that compensation is the most usual form of reparation, it further concluded that restitution in kind applies with priority, as follows:

“Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the

734 ibid 51.
735 ibid 48.
736 ibid 27 (emphasis added).
737 Gray (n 4) 77.
principles which should serve to determine the amount of compensation due for an act contrary to international law.”

The circumstance that the Permanent Court determined that compensation is the most usual form of reparation further supports the view that its *dictum* regarding the primacy of restitution in kind should be properly contextualised and that it does not apply in any given disputes submitted before the Court. The Permanent Court therefore concluded that compensation is the remedy that has the potential to be applicable in a wider range of disputes.

Certain authors, when analysing the above mentioned conclusion of the Permanent Court, have considered that the Permanent Court clearly established “the principles [which] are self-evident in suggesting the clear preference for restitution as the primary remedy for violations in international law”. However, although compensation does not appear to be the most usual form of reparation, as the Permanent Court had concluded, neither does restitution in kind. Compensation remains among the remedies that have been the least granted by the Court throughout its case-law.

It can be considered that the *Chorzow Factory Case* is one of the most relevant cases in the history of the Court with respect to its determinations related to remedies in general and the intricacies of compensation in particular.

### 2.3. The Corfu Channel Case

The *Corfu Channel Case* is the first case that the International Court of Justice had on its docket. Also, this case would be the only one for a long period of time in which the International Court of Justice granted compensation. The *Corfu Channel Case* is not exceptional in its substantial analysis of compensation because the International Court followed the judgment of the Permanent Court in the *Chorzow Factory Case*. However, certain relevant conclusions of the International Court of Justice have contributed to the interpretation and clarification of this remedy.

#### A. Bifurcation of Proceedings with respect to Compensation

The judgment of the *Corfu Channel Case* is relevant to compensation as a remedy from a procedural standpoint as well. In this case, the Court, after deciding that compensation is the appropriate remedy that should be granted to the applicant, decided to bifurcate the proceedings and hold a separate phase with respect to the determination of the quantum of compensation. The reasoning for such a determination was that the Albanian Government had not provided sufficient details with respect to its claims for compensation. Due to this lack of evidence the Court concluded as follows:

“In that judgment the Court decided that it had jurisdiction to assess the amount of compensation but stated that it could not do so in the same judgment, as the Albanian Government had not yet stated which items, if any, of the various sums claimed it contested, and as the United Kingdom Government had not submitted its evidence with regard thereto. The Court therefore stated that further proceedings on this subject were necessary and

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738 Case Concerning Factory at Chorzow (Germany v. Poland) (n 8) 47.
739 Leckie, Huggins (n 253) 133.
740 ibid.
that the order and time-limits of these proceedings would be fixed by an order of the same date."

As a consequence, in the judgment which referred to the merits of the case, the Court concluded that:

“Gives judgment that the People’s Republic of Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters and for the damage and loss of human life that has resulted therefrom; and

Reserves for further consideration the assessment of the amount of compensation and regulates the procedure on this subject by an order dated this day.”

Bifurcation of proceedings before the International Court of Justice is the usual procedural mechanism through which the Court resolves the disputes: it first delivers a judgment regarding the merits of the case and, subject to further clarifications provided either by the parties or by designated experts, it delivers a judgment regarding the quantum of compensation. Cases such as Diallo (discussed further below) demonstrate that this approach has been followed by the Court throughout its practice.

B. Expert reports requested by the Court

Another relevant issue with a certain degree of novelty in the Corfu Channel Case was the reliance on Article 50 of the Statute of the Court for requesting, ex officio, expert determination for a variety of issues which included, inter alia, the quantification of compensation. Article 50 reads:

“The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.”

Applying the said article, the Court submitted the following question to the experts, due to its anxiety towards the determination of technical issues that could have interfered with finding the truth:

“On the assumption that the mines discovered on November 13th, 1946, were laid at some date within the few preceding months, whoever may have laid them, you are requested to examine the information available regarding (a) the number and the nature of the mines, (b) the means for laying them, and (c) the time required to do so, having regard to the different states of the sea, the conditions of the locality, and the different weather conditions, and to ascertain whether it is possible in that way to draw any conclusions, and. If so, what conclusions, in regard to: (1) the means employed for laying the minefield discovered on November 13th, 1946, and (2) the possibility of mooring those mines with those means

741 Corfu Channel Case (Great Britain v. Albania) (n 9) 5.
742 Corfu Channel Case (Great Britain v. Albania) (n 2) 36.
without the Albanian authorities being aware of it, having regard to the extent of the measures of vigilance existing in the Saranda region.\textsuperscript{743}

The Court further relied on expert reports regarding the assessment of damages. Thus, the Court considered that the experts should evaluate the submissions of the parties regarding the damages that were in dispute:

\begin{quote}
“(1) Experts designated by the Court shall examine the figures and estimates stated in the last submissions filed by the Government of the United Kingdom regarding the amount of its claim for the loss of the Saumarez and the damage caused to the Volage;”\textsuperscript{744}
\end{quote}

The Court further analysed the report that was submitted by the experts in order to decide whether or not the claims of Great Britain were well substantiated. The request for expert reports by the Court, \textit{ex officio}, is rather exceptional. Throughout its case-law the International Court requested expert opinions in few cases: the \textit{Corfu Channel Case} and the \textit{Gulf of Maine Case}\textsuperscript{745} are such examples. The \textit{Chorzow Factory Case} was the only case in which the Permanent Court adopted this approach.

The reasons for the reluctance of the Court to appoint experts cannot be easily determined. However, one can conclude that the Court could consider as a valid argument that should it appoint experts, an important portion of the dispute would be resolved by the experts and not by the Court. However, the \textit{Corfu Channel Case} remains “the outstanding example of the use of experts by the ICJ: Subsequent instances have not displaced this case from its position as the leading illustration”.\textsuperscript{746}

\section*{C. The Judgment of the Court}

In the judgment on the compensation phase, the Court determined that:

\begin{quote}
“Gives judgment in favour of the claim of the Government of the United Kingdom, and

\textit{Fixes the amount of compensation due from the People's Republic of Albania to the United Kingdom at 843,947.}”\textsuperscript{747}
\end{quote}

Even though the International Court of Justice decided that a fixed amount was due as compensation, it is relevant to note that this finding did not necessarily lead to a formal settlement of the dispute. Albania decided to ignore the judgment of the Court in this respect and refused to pay the said amounts until 1991, when the dispute was finally settled.\textsuperscript{748} This approach of the responding party further demonstrates the reasons for which the Court has been rather reluctant ever since to grant compensation of a determined amount, with one exception: the \textit{Diallo Case}.

\textsuperscript{743} \textit{Corfu Channel Case} (Great Britain v. Albania) (n 20) 4-5.
\textsuperscript{744} ibid.
\textsuperscript{745} \textit{Delimitation of Maritime Boundary in the Gulf of Maine Area} (Canada v. The United States of America) (Order) [1984] ICJ Rep 165.
\textsuperscript{746} Gillian White, ‘The use of experts by the International Court of Justice’ in Robert Yewdall Jennings, Vaughn Lowe and Malgosia Fitzmaurice (eds), \textit{Fifty Years of the International Court of Justice: Essays in honour of Sir Robert Jennings} (CUP 1996) 529.
\textsuperscript{747} \textit{Corfu Channel Case} (Great Britain v. Albania) (n 9) 10.
\textsuperscript{748} M Weisburd, \textit{Failings of the International Court of Justice} (OUP 2016) 351.
2.4. The Diallo Case

The judgement of the International Court of Justice in the Diallo Case represents another circumstance where the Court has granted compensation. This case is of relevance because the Court approached several issues for the first time: Diallo is the only case in the history of the Court in which compensation for moral damages was granted by the Court. Further, with respect to the practice of the International Court of Justice regarding compensation, it is the second case in approximately sixty years in which the Court granted this remedy. Also, the Court took a novel approach with respect to its references to the practice of other international courts. All these issues shall be critically analysed below.

A. The Facts of the Case

The facts of the Diallo Case were presented within Title I Chapter 5 Section B, above.

B. References to the Case-law of International Courts

First of all, it must be noted that the Court relied on its previous practice related to compensation. Thus, the cases that influenced the decision of the Court in the Diallo Case were the Chorzow Factory Case and the Corfu Channel Case. These references are natural due to the fact that these two cases are among the few that interpret and clarify certain characteristics of compensation. The Court, therefore, mentioned that it granted compensation once, in the Corfu Channel Case and that it shall apply its findings from the Chorzow Factory Case, as follows:

“The Court turns to the question of compensation for the violations of Mr. Diallo’s human rights established in its Judgment of 30 November 2010. It recalls that it has fixed an amount of compensation once, in the Corfu Channel case ((United Kingdom v. Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949, p. 244). In the present case, Guinea is exercising diplomatic protection with respect to one of its nationals, Mr. Diallo, and is seeking compensation for the injury caused to him. As the Permanent Court of International Justice stated in the Factory of Chorzów case (Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, pp. 27-28), “[i]t is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law.” 749

From this observation, it can be concluded that the findings of the Permanent Court in the Chorzow Factory Case presently still produce certain effects. The Court relies on the conclusions that were drawn more than sixty years ago with regards to reparation in general and to restitution and compensation in particular. This approach is natural as “the Court follows its own decisions for the same reasons for which all courts – whether bound by the doctrine or precedent or not – do so, namely because such decisions are repository of legal experience to which is convenient to adhere; because

749 Amahdou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (n 18) 324, 11.
they embody what the Court has considered in the past to be good law”. The manner in which the Court has proceeded to approach the compensation stage of the Diallo Case is in line with its previous practice.

Thus, as its previous case-law indicates, the Court first decided that the parties should try to reach an agreement with respect to the amount of compensation due. Further, as the parties failed to reach such an agreement the Court decided that it shall analyse and determine the amounts of compensation that should be paid by the Democratic Republic of Congo. In this respect, the Court held:

“Finds that the Democratic Republic of the Congo is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) above;

(8) Unanimously,

Decides that, failing agreement between the Parties on this matter within six months from the date of this Judgment, the question of compensation due to the Republic of Guinea shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.”

However, the Court referred to the case-law of other international Courts, such as the European Court of Human Rights or the Inter-American Court of Human Rights. This approach is rather singular in the case-law of the Court as it has rarely relied on a particular international jurisdiction, especially a court that deals with human rights specifically.

It can be considered that this approach is a positive novelty for the practice of the Court. The Court should further rely on this approach in its following judgments by observing the practice of other international courts and vice-versa, other international courts should also observe the practice of the International Court of Justice. This approach would bring coherence in the interpretation and application of certain concepts throughout the various judicial bodies that resolve international disputes. A perspective that best describes this approach of the Court related to the practice of other judicial bodies, and that confirms a relevant conclusion in this respect, is the following:

"judicial actors increasingly view their function as including the need to serve as guardians of the fabric of international dispute settlement by ensuring its coherence through coordination.”

C. The Burden of Proof

Generally, it is established that the burden of proof rests with the entity that submits a positive assertion, as the maxim actori incumbit probatio provides. However, it is

750 Lauterpacht (n 42) 14.
752 Amahdou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (n 18) 324, 11.
interesting to note that the Court mentioned that it has the possibility to determine the amount of compensation by analysing the arguments of the responding state as well, accepting that the applicant might have material difficulties in assessing certain situations. Therefore, even though the applicant had the burden of proof with respect to the amounts of compensation, the Court considered that this burden was not absolute and that it had the power to make a determination on the amounts. Thus, the Court recognized that "the abruptness of Mr. Diallo’s expulsion may have diminished the ability of Mr. Diallo and Guinea to locate certain documents, calling for some flexibility by the Court in considering the record before it". 754

The Court first established that it would determine the amounts of compensation due, paying consideration to the arguments that were raised by the party that requested it. Thus, the Court concluded the following in this respect:

"The assessment of compensation owed to Guinea in this case will require the Court to weigh the Parties’ factual contentions. The Court recalled in its Judgment of 30 November 2010 that, as a general rule, it is for the party which alleges a particular fact in support of its claims to prove the existence of that fact. The Court also recognized that this general rule would have to be applied flexibly in this case and, in particular, that the Respondent may be in a better position to establish certain facts". 755

The Court further concluded that it was not obliged in any manner to rely solely on the arguments of the applicant, but it could also consider the conclusions of the responding state in order to reach the truth. This flexible approach is preferable to a more restrictive one which would isolate the applicant, especially in situations where this party is already undermined by the impossibility to provide evidence.

D. Non-material Damage and Equity

The judgment of the International Court in the Diallo Case is relevant for the interpretation and clarification of compensation due to the fact that it made a clear distinction between material and non-material damage. The Diallo Case is one of the very few cases in which the International Court has granted compensation both with respect to material and to non-material damages. The judgment of the Court in the Diallo Case is further relevant, not only because it considered the availability of non-material damages, but also through the perspective of its approach towards their quantification. In this respect, the Court concluded as follows:

"Arbitral tribunals and regional human rights courts have been more specific, given the power to assess compensation granted by their respective constitutive instruments. Equitable considerations have guided their quantification of compensation for non-material harm. For instance, in Al- Jedda v. United Kingdom, the Grand Chamber of the European Court of Human Rights stated that, for determining damage,

"[i]ts guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the

754 Amahdou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (n 18) 324, 12.
755 ibid 5 (emphasis added).
Due to the above mentioned arguments, the Court awarded the amount of USD 85,000 to Guinea, based on equity and reasonableness. The reasoning for which the Court concluded that the said amount is equitable took into consideration the number of days that Mr. Diallo was detained, the fact that Mr. Diallo was detained without being provided with the reasons for the incarceration, the fact that he was not allowed to seek remedies for the incarceration, that he was detained for an unjustifiably long period pending expulsion, that he was made the object of accusations that were not substantiated and that he was wrongfully expelled from the country where he had resided for 32 years and where he had engaged in significant business activities.

Authors have argued that the above mentioned analysis of the Court was not necessarily sufficient for the determination of the said quantum of compensation for moral damages and considered this circumstance regrettable. It can be considered that the Court performed a thorough analysis of the practice of international courts and tribunals to determine the amount that was due to Guinea. Thus, even if non-material damages are difficult to assess, "international courts and tribunals recognize that such damages are very real". The International Court of Justice confirmed this view through the Diallo Case.

**E. The Judgment of the Court**

Due to the fact that the parties did not reach an agreement with respect to the amount of compensation, the Court decided this issue through a separate procedural stage, as follows:

“Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the non-material injury suffered by Mr. Diallo at US$85,000;

Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US$10,000;

Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion;"
Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings;

Decides that the total amount of compensation due under points 1 and 2 above shall be paid by 31 August 2012 and that, in case it has not been paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to the Republic of Guinea will accrue as from 1 September 2012 at an annual rate of 6 per cent;”

The Diallo Case is unique in its finding regarding moral damages granted by the Court as compensation. It can be concluded that the finding of the International Court of Justice should represent a veritable precedent in this respect. Firstly, regarding the availability of compensation for moral damages as a remedy of international law, the Court concluded as follows:

“Mental and moral damage”, referred to by Guinea, or “non-pecuniary injury”, referred to by the DRC, covers harm other than material injury which is suffered by an injured entity or individual. Non-material injury to a person which is cognizable under international law may take various forms."

Secondly, the judgment of the Court in the Diallo Case represents a novelty with respect to the manner in which the Court assessed compensation regarding injuries caused to individuals, the Court considering equity as a valuation tool for this type of compensation. It can be therefore concluded that the finding of the Court with respect to the manner in which this remedy is interpreted represents a finding of principle which should be applied in the future by the Court and by other international Courts and tribunals.

3. Conclusion

It can be concluded with respect to compensation that, although the case-law of the International Court of Justice is rather limited regarding this remedy, it is the one towards which the Court has manifested its greatest care. Perhaps due to the technicalities and typologies of compensation, the International Court of Justice has provided relevant findings that clarified certain notions, such as the manner in which compensation is addressed by experts, the burden of proof or compensation for moral damages.

The International Court of Justice should continue its endeavours in further clarifying this remedy so that, in the future, the state parties will be provided with the complete picture regarding compensation.

765 ibid 13.
Chapter 6. Satisfaction

1. Introduction

Satisfaction as a remedy before the International Court of Justice and the Permanent Court of International Justice has not been often requested by the parties, nor granted by the Court. More so, it appears that in the few disputes in which the Court has granted this remedy, it has interpreted and applied it in a different manner than that of the ILC Articles on State Responsibility, which provide the following in article 37:

“1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.”

The approach that the Court has taken towards satisfaction as a remedy has led authors like Amerasinghe to conclude that the legal status of satisfaction is yet uncertain. This is due to the fact that this remedy has certain particularities, mainly that it is often sought when damage to the honour and dignity of states has allegedly occurred:

“The vast majority of international arbitral decision on reparation, generally in the form of damages, clearly concern claims by states involving injury to their nationals. In the law of state responsibility, a distinction is generally made between injuries to individuals ("private") and injuries to states ("public").

In regard to the latter the injury to a state's honour and dignity claims prominence and often it is thought that the remedy for such injury is "satisfaction". However, the exact juridical status of this remedy and its relation to pecuniary compensation for injury to a state as such are not clear.”

This conclusion has merit, as the inconsistencies regarding the interpretation and clarification of satisfaction as a remedy have been amplified by the fact that the International Court of Justice attributes a meaning to satisfaction that was not necessarily envisioned by the ILC Articles on State Responsibility. The meaning attributed to satisfaction by the ILC Articles on State Responsibility entails that the state which committed the breach of an international obligation should provide satisfaction, if the Court considers this remedy appropriate. However, as shall be presented below, the International Court of Justice considers that satisfaction can be granted without any action on behalf of the responsible state.

768 Amerasinghe (n 111) 417.
Furthermore, not only does the Court seem rather indecisive with respect to satisfaction as a remedy but “state practice on the award of satisfaction shows the lack of objective standards in this area. Obvious, exact correspondence between the injury and satisfaction is often not possible; the form of satisfaction given depends on political factors. And the extensive diplomatic practice on satisfaction the emphasis is on the affront to the state however caused rather than any breach of international law.”

2. The Case-law of the International Court of Justice

Satisfaction is considered to be an exceptional remedy. Thus, the perspective of the ILC Articles on State Responsibility is that satisfaction applies in cases where the standard forms of reparation prove to be impossible, i.e. if restitution in kind is materially impossible or if compensation cannot be determined due to certain specific circumstances. The commentary of the ILC Articles further substantiates this conclusion in the following manner:

“It is not a standard form of reparation, in the sense that in many cases the injury caused by an internationally wrongful act of a State may be fully repaired by restitution and/or compensation. The rather exceptional character of the remedy of satisfaction, and its relationship to the principle of full reparation, are emphasized by the phrase “insofar as [the injury] cannot be made good by restitution or compensation.”

Thus, satisfaction is presented by the ILC Articles on State Responsibility as being the appropriate remedy for injuries that are directly caused to states and cannot be quantified due to the fact that they are not material, i.e. harm caused to the reputation of a certain state. Gray confirms this view and argues the following in this respect:

“In the law of state responsibility a distinction is commonly drawn between injuries to individuals which are called private or economic injuries and injuries to states, which are called public or political. The latter are usually conceived as consisting in harm to a state’s honour and dignity and the appropriate remedy for such injury is often said to be satisfaction. But the exact juridical status of this remedy and its relation to pecuniary compensation for direct injury to a state and punitive damages are not clear.”

However, even if satisfaction is a well-established remedy of international law, the case-law of the Court shows that states rarely request satisfaction as a remedy. Furthermore, the Permanent Court of International Justice and the International Court of Justice have rarely granted this remedy for breaches of international law. These circumstances have sometimes led to drastic opinions, such as the one expressed by Judge Azavedo in the Corfu Channel Case, who concluded that satisfaction should no longer be considered a form of reparation due to its volatile nature.

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769 Gray (n 4) 42.
771 Gray (n 4) 41.
772 Corfu Channel Case (Great Britain v Albania) (n 2) (Dissenting Opinion of Judge Azevedo).
2.1. The Corfu Channel Case

A. The Facts of the Case

The dispute in the Corfu Channel Case which was submitted before the Court, entailed that a number of British warships were damaged due to existing mines in the waters of Albania. The United Kingdom sought compensation for its losses, while Albania sought satisfaction:

“Que, vu les circonstances exposées, le gouvernement britannique a violé les droits du Gouvernement albanais selon les règles du droit international et par conséquent doit au Gouvernement albanais des excusts et satisfaction.”

An underlying reason for which Albania requested this type of remedy could be considered the fact that no injury was caused to it as a result of the breach of sovereignty rights. As such, requests for other more coercive remedies, such as restitution in kind or compensation, would have been redundant.

B. The Judgment of the Court

Deciding upon the above mentioned request of Albania, the Court concluded that its declaratory judgment, which confirmed that a breach of international law occurred on behalf of the United Kingdom, represents proper satisfaction for Albania. Thus, the Court decided that:

“Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People’s Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.”

The manner in which the Court has determined that its declaration would constitute an appropriate form of satisfaction has been contested. Thus, Kolb argues the following in this respect:

“The Court cannot, in such a case, substitute itself for the applicant, imposing on the latter a particular way of exercising his rights because that is a matter solely for the applicant.”

However, the findings of the Court in this case have been referred to by the International Court of Justice throughout its practice as obiter dictum. Thus, in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the Court has confirmed the view that was expressed in the Corfu Channel Case and has concluded as follows:

“It is however clear that the Applicant is entitled to reparation in the form of satisfaction, and this may take the most appropriate form, as the

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773 Corfu Channel Case (Great Britain v Albania) [1948] ICJ Pleadings, Counter-Memorial submitted by the Government of the People’s Republic of Albania, 146.
774 Corfu Channel Case (Great Britain v Albania) (n 2) 36 (emphasis added).
775 Kolb (n 46) 920.
Applicant itself suggested, of a declaration in the present Judgment that the Respondent has failed to comply with the obligation imposed by the Convention to prevent the crime of genocide. As in the Corfu Channel (United Kingdom v. Albania) case, the Court considers that a declaration of this kind is “in itself appropriate satisfaction” (Merits, Judgment, I.C.J. Reports 1949, pp. 35, 36), and it will, as in that case, include such a declaration in the operative clause of the present Judgment. The Applicant acknowledges that this failure is no longer continuing, and accordingly has withdrawn the request made in the Reply that the Court declares that the Respondent “has violated and is violating the Convention.”

It is therefore important to note that the Corfu Channel Case represents the first case that established that satisfaction can be granted by the Court by means of a declaratory judgment. The findings expressed in the judgment, however, were not unanimously accepted by the members of the Court.

**C. The Dissenting Opinion of Judge Azavedo**

Few opinions have been expressed against this remedy, one being that of Judge Azavedo in his dissenting opinion of the Corfu Channel Case which concluded as follows with respect to satisfaction as a remedy:

“On the other hand, the Court should break away from the familiar medieval procedure, which is not employed nowadays even in schools, such as apologies, flag saluting, etc. All this is reminiscent of itimate, which are becoming more and more obsolete.”

Judge Azavedo further clarified his point and concluded that a breach of international law could not remain without a remedy, considering that:

“There remains only one moral sanction that can be applied without disregarding the absence of a claim for the assessment of damages.

The matter cannot be left to the future; for the sanction must re ipsa be found in the Judgment. This will be purely declaratory, and will state that the United Kingdom’s conduct was contrary to international law and in every way abnormal.”

However, the fact that this remedy is becoming obsolete is not necessarily an argument that would render the judgments of the Court that grant this remedy contrary to international law. As has been previously stated, both compensation and restitution have become rather exceptional before the International Court of Justice. This circumstance does not mean, however, that they should no longer be regarded as remedies, but it merely describes a certain evolutionary trend that the Court and the state parties have with respect to satisfaction.

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777 *Corfu Channel Case (Great Britain v Albania)* (n 2) (Dissenting Opinion of Judge Azevedo) 36 (emphasis added).

778 *ibid.*
Thus, the following view, which is more liberal in approach with respect to the applicability of satisfaction as a remedy of international law has merit:

“A remedy on these lines and with this purpose, rather than “satisfaction” properly so called, would provide a means of protecting the interests which in fact call for the protection of international law in cases involving responsibility of this kind.”


A. The Facts of the Case

Through the statement of facts, the applicant state sought to establish that the People and State of Bosnia and Herzegovina had suffered from the crime of genocide, as defined by the 1948 Genocide Convention. As such, the application contained the following argument in this respect:

“Therefore, the People and State of Bosnia and Herzegovina charge that Yugoslavia (Serbia and Montenegro) and its agents and surrogates have committed genocide, and will continue to commit genocide unless they are stopped. The Bosnian People pray that as the world learns of the atrocities committed in Bosnia and Herzegovina, humanity, justice, and rule of law will prevail.”

As a consequence, the applicant state argued that it was entitled to compensation for the damages caused, in the following terms:

“that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro).”

Thus, the parties did not refer to satisfaction when requesting the Court to grant reparation for the breaches of international law that occurred. However, even if the parties did not refer to satisfaction as a remedy within their pleadings, the Court concluded that satisfaction represented the appropriate remedy.

B. The Judgment of the Court

The Court concluded that even if the obligation to prevent the crime of genocide was clearly breached, a link of causality between the breach and the damage should be proven by the applicant state:

779 Amador, Sohn and Baxter (n 402) 128.
781 ibid 64.
“Since the Court cannot therefore regard as proven a causal nexus between the Respondent’s violation of its obligation of prevention and the damage resulting from the genocide at Srebrenica, financial compensation is not the appropriate form of reparation for the breach of the obligation to prevent genocide.”782

Consequently, the Court concluded that even if reparation was due, that without any link of causality compensation could not be granted, but that satisfaction, in lieu of former, was the appropriate remedy:

“It is however clear that the Applicant is entitled to reparation in the form of satisfaction, and this may take the most appropriate form, as the Applicant itself suggested, of a declaration in the present Judgment that the Respondent has failed to comply with the obligation imposed by the Convention to prevent the crime of genocide.”783

However, the Court decided to refer to the finding related to compensation provided in one of its previous cases, where it granted satisfaction through a declaratory judgment:

“As in the Corfu Channel (United Kingdom v. Albania) case, the Court considers that a declaration of this kind is “in itself appropriate satisfaction” (Merits, Judgment, I.C.J. Reports 1949, pp. 35, 36), and it will, as in that case, include such a declaration in the operative clause of the present Judgment.”784

This case demonstrates the fact that satisfaction could be considered as being a secondary remedy which applies in the cases where the primary remedies, such as compensation or restitution, prove to be impossible to grant.

2.3. The S.S. “I’m Alone” Case

Although this case was decided by a Joint Commission established under the auspices of the United Nations, it can prove to be relevant for offering certain clarifications with respect to satisfaction as a remedy of international law. As previously mentioned, the International Court of Justice presently observes the practice of other judicial bodies when it delivers its judgments.

A. The Facts of the Case

On the 22nd of March 1929, a Canadian ship, the I’m Alone, was sunk by the US vessel Dexter, at a distance that exceeded 200 miles from the coast. The I’m Alone ship was smuggling alcohol into the United States and further refused to stop or to allow boarding, and it was sailing with another United States ship, the Wolcott, in pursuit. This ship was later joined by Dexter, the ship that intentionally sunk the I’m Alone. As a consequence, both the I’m Alone ship and its cargo were lost, and one person lost their life.

783 ibid.
784 ibid.
Even though this case was not resolved by the International Court of Justice, nor by the Permanent Court of International Justice, it has been relied upon for the interpretation of satisfaction as remedy of international law.

B. The Judgment of the Court

The *I’m Alone Case* represents one of the few cases in which pecuniary satisfaction has been granted in an inter-state dispute. In this sense, the Joint Commission concluded the following:

“The Commissioners consider that, in view of the facts, no compensation ought to be paid in respect of the loss of the ship or the cargo.

The act of sinking the ship, however, by officers of the United States Coast Guard, was, as we have already indicated, an unlawful act; and the Commissioners consider that the United States ought formally to acknowledge its illegality, and to apologize to His Majesty's Canadian Government therefor;

and, further, that as a material amend in respect of the wrong the United States should pay the sum of $25,000 to His Majesty's Canadian Government; and they recommend accordingly.”

However, the differences between pecuniary satisfaction and compensation for moral damages are difficult to establish. Amerasinghe concludes the following in this respect:

“But where there has been a moral or personal injury to an individual it is difficult to distinguish whether an award apparently in excess of mere compensation for his financial loss includes an element for the satisfaction of the state or whether it includes simply moral compensation for moral injury of the individual.”

3. Conclusion

These above mentioned cases clearly demonstrate the manner in which satisfaction is currently interpreted. Thus, one form in which satisfaction is granted is as provided by the *I’m Alone Case*, in which the responding state was ordered to present apologies to the applicant state. The other form, which has been repeatedly confirmed by the Court, is through a declaration of wrongfulness.

The ILC Articles on State Responsibility provide a better approach towards satisfaction, namely that this remedy should be ordered by the Court and that it should be provided by the state that has committed a breach of international law. The opinion expressed by the International Court of Justice in the sense that a declaration of wrongfulness also means satisfaction would indeed render the latter obsolete. It is important to reiterate the fact that the purpose of satisfaction as a remedy is that the responsible state acknowledges that it has breached international law, and not only that the Court concludes that such a breach has occurred.

785 S. S. “I’m Alone” (Canada/United States) (n 444).
786 Amerasinghe (n 111) 418.
Conclusions to Part II

The aim of Part II of the thesis was to describe the specific perspectives on the interpretation of remedies of international law, and to clarify the particularities of the relevant related notions, through the analysis of the practice of the Permanent Court of International Justice and the International Court of Justice. The study undertaken in Part II leads to the conclusion that the submissions of the parties and the judgments of the International Court of Justice significantly influence the interpretation and clarification of remedies. Such influence cannot and should not be disregarded.

The requests of the state parties to the disputes before the judicial body confirm certain theoretical views with respect to the application and availability of remedies of international law. For instance, the requests for remedies submitted before the Court demonstrate that the framework provided by the ILC Articles on Responsibility of States, with respect to remedies, is usually followed. Moreover, the preference given by state parties to certain remedies, such as declaratory relief, in disputes submitted before the International Court of Justice, is also relevant for understanding the manner in which states perceive international dispute resolution before the judicial body. It must be noted in this respect that the priority given to the remedy of declaratory relief demonstrates that states often consider the judgments of the International Court of Justice as veritable instruments in the armoury of their post adjudication diplomatic negotiation tools.

Equally important is the approach of the Court regarding the remedies of international law, when pronouncing judgments that clarify and interpret the arguments that are raised by the parties. Any systemic study of the remedies available under international law would be incomplete without this evaluation of the Court’s approach. Such evaluation also encompasses the manner in which the remedies awarded by the Court, in some cases contribute (in other cases, less so) to the final resolution of the disputes that the Court is called upon to resolve. It can be concluded that the Court often gives due consideration to the submissions of the state parties and generally renders judgments which address their arguments with respect to remedies. However, the Court’s cautious approach with respect to certain remedies, such as specific performance or compensation, leads to the conclusion that the Court is also mindful of the fact that its findings are used in the post adjudication negotiation phase. Therefore, the Court gives judgments that contribute not only to the resolution of the submitted contentious legal disputes but also (and perhaps more importantly) to the re-establishment of diplomatic relations between states.
The International Court of Justice has contributed to the interpretation of remedies through its ever-evolving jurisprudence. Several aspects of the remedies available before the Court have been clarified through its practice and, consequently, State parties now have more reasonable expectations when they submit a dispute before the Court (as compared to their expectations before the Permanent Court of International Justice given its rather limited jurisprudence). The consistency, which the Court has demonstrated in its interpretation of the remedies available before it, has enhanced predictability in the manner in which the Court applies and clarifies the remedies that are requested by the parties appearing before it. Illustratively, if at the beginning of the Permanent Court of International Justice’s activity its jurisdiction to grant remedies was disputed by the responding states, this is no longer an issue before the Court. Further, while earlier it was unclear whether remedies such as compensation for moral damages could be granted by the Court, the International Court of Justice has now clarified that such remedies are available. As demonstrated throughout this thesis, various issues regarding remedies have been resolved by the Court through its related findings of principle.

Even though the Court has clarified an important number of issues related to remedies, there still remain aspects that require further elucidation. While a general framework of remedies exists in international law, which is fortified by international legal instruments such as the ILC Articles on Responsibility of States for Internationally Wrongful Acts, there still remains scope for a more detailed analysis of this particular area. The conclusion that the remedies of international law available before the Court are presently underdeveloped is confirmed by scholars such as Gray and Brownlie. The reason for this occurrence is that while the judgments of the Court often contain lengthy clarifications on the substance of the dispute, its findings of principle related to the interpretation and clarification of the available remedies remain secondary. This lack of analysis with respect to remedies justifies certain uncertainties regarding their availability, applicability and interpretation. The contribution of authors such as James Crawford with respect to the interpretation of remedies of international law, are thus, invaluable and are among the few that contain important clarifications. This said, the interpretation of certain remedies of international law remains to be further developed.

The thesis endeavoured to determine whether the remedies envisaged by the International Law Commission in its Articles on the Responsibility of States for Internationally Wrongful Acts are applied as such by the Court, or whether the judicial body adopts a different approach. It attempted to map the differences in approach that stem from the Court’s practical purpose of resolving disputes and the theoretical perspective preferred by the International Law Commission. The intention in this respect was to isolate the Court from the more general field of international dispute settlement and to test the manner in which the general model of remedies of

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787 Free Zones of Upper Savoy and District of Gex (France v Switzerland) (n 614); Case Concerning the Factory at Chorzow (Germany v Poland) (n 32) 24.
788 Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (n 18) 324.
789 Draft articles on Responsibility of States for Internationally Wrongful Acts with Commentaries (n 181).
790 Gray (n 4) 1.
791 Brownlie (n 39) 557.
international law codified by the International Law Commission is applied before the principal judicial body of the United Nations.

It can be concluded that the Court has a unique approach regarding the application of remedies, which takes a different path from the one prescribed by the Articles on Responsibility of States codified by the International Law Commission. The practice of the Court reflects the general framework provided by the ILC Articles. The remedies included therein are generally accepted as such by the Court, in the sense that the existence of a determined list of remedies is confirmed by the practice before the Court. However, the substance of the rules often does not fit neatly into each other, at least with respect to certain remedies. The conceptual interpretation of some remedies and the procedural implications related to others are understood by the Court in accordance with the specificities of the disputes submitted before it. Further, while the reasons for the preference given to certain remedies appear readily from a reading of the Court’s jurisprudence in some instances, in others it is less evident.

With respect to the general approach of the Court towards the resolution of disputes submitted before it, it appears that the Court behaves in a manner different from a regular court or tribunal, at least with respect to the remedies that it has granted throughout its jurisprudence. Though the Court resolves disputes and issues judgments (akin to an arbitral tribunal), its activity has to take into consideration a multitude of factors, including but not limited to, legal and political constraints. The fact that the disputes submitted before the Court subsume a multiplicity of legal and political considerations, influences the manner in which the Court resolves the disputes that are submitted before it, as well as the mechanisms applied for repairing the injury caused by the breach of an international obligation. That is not to say that the Court is overly preoccupied with the political implications of the disputes submitted before it. Its primary endeavour is to fulfil its function, that is to “decide, in accordance with international law, such disputes as are submitted before it”, in accordance with article 38 of the Statute of the International Court of Justice.

The manner in which the remedies of international law are interpreted and applied is, however, strictly connected with the function of the Court, i.e., that of being the judicial organ of the United Nations. It has been argued that “the ICJ actively services and participates in achieving and accomplishing the principles of the UN. It plays an important role in achieving the central purpose of the UN, namely, the maintenance of international peace and security through its constructive contribution to the peaceful settlement of disputes”. Therefore, the fact that the Court considers the manner in which its judgments contribute to the maintenance of international peace, influences the application of remedies with respect to the disputes submitted before it. The connection between the Court and the United Nations is the reason why the Court has been more circumspect in granting coercive remedies, and correctly so. The fact that States often seem to accept the findings of the Court with respect to the remedies through which the Court resolves the legal issues submitted before it is also relevant. As such, a further differentiator is that the Court resolves disputes between States and that “the sovereign

792 Gray (n 16) 413-423, 418: “Will the ILC acknowledge that the rarity of the award of this remedy [restitution in kind] in practice and its unsuitability for many types of breach of international law require it at least to offer more flexibility than the current Draft Articles allow? ”

character, common to all states, dictates or constraints the mechanisms for resolving claims by one state against another and for collective enforcement of the law.”

The function of the Court is therefore complex and manifests its effect throughout the resolution of the dispute, perhaps the most at stage of remedies in the proceedings. One reason for which the Court has been rather reluctant to grant certain remedies provided by the Articles on Responsibility of States for Internationally Wrongful Acts is that the judgments that grant such remedies require subsequent action and monitoring, _inter alia_, in the form of negotiations regulating the said action between the State parties. Therefore, even though the Court cannot guarantee compliance of the State parties with its judgments, it does factor this into its decision-making process. The member states of the United Nations accept that the judgments of the Court are binding, in accordance with article 59 of the Statute of the Court and, further, that they have an obligation “to _comply with the decisions of the International Court_”, in accordance with article 94 (1) of the Charter of the United Nations. However, even if subtle, the contribution of the Court with respect to compliance of its judgments should not be disregarded. The Court fulfils this function by observing the manner in which the State parties behave in the adjudicatory phase and in the post adjudicatory phase as well.

The Court has described and clarified its function in several of its judgments, including in the Northern Cameroons Case, where it concluded that, “[t]he function of the Court is to state the law, but it may pronounce judgment only in connection with concrete cases where there exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties”. This finding is further confirmed by Rosenne, who concludes that “it cannot be too often emphasized that the Court is a court of justice and not of ethics or morals or of political expediency. Its function is to _declare the law, _jus dicere_. The above-mentioned conclusions with respect to the function of the Court and the scope of its declarations of wrongfulness should not be interpreted restrictively, _in vacuo_. A conclusion that the Court ignores the political implications of the disputes submitted before it would be too detached from its practice. The fact that the Court observes the manner in which its judgments on remedies impact the future negotiations is confirmed by its case-law. The practice of the Court confirms that it does so given that a wide range of judgments issued by the Court invite the parties to negotiate in the post adjudication phase.

Perhaps an even better understanding of the scope of the function of the International Court of Justice has been elucidated in the _Case of the Free Zones of Upper Savoy and District of Gex_, in which the Permanent Court concluded that:

> “the judicial settlement of international disputes, with a view to which the Court has been established, is simply an alternative to the direct and friendly settlement of such disputes between the Parties; as consequently it is for the Court to facilitate, so far as is compatible with its Statute, such

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795 Crawford (n 7) 693.
796 Rosenne (n 56) 195.
797 ibid 198.
798 _Case concerning the Northern Cameroons (Cameroon v United Kingdom) _ (n 52) 33.
799 Rosenne (56) 169.
direct and friendly settlement. 800

A more recent view in this respect is that of Judge Tomka stating that “it should be emphasized that the Court can play an important role in assisting parties in peacefully settling their disputes prior to rendering a judgment on the merits, even if the proceedings before the Court are eventually discontinued prior to the commencement of public hearings”. 801 Thus, the Court is a complex dispute settlement institution, which is also a facilitator of amicable political settlement of international disputes between States. This function of the Court is manifested in the different phases that a dispute submitted before it entails. In the discharge of its functions, the Court looks towards the past (by deciding whether a wrongful act occurred), towards the present (by contributing to the amicable settlement of the disputes during its proceedings) and also towards the future (by paying due consideration to the manner in which its judgments are implemented). It can thus, be validly concluded that the exercise of the function of the International Court of Justice should not necessarily be conditioned upon a judgment being issued, but upon the final resolution of the dispute.

However, when the parties to a dispute do not reach settlement prior to the delivery of the judgment, as it often happens, the Court makes its best efforts that its judgment, once issued, is respected and implemented by the responding State. The Court does so, by issuing judgments that contain appropriate remedies which observe the particularities of each case. This approach is relevant from the fact that, often, “States, in contemplating the resolution of a dispute, will invariably consider all the relevant circumstances and may resort to the Court as a part of a broader strategy”. 802 Chan further observes in this respect that, “as the ICJ itself described in Bosnian Genocide, ‘the Court’s function, according to Art. 38 of its Statute, is to “decide”, that is, to bring to an end “disputes as are submitted to it”’”. 803 As such, the resolution of a dispute is essential for the Court, the mechanism through which the dispute is resolved or the procedural moment in which the dispute is resolved is secondary, if not irrelevant.

The meaning of “deciding in accordance with international law” is, therefore, wide and does not impose upon the Court any particular means through which it would decide the cases that are brought before it, except for applying the sources of international law provided by article 38 of its Statute read with article 36, which includes reparation within the jurisdiction of the Court. Presently, the Court understands Article 38 of its Statute to mean that it best decides the disputes submitted before it through declaratory judgments, which represent the norm before the Court. The declaratory judgment is well suited to fulfil the role of the Court as it also denotes its preventive function in the vaudeville of international law. 804 It has been argued in this respect that, “as a measure of preventive justice, the declaratory judgment probably has its greatest efficacy. It is

800 Case of the Free Zones of Upper Savoy and District of Gex (Order) PCIJ Series A, No 22, 13.
802 ibid.
804 C D Visscher, Aspects récents du droit procédural de la Cour internationale de Justice (A Pedone 1966), 187.
designed to enable parties to ascertain and establish their legal relations so as to conduct themselves accordingly and thus to avoid the necessity of future litigation.”  

It is also relevant to note that the States party to the disputes submitted before the Court are satisfied with the declaratory judgments it renders, and often accept its findings related to remedies with no need for future negotiations related to compliance or implementation.

The manner in which the Court approaches the application of the remedies of international law constantly and consistently contributes towards the clarification of this particular area of interest. The statement of Sir Hersch Lauterpacht that “Judicial settlement may, given the will of the parties, prove the starting-point for a required change of the law. But before such change is attempted it may be necessary to determine what the law is” is relevant, because it best describes the activity of the Court, at least with respect to the remedies of international law. The Court declares the law and, in doing so, further influences the direction of its change and enhances its development.

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805 Borchard (n 44) 105, 110.
806 Lauterpacht (n 507) 338.
### Annexes

#### 1. The Permanent Court of International Justice

**Annex 1. The Requests submitted before the Permanent Court of International Justice through Special Agreements**

<table>
<thead>
<tr>
<th>No.</th>
<th>Case</th>
<th>Date of Special Agreement</th>
<th>Relief Sought</th>
<th>Type of Relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Treaty of Neuilly, Article 179, Annex, Paragraph 4 (Interpretation) (Bulgaria/Greece)</td>
<td>18 March 1924</td>
<td>&quot;submit to the Permanent Court of International Justice, in its Chamber for Summary Procedure as provided by Article 29 of its Statute and Article 67 and 70 of its Rules of Court, the dispute which has arisen between them in connection with the jurisdiction of the arbitrator appointed by M. Gustave Ador under paragraph 4 of the Annex to Section IV of Part IX of the Treaty of Peace signed at Neuilly on November 27th, 1919&quot;</td>
<td>Declaratory</td>
</tr>
</tbody>
</table>
| 2.  | “Lotus” (France/Turkey) | 12 October 1926 | "(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law - and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-Kourt and upon the arrival of the French steamer at Constantinople - as well as against the captain of the Turkish steamship - joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish sailors and passengers?  

"(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?"" | Declaratory Compensation |
| 3.  | “Serbian Loans” (France/Serbia) | 19 April 1928 | "(a) Whether, as held by the Government of the Kingdom of the Serbs, Croats and Slovenes, the latter is entitled to effect in paper francs the service of its 4 % 1895, 5 % 1902, 44 % 1906, 44 % 1909 and 5 % 1913 loans, as it has hitherto done;  

(b) or whether, on the contrary, the Government of the Kingdom of the Serbs, Croats and Slovenes, as held by the French bondholders, is under an obligation to pay in gold or in foreign currencies and at the places indicated hereinafter, the amount of the bonds drawn for redemption but not refunded and of those subsequently drawn, as also of coupons due for payment but not paid, and of those subsequently falling due for payment of the Serbian loans enumerated above, and in particular:  

1° With regard to the Serbian 4 % loan of 1895, whether holders of bonds of this loan are entitled, whatever their nationality may be, to obtain, at their free choice, payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due for payment, as also of their bonds drawn for redemption but" | Declaratory Specific Performance |
not refunded and of those subsequently drawn, at Paris, London, Berlin, Vienna, Geneva and Belgrade, in the currency in circulation at one of these places;

2° With regard to the 5 % 1902, 4+ % 1906, 49 % 1909 and 5 % 1913 loans and, subsidiarily with regard to the above-mentioned 4 % loan of 1895, whether holders of these bonds are entitled to obtain payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn, in gold francs at Belgrade, Paris, Brussels and Geneva, or at the equivalent value of the said amount at the exchange rate of the day in the local currency at Berlin, Vienna and Amsterdam, in so far as concerns the 1902, 1906 and 1909 loans ;

3° Lastly, how the value of the gold franc is to be determined as between the Parties for the above-mentioned payments."

| 4. | “Brazilian Loans” (France/Brazil) | 27 August 1927 | "With regard to the Brazilian Federal Government's 5 % loan of 1909 (Port of Pernambuco), 4 % loan of 1910, and 4 % loan of 1911, is payment of coupons which have matured and are not barred by prescription at this date, and coupons which shall mature, as also repayment of bonds drawn for redemption but not actually paid which are not barred by prescription on the date of the Court's decision, or of bonds subsequently to be redeemed, to be effected by delivery to the French holders, in respect of each franc, of the value corresponding, in the currency of the place of payment at the rate of exchange on the day, to one-twentieth of a gold piece weighing 6.45161 grammes of 900/1000 fineness, or is such payment or repayment to be effected as hitherto in paper francs, that is to say, in the French currency which is compulsory legal tender?" | Declaratory |

| 5. | “Free Zones of Upper Savoy and the District of Gex” (France/Switzerland) | 21 March 1928 | "it shall rest with the Permanent Court of International Justice to decide whether, as between Switzerland and France, Article 435, paragraph 2, of the Treaty of Versailles, with its annexes, has abrogated or has for its object the abrogation of the provisions of the Protocol of the Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, and of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the Pays de Gex, having regard to all facts anterior to the Treaty of Versailles, such as the establishment of the Federal customs in 1849, which are considered relevant by the Court";

"the High Contracting Parties agree that the Court, as soon as it has concluded its deliberation on this question, and before pronouncing any decision, shall accord to the two Parties a reasonable time to settle between themselves the new régime to be applied in those districts, under such conditions as they may consider expedient, as provided in Article 435, paragraph 2, of the said Treaty";

"failing the conclusion and ratification of a convention between the two Parties within the time specified, the Court shall, by means of a single judgment rendered in accordance with Article 58 of the Court's Statute, pronounce its decision in regard to the question formulated in Article 1 and settle for a period to be fixed by it and having regard to present conditions, all the questions" | Declaratory |
<table>
<thead>
<tr>
<th>No.</th>
<th>Case Title</th>
<th>Date</th>
<th>Paragraph(s)</th>
<th>Declaratory/Specific Performance</th>
<th>Jurisdiction/Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>“Territorial Jurisdiction of the International Commission of the River Oder” (U.K., Czechoslovak Republic, Denmark, France, Germany and Sweden/Poland)</td>
<td>30 October 1928</td>
<td>&quot;Does the jurisdiction of the International Commission of the Oder extend, under the provisions of the Treaty of Versailles, to the sections of the tributaries of the Oder, Warthe (Warta) and Netze (Notec) which are situated in Polish territory, and, if so, what is the principle laid down which must be adopted for the purpose of determining the upstream limits of the Commission's jurisdiction?&quot;</td>
<td>Declaratory</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>“Delimitation of the Territorial Waters between Castellorizo and the Coasts of Anatolia” (Turkey/Italy)</td>
<td>30 May 1929</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>“Lighthouses case” (France/Greece)</td>
<td>15 July 1931</td>
<td>&quot;to give its decision upon the question whether the contract concluded on April 1st/14th, 1913, between the French firm Collas &amp; Michel, known as the 'Administration générale des Phares de l'Empire ottoman', and the Ottoman Government, extending from September 4th, 1924, to September 4th, 1949, concession contracts granted to the said firm, was duly entered into and is accordingly operative as regards the Greek Government in so far as concerns lighthouses situated in the territories assigned to it after the Balkan wars or subsequently&quot;</td>
<td>Declaratory Specific performance</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>“Oscar Chinn” (U.K./Belgium)</td>
<td>13 April 1934</td>
<td>&quot;1. Having regard to all the circumstances of the case, were the above-mentioned measures complained of by the Government of the United Kingdom in conflict with the international obligations of the Belgian Government towards the Government of the United Kingdom? 2. If the answer to question 1 above is in the affirmative, and if Mr. Oscar Chinn has suffered damage on account of the non-observance by the Belgian Government of the above-mentioned obligations, what is the reparation to be paid by the Belgian Government to the Government of the United Kingdom?&quot;</td>
<td>Declaratory Compensation</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>“Lighthouses in Crete and Samos” (France/Greece)</td>
<td>28 August 1936</td>
<td>&quot;Whether the contract concluded on April 1st/14th, 1913, between the French firm Collas &amp; Michel, known as the 'Administration générale des Phares de l'Empire ottoman', and the Ottoman Government, extending from September 4th, 1924, to September 4th, 1949, concession contracts granted to the said firm, was duly entered into and is accordingly operative as regards the Greek Government in so far as concerns lighthouses situated in the territories of Crete, including the adjacent islets, and of Samos, which were assigned to that Government after the Balkan wars.&quot;</td>
<td>Declaratory Specific Performance</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>“Borchgrave” (Belgium/Spain)</td>
<td>20 February 1937</td>
<td>“The Permanent Court of International Justice is requested to Say whether, having regard to the circumstances of fact and of law concerning the case, the responsibility of the Spanish Government is involved.&quot;</td>
<td>Declaratory</td>
<td></td>
</tr>
</tbody>
</table>
### Annex 2. The Judgments of the Permanent Court of International in the Cases Submitted through Special Agreements

<table>
<thead>
<tr>
<th>No.</th>
<th>Case</th>
<th>Date of Judgment</th>
<th>Judgment</th>
<th>Type of Relief Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Treaty of Neuilly, Article 179, Annex, Paragraph 4 (Interpretation) (Bulgaria/Greece)</td>
<td>12 September 1924</td>
<td>“That the last sentence of the first sub-paragraph of paragraph 4 of the Annex to Section IV of Part IX of the Treaty of Neuilly should be interpreted as authorizing claims in respect of acts committed even outside Bulgarian territory as constituted before October 11th, 1915, and in respect of damage incurred by claimants not only as regards their property, rights and interests but also as regards their person; That reparation due on this ground is within the scope of the reparation contemplated in Article 121 and consequently is included in the total capital sum mentioned in Articles 121 and 122.”</td>
<td>Declaratory</td>
</tr>
<tr>
<td>2.</td>
<td>“Lotus” (France/Turkey)</td>
<td>7 September 1927</td>
<td>“(1) that, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship Lotus and the Turkish steamship Boz-Kourt, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the Lotus at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction; (2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.”</td>
<td>Declaratory</td>
</tr>
<tr>
<td>3.</td>
<td>“Serbian Loans” (France/Serbia)</td>
<td>12 July 1929</td>
<td>“by nine votes to three, gives judgment to the following effect (1) That, in regard to the Serbian 4 % loan of 1895, the holders of bonds, of this loan are entitled, whatever their nationality may be, to obtain, at their free choice, payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and of those subsequently drawn, at Paris, Berlin, Vienna and Belgrade, in the currency in circulation at one of these places; (2) That, in regard to the 4 % 1895, 5 % 1902, 44 % 1906, 48 % 1909 and 5 % 1913 Serbian loans, the holders of these bonds are entitled to obtain payment of the nominal amount of their coupons due for payment but not paid and of those subsequently falling due, as also of their bonds drawn for redemption but not refunded and those subsequently drawn, in gold francs, in the case of the 1895 loan, at Belgrade and Paris, and, in the case of the 1902, 1906, 1909 and 1913 loans, at Belgrade, Paris, Brussels and Geneva, or at the equivalent value of the said amount at the exchange rate of the day in the local currency at”</td>
<td>Declaratory</td>
</tr>
</tbody>
</table>

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Berlin and Vienna, in the case of the 1913 loan, and at Berlin, Vienna and Amsterdam, in the case of the 1902, 1906 and 1909 loans.

(3) That the value of the gold franc shall be fixed between the \textquoteleft Parties, for the above-mentioned payments, as equivalent to that of a weight of gold corresponding to the twentieth part of a piece of gold weighing 6 grammes 45161, 900/1000 fine.\textquoteleft"

4. \textbf{\textquoteleft Brazilian Loans\textquoteleft} (France/Brazil) 12 July 1929

\textquoteleft That with regard to the Brazilian Federal Government\textquoteleft s 5 \% loan of 1909 (Port of Pernambuco), 4 \% loan of 1910 and 4 \% loan of 1911, payment of coupons which have matured and are not barred by prescription at the date of the Special Agreement and of coupons subsequently maturing, as also repayment of bonds drawn for redemption but not actually repaid which are not barred by prescription on the date of the present judgment, or of bonds subsequently to be redeemed, must be effected by delivery to the French holders in respect of each franc, of the value corresponding in the currency of the place of payment at the rate of exchange of the day, to one-twentieth part of a gold piece weighing 6.45161 grammes, 900/1000 fine.\textquoteleft"

5. \textbf{\textquoteleft Free Zones of Upper Savoy and the District of Gex\textquoteleft} (France/Switzerland) 7 June 1932

\textquoteleft by six votes to five,\textquoteleft decides:

\textit{In regard to the question formulated in Article 1, paragraph 1, of the Special Agreement:}

\textit{That, as between France and Switzerland, Article 435, paragraph 2, of the Treaty of Versailles, with its Annexes, neither has abrogated nor is intended to lead to the abrogation of the provisions of the Protocol of the Conference of Paris of November 3rd, 1815, of the Treaty of Paris of November 20th, 1815, of the Treaty of Turin of March 16th, 1816, or of the Manifesto of the Sardinian Court of Accounts of September 9th, 1829, regarding the customs and economic régime of the free zones of Upper Savoy and the Pays de Gex.}

\textit{In regard to the questions referred to in Article 2, paragraph 1, of the Special Agreement:}

\textit{That the French Government must withdraw its customs line in accordance with the provisions of the said treaties and instruments; and that this régime must continue in force so long as it has not been modified by agreement between the Parties;}

\textit{That the withdrawal of the customs line does not affect the right of the French Government to collect at the political frontier fiscal duties not possessing the character of customs duties;}

\textit{That, as the free zones are maintained, some provision for the importation of goods free of duty or at reduced rates across the line of the Federal customs, in favour of the products of the zones, must be contemplated;}

\textit{That the declaration made in regard to this question by the Agent of the Swiss Government before the Court at the hearing on April 22nd, 1932, shall be placed on record;}

\textit{That January 1st, 1934, shall be appointed as the date by}

Declaratory
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<tbody>
<tr>
<td><strong>6.</strong></td>
<td>“Territorial Jurisdiction of the International Commission of the River Oder”  (U.K., Czechoslovak Republic, Denmark, France, Germany and Sweden/Poland)</td>
<td>10 September 1929</td>
<td>Decleratory</td>
</tr>
</tbody>
</table>
|   | “Under the provisions of the Treaty of Versailles, the jurisdiction of the International Commission of the Oder extends to the sections of the Warthe (Warta) and Netze (Netec) which are situated in Polish territory:  
(2) The principle laid down, which must be adopted for the purpose of determining the upstream limits of the Commission's jurisdiction, is the principle laid down in Article 331 of the Treaty of Versailles.” |   | |
| **7.** | “Delimitation of the Territorial Waters between Castellorizo and the Coasts of Anatolia”  (Turkey/Italy) | Order (Discontinuance) 26 January 1933 | NA |
|   | “Records the fact that, by mutual agreement, the Royal Italian Government and the Government of the Turkish Republic intend to break off the proceedings contemplated in the Special Agreement concluded at Ankara on May 30th, 1929, between Italy and Turkey;  
Declares that the proceedings began in regard to the case concerning the delimitation of the territorial waters between the island of Castellorizo and the coasts of Anatolia are thus terminated;  
Decides that the said case shall be removed from the Court's list.” |   | |
| **8.** | “Lighthouses case”  (France/Greece) | 17 March 1934 | Declaratory Specific Performance |
|   | “decides that the contract of April 1st/14th, 1913, between the French firm Collas & Michel, known as the "Administration générale des Phares de l'Empire ottoman", and the Ottoman Government, extending from September 4th, 1924, to September 4th, 1949, concession contracts granted to the said firm, was duly entered into and is accordingly operative as regards the Greek Government in so far as concerns lighthouses situated in the territories assigned to it after the Balkan wars or subsequently.” |   | |
| **9.** | “Oscar Chinn”  (U.K./Belgium) | 12 December 1934 | Declaratory |
|   | “decides that the measures taken and applied in the month of June 1931 and subsequently thereto by the Belgian Government in connection with the limited liability Company Union nationale des Transports fluviaux (commonly known as Unatra) and in relation to fluvial transport on the waterways of the Belgian Congo, are not, having regard to all the circumstances of the case, in conflict with the international obligations of the Belgian Government towards the Government of the United Kingdom.” |   | |
| **10.** | “Lighthouses in Crete and Samos”  (France v. Greece) | 8 October 1937 | Declaratory Specific Performance |
|   | “decides that the contract concluded on April 1st/14th, 1913, between the French firm Collas & Michel, known as the "Administration générale des Phares de l'Empire ottoman", and the Ottoman Government, extending from September 4th, 1924, to September 4th, 1949, concession contracts granted to the said firm, was duly entered into and is accordingly operative as regards the Greek Government in so far as concerns lighthouses situated in the territories of Crete, including the adjacent islets, and of Samos, which were assigned to that Government after the Balkan wars.” |   | |
| **11.** | “Borchgrave”  (Belgium v. Spain) | Order (Discontinuance) 30 April 1928 | NA |
|   | “places on record the discontinuance by the Belgian and Spanish Governments of the proceedings instituted by the Special Agreement filed on March 5th, 1937;  
and orders that the case shall be removed from the Court's list.” |   | |
### Annex 3. The Requests submitted before the Permanent Court of International Justice through Unilateral Applications

<table>
<thead>
<tr>
<th>No.</th>
<th>Case</th>
<th>Date of Application</th>
<th>Request for Relief</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>S.S. &quot;Wimbledon&quot; (United Kingdom, France, Italy, Japan v. Germany; Poland intervening)</td>
<td>16 January 1923</td>
<td>“That the German authorities wrongfully refused on March 21st, 1921, free access to the Kiel Canal of the steamship &quot;Wimbledon&quot;; That the German Government shall make reparation for the loss incurred by the aforementioned vessel in consequence of this action, a loss which is estimated at francs 174,082.86, together with interest at 6% per annum as from March 20th, 1921.”</td>
<td>Declaratory Compensation</td>
</tr>
<tr>
<td>2.</td>
<td>Interpretation of Judgment No.3 (Bulgaria v. Greece)</td>
<td>27 November 1924</td>
<td>“(a) the possible existence, according to the terms of the judgment, of Bulgarian property in Greece which might be used to realize sums awarded by the arbitrator; (b) the possibility, under the terms of the judgment, of liquidating Bulgarian landed property in Greece with a view to realizing such sums; (c) the right of Greece, under the terms of the judgment, to apply to the Reparation Commission with a view to obtaining a redistribution between the Allied Powers of the total capital sum at which the obligation to make reparation imposed upon Bulgaria was fixed;”</td>
<td>Declaratory</td>
</tr>
<tr>
<td>3.</td>
<td>Mavrommatis Jerusalem Concessions (Greece v. United Kingdom)</td>
<td>13 May 1924</td>
<td>Not available. However, the request for relief is paraphrased in the Judgment of the Court as follows: “the Government of Palestine and consequently also the Government of His Britannic Majesty have, since 1921, wrongfully refused to recognize to their full extent the rights acquired by M. Mavrommatis under the contracts and agreements concluded by him with the Ottoman authorities in regard to the works specified above, and that the Government of His Britannic Majesty shall make reparation for the consequent loss incurred by the said Greek subject, a loss which is estimated at £234,339 together with interest at six percent as from July 20th, 1923, the date on which this estimate was made.”</td>
<td>Declaratory Compensation</td>
</tr>
<tr>
<td>4.</td>
<td>Certain German Interests in Polish Upper Silesia (Merits) (Germany v. Poland)</td>
<td>15 May 1925</td>
<td>“(a) that Article 2 of the Polish Law of July 14th, 1920, constitutes a measure of liquidation as concerns property, rights and interests acquired after November 11th, 1918, and that Article 5 of the same law constitutes a liquidation of the contractual rights of the persons concerned; (b) that, should the decision in regard to point (a) be in the affirmative, the Polish Government in carrying out these liquidations has not acted in conformity with the provisions of Articles 92 and 297 of the</td>
<td>Declaratory</td>
</tr>
</tbody>
</table>
|   | Treaty of Versailles;  
|---|---|
| 2. (a) | that the attitude of the Polish Government in regard to the Oberschlesische Stickstoffwerke and Bayernische Stickstoffwerke Companies was not in conformity with Article 6 and the following articles of the Geneva Convention;  
| (b) | should the decision in regard to point (a) be in the affirmative, the Court is requested to state what attitude should have been adopted by the Polish Government in regard to the Companies in question in order to conform with the above-mentioned provisions;  
| 3. | that the liquidation of the rural estates belonging to Count Nikolaus Ballestrem; to the Georg Giesches Erben Company; to Christian Kraft, Fürst zu Hohenlohe-Oehringen; to the Vereinigte Konigs- und Lazzrahitte Company; to the Baroness Maria Anna von Goldschmidt-Rothschild (née von Friedlander-Fuld); to Karl Maximilian, Fürst von Lichnowsky; to the City of Ratibor; to Frau Gabriele vonRuffer (née Grafin Henckel von Donnersmarck); to the Godulla Company and to Frau Hedwig Voigt, would not be in conformity with the provisions of article 6 and the following articles of the Geneva Convention.”  
| 5. | Denunciation of the Treaty of 2 November 1865 between China and Belgium (Belgium v. China)  
| 25 November 1926 | “To give judgment, whether the aforesaid Government is present or absent, and after such times as the Court may see fit to fix, to the effect that the Government of the Chinese Republic is not entitled unilaterally to denounce the Treaty of November 2nd, 1865;”  
| 6. | Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów) (Germany v. Poland)  
| 18 October 1927 | “that the contention  
(1) that in Judgment No. 7 the Court reserved to the Polish Government the right to annul by process of law, even after the rendering of that judgment, the Agreement of December 24th, 1919, and the entry, based on that agreement, of the name of the Oberschlesische as owner in the land registers;  
(2) that the action brought by the Polish Government against the Oberschlesische Stickstoffwerke A.-G. before the Civil Tribunal of Kattowitz, with a view to effecting this annulment, is of international importance in connection with the suit concerning the Chorzów factory (claim for indemnity) now pending before the Court, is not in accordance with the true construction of Judgments Nos. 7 and 8.”  
| 7. | Rights of Minorities in Upper Silesia (Minority Schools) (Germany v. Poland)  
| 2 January 1928 | “that Articles 74, 106 and 131 of the German-Polish Convention relating to Upper Silesia of May 15th, 1922, establish the unfettered liberty of an individual to declare according to his own conscience and on his own personal responsibility that he himself does or does not belong to a racial, linguistic or religious minority and to choose the language of instruction and the corresponding school for the pupil or child for whose education he is legally responsible, subject to no verification, dispute, pressure or hindrance in any form whatsoever by the authorities;  
that any measure singling out the minority schools to
|   | Factory at Chorzów (Merits) (Germany v. Poland) | 8 February 1927 | “(1) that by reason of its attitude in respect of the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies, which attitude has been declared by the Court not to have been in conformity with the provisions of Article 6 and the following articles of the Geneva Convention, the Polish Government is under an obligation to make good the consequent damage sustained by the aforesaid Companies from July 3rd, 1922, until the date of the judgment sought; (2) that the amount of the compensation to be paid by the Polish Government is 59,400,000 Reichsmarks for the damage caused to the Oberschlesische Stickstoffwerke Company and 16,775,200 Reichsmarks for the damage caused to the Bayerische Stickstoffwerke Company; (3) in regard to the method of payment: (a) that the Polish Government should pay within one month from the date of judgment, the compensation due to the Oberschlesische Stickstoffwerke Company for the taking possession of the working capital (raw material, finished and half-manufactured products, stores, etc.) and the compensation due to the Bayerische Stickstoffwerke Company for the period of exploitation from July 3rd, 1922, to the date of judgment; (b) that the Polish Government should pay the sums remaining unpaid by April 15th, 1928, at latest; (c) that, from the date of judgment, interest at 6% per annum should be paid by the Polish Government; (d) that the payments mentioned under (a)-(c) should be made without deduction to the account of the two Companies with the Deutsche Bank at Berlin; (e) that, until June 30th, 1931, no nitrated lime and no nitrate of ammonia should be exported to Germany, to the United States of America, to France or to Italy.” | Compensation |
|---|---|---|---|
|   | Interpretation of the Statute of the Memel Territory (United Kingdom, France, Italy, Japan v. Lithuania) | 11 April 1932 | “To decide (…) (1) whether the Governor of the Memel Territory has the right to dismiss the President of the Directorate; (2) in the case of an affirmative decision, whether this right only exists under certain conditions or in certain circumstances, and what those conditions or circumstances are; (3) if the right to dismiss the President of the Directorate is admitted, whether such dismissal involves the termination of the appointments of the other members of the Directorate; (4) if the right to dismiss the President of the Directorate only exists under certain conditions or in certain circumstances, whether the dismissal of M. Bottcher, carried out on February 6th, 1932, is in | Declaratory |
order in the circumstances in which it took place;

(5) whether, in the circumstances in which it took place, the appointment of the Directorate presided over by M. Simaitis is in order;

(6) whether the dissolution of the Diet, carried out by the Governor of the Memel Territory on March mnd, 1932, when the Directorate presided over by M. Simaitis had not received the confidence of the Diet, is in order.”

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<tr>
<th></th>
<th>Legal Status of the South-Eastern Territory of Greenland (Norway v. Denmark; Denmark v. Norway)</th>
<th>18 July 1932</th>
<th>NA</th>
<th>NA</th>
</tr>
</thead>
</table>
|   | Prince von Pless Administration (Germany v. Poland) | 18 May 1932 | "to give judgment (…)  
(1) that the attitude of the Polish Government and authorities towards the Pless Administration in the matter of income taxes for the fiscal years 1925-1930 - especially as regards the application of the procedure by default, the accumulation of the amounts due over several fiscal years, the interpretation and application of the provisions concerning depreciation and the non-taxation of charges relating to the acquisition, maintenance and security of revenue, together with the revaluation of items in the balance sheets - is in conflict with Articles 67 and 68 of the Geneva Convention;  
(2) that acts of the fiscal authorities in conflict with the aforementioned provisions are, according to Article 65 of the Geneva Convention, null and void;  
(3) that the Polish Government is bound to indemnify the Prince von Pless for the damage resulting from the attitude referred to in (2) above, and that the applicant Government shall subsequently be given an opportunity of stating the figure claimed for this indemnity;  
(4) that the Pless Administration enjoys full liberty to appoint its employees and workmen, regardless of race and language, without being exposed in this connection to any pressure whatever from the Polish Government and authorities.” | Declaratory Compensation |
<p>|   | Legal Status of Eastern Greenland (Denmark v. Norway) | 12 July 1931 | &quot;the promulgation of the above-mentioned declaration of occupation and any steps taken in this respect by the Norwegian Government constitute a violation of the existing legal situation and are accordingly unlawful and invalid&quot;. | Declaratory |
|   | Appeals from Certain Judgments of the Hungaro/Czecho slovak Mixed Arbitral Tribunal | 7 July 1932 | &quot;appealing from the judgments of December 21st, 1931, of the Hungaro-Czechoslovak Mixed Arbitral Tribunal concerning questions of jurisdiction in the case of Alexander Semsey and others v. the State of Czechoslovakia (No. 321) and in the case of Wilhelm Fodor v. the State of Czechoslovakia (No. 752)&quot; | Declaratory |</p>
<table>
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<tr>
<th>Case</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Czechoslovakia v. Hungary)</td>
<td>20 July 1932</td>
<td>&quot;appealing from the judgment of April 13th, 1932, of the Hungaro-Czechoslovak Mixed Arbitral Tribunal upon merits in the case of the Ungarische Hanfund Flachsindustrie v. (1) the State of Czechoslovakia, and (2) the Flax Spinners' Association (No. 127)&quot;</td>
</tr>
<tr>
<td>14. Polish Agrarian Reform and German Minority (Germany v. Poland)</td>
<td>1 July 1933</td>
<td>&quot;The German Government requests the Permanent Court of International Justice to declare that violations of the Treaty of June 28th, 1919, have been committed to the detriment of Polish nationals of German race and to order reparation to be made.&quot;</td>
</tr>
<tr>
<td>15. Appeal from a Judgment of the Hungaro/Czechoslovak Mixed Arbitral Tribunal (The Peter Pázmány University) (Czechoslovakia v. Hungary)</td>
<td>3 May 1933</td>
<td>&quot;To adjudge and declare (...) That, in its judgment No. 221 delivered on February 3rd, 1933, the Hungaro-Czechoslovak Mixed Arbitral Tribunal wrongly decided that it was competent to take cognizance of the claim brought by the Royal Hungarian Peter Pazmany University, of Budapest, against the Czechoslovak State, under Article 250 of the Treaty of Trianon; That the Royal Hungarian Peter Pazmany University, of Budapest, is not justified in claiming the restitution by the Czechoslovak State of the immovable property specified in Section 1 of the aforementioned judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal; That the Czechoslovak Government is not bound to restore the aforesaid immovable property to the Royal Hungarian Peter Pazmany University of Budapest; Alternatively: To declare the aforesaid judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal null and void; Alternatively: To modify the aforesaid judgment, and to dismiss the Applicant's claim; Alternatively: To invite the Mixed Arbitral Tribunal to conform to the principles laid down by the Court for the interpretation of Articles 250, 239, 249 and 256 of the Treaty of Peace of Trianon and of the Protocol signed at Paris on April 26th, 1930, and to deliver a fresh judgment in case No. 221, dismissing the Applicant's claim; Alternatively: To declare that the Czechoslovak State is not bound to give effect to the judgment in question, and that it is absolved from any obligation towards the Applicant in respect thereof.&quot;</td>
</tr>
<tr>
<td>16. Pajzs, Czáky, Esterházy (Hungary v. Yugoslavia)</td>
<td>1 December 1935</td>
<td>&quot;A. 1. To admit the appeal; 2. To adjudge and declare, as a matter of law, after admitting the appeal, preferably by way of revising the three judgments in question, that the Mixed Arbitral Tribunal has jurisdiction to adjudicate upon the claims of the Hungarian nationals, stating fully the reasons on which the judgment is based and requiring the Mixed Arbitral Tribunal to conform to such statement of reasons; B. Alternatively or cumulatively, as the Court may&quot;</td>
</tr>
</tbody>
</table>
For the reasons referred to above, the Court was of the opinion that:

1. To adjudge and declare, generally, how Agreements II and III of Paris are to be interpreted and applied, and to redress the situation created by the Yugoslav Government's attitude, since that Government, either under its domestic legislation as portrayed in Article II, paragraph 3, of its law of June 26th, 1931, or under an erroneous interpretation of that legislation by the administrative authorities—though alleged by it to be authorized by and in conformity with Agreements II and III of Paris at present refuses to recognize in respect of all Hungarian nationals its obligation to pay the sums due to them in accordance with the national treatment applicable to them under its domestic legislation in respect of their lands expropriated in the course of its agrarian reform—extending to them an entirely new and unforeseen treatment discriminatory in character and not provided for in Agreements II and III of Paris—instead of only proceeding in this way in the case of Hungarian nationals who submitted claims in respect of the same lands before the Mixed Arbitral Tribunal and who have had their claims recognized by judgments of the Mixed Arbitral Tribunal against the Agrarian Fund, as laid down in Agreements II and III of Paris;

2. To order the Kingdom of Yugoslavia, in particular:

(a) in its attitude and proceedings, strictly to conform to the interpretation and application of Agreements II and III, so laid down as correct, and to respect the rights of which the existence was assumed by those Agreements;

(b) to make good the damage and refund the costs and expenses occasioned to Hungarian nationals by its present attitude and proceedings which are unwarranted by Agreements II and III of Paris;

C. To adjudge and declare that the Kingdom of Yugoslavia is also under an obligation to indemnify the Government of the Kingdom of Hungary for all costs and expenses incurred by the latter in obtaining redress for its nationals for whose situation the Kingdom of Yugoslavia, in spite of warning, is responsible, including the cost and expenses of the present proceedings before the Court.”

17. Losinger (Switzerland v. Yugoslavia) 23 November 1935

“I. To declare that the Government of the Kingdom of Yugoslavia cannot, founding itself on the Yugoslav law of July 19th, 1934, concerning the conduct of State litigation, which came into force on October 19th, 1934, release itself from the observance of an arbitration clause in a contract concluded prior to this legislative measure with the firm of Losinger & Co., S. A., of Berne;

II. To declare that the denial of jurisdiction lodged by the Government of the Kingdom of Yugoslavia, at the hearing on October 7th, 1935, and founded on this law, before the umpire in the arbitration proceedings pending between the State of Yugoslavia and the firm of Losinger & Co., S. A., is contrary to the principles of the law of nations.”

Declaratory
<table>
<thead>
<tr>
<th>No.</th>
<th>Case Title</th>
<th>Date of Decision</th>
<th>Text</th>
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</table>
| 18. | Diversion of Water from the Meuse (Netherlands v. Belgium) | 1 August 1936 | "I. To adjudge and declare that:  
(a) the construction by Belgium of works which render it possible for a canal situated below Maestricht to be supplied with water taken from the Meuse elsewhere than at that town is contrary to the Treaty of May 12th, 1863;  
(b) the feeding of the Belgian section of the Zuid-Willemsvaart, of the Campine Canal, of the Hasselt branch of that canal and of the branch leading to Beverloo Camp, as also of the Turnhout Canal, through the Neerhaeren Lock with water taken from the Meuse elsewhere than at Maestricht, is contrary to the said Treaty;  
(c) Belgium's project of feeding a section of the Hasselt Canal with water taken from the Meuse elsewhere than at Maestricht is contrary to the said Treaty;  
(d) Belgium's project of feeding the section of the canal joining the Zuid-Willemsvaart to the Scheldt between Herenthals (Viersel) and Antwerp with water taken from the Meuse elsewhere than at Maestricht is contrary to the said Treaty.  

II. To order Belgium  
(a) to discontinue all the works referred to under I (a) and to restore to a condition consistent with the Treaty of 1863 all works constructed in breach of that Treaty;  
(b) to discontinue any feeding held to be contrary to the said Treaty and to refrain from any further such feeding." |
| 19. | Phosphates in Morocco (Italy v. France) | 30 March 1936 | “To judge and declare, whether the said Government enters an appearance or not, and after such time-limits as the Court may fix, in the absence of an agreement between the Parties:  
(a) that the monopolization of the Moroccan phosphates, which was accomplished by stages between 1920 and 1934 for the benefit of French interests, is inconsistent with the international obligations of Morocco and of France, and that it must for that reason be annulled with all the consequences that ensue;  
(b) alternatively, that the decision of the Mines Department dated January 5th, 1925, and the denial of justice which followed it, are inconsistent with the international obligation incumbent upon Morocco and upon France to respect the rights acquired by the Italian Company Miniere e Fosfati, and therefore that the Protectorate authorities are bound to recognize the said company as discoverer, and to invite tenders without delay for the working of the deposits covered by the company's licences;  
(c) alternatively again, that fair compensation must be paid for expropriation, such compensation to be assessed by the Court with due regard to the immense revenues of the Shereefian Phosphates Office;" |
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<tr>
<th>No.</th>
<th>Case Description</th>
<th>Date</th>
<th>Decision</th>
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| 20. | Panevezys-Saldutiskis Railway Estonia v. Lithuania) | 2 November 1937 | "to adjudge and declare:
1. That the Lithuanian Government has wrongfully refused to recognize the rights of the Esimene Juurdeveo Raudteede Selts Venemaal Company, as owners and concessionaires of the Panevezys-Saldutiskis railway line, and to compensate that company for the illegal seizure and operation of this line.
2. That the Lithuanian Government is under an obligation to make good the prejudice which has been thus sustained by the Esimene Juurdeveo Raudteede Selts Venemaal Company, and which is estimated, the proposals for a compromise made by that company having been withdrawn, at the sum of 14,000,000 Gold Lits, plus interest at 6 % per annum as from January 1st, 1937." |
| 21. | Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria) | 26 January 1938 | "(A) to declare that the State of Bulgaria has failed in its international obligations:
(1) by reason of the fact that the State Administration of Mines, on November 24th, 1934, put into force a special artificially calculated tariff for coal supplied to power stations, in order to enable the Municipality of Sofia to distort the application of the decisions given by the Mixed Arbitral Tribunal in 1923 and 1925;
(2) by reason of the above-mentioned judgments of the District Court and of the Court of Appeal of Sofia, which deprived the Electricity Company of Sofia and Bulgaria of the benefit of the said decisions of the Mixed Arbitral Tribunal (a) by allowing the fictitious value fixed by the Administration of Mines to be used for the calculation of the factor 'P' in the formula for determining the tariff,
(b) by deciding that the factor 'r' should be calculated on the basis of the official rate of exchange decreed by the National Bank of Bulgaria and not on the basis of the rate of exchange actually applied by that Bank for the conversion of Bulgarian currency into foreign currency,
(c) by deciding that the Company could no longer require its consumers to pay the amount of the excise duty,
(d) by deciding that the Company could not put any tariff into operation before having obtained the formal agreement of the Municipality;
(3) by reason of the promulgation of the law of February 3rd, 1936, Article 30, paragraph C, of which establishes a special tax on the distribution of electric power purchased from undertakings not subject to tax." |
22. Société Commerciale de Belgique (Belgium v. Greece) 5 May 1938

"(1) to declare that the Greek Government, by refusing to comply with the arbitral award made in favour of the Société commerciale de Belgique, has violated its international obligations;

(2) to assess the amount of the compensation due in respect of this violation”.

Declaratory
Specific Performance
Compensation

Annex 4. The Judgments of the Permanent Court of International Justice in the Cases Submitted through Unilateral Applications

<table>
<thead>
<tr>
<th>No.</th>
<th>Case</th>
<th>Date of Judgment</th>
<th>Judgment</th>
<th>Type of Relief Granted</th>
</tr>
</thead>
</table>
| 1.  | S.S. “Wimbledon” (United Kingdom, France, Italy, Japan v. Germany; Poland intervening) 17 August 1923 | “1. That the German authorities on March 21st, 1921, were wrong in refusing access to—the Kiel Canal to the S.S. “Wimbledon”;

2. that Article 380 of the Treaty signed at Versailles on June 28th, 1919 between the Allied and Associated Powers and Germany, should have prevented Germany from applying to the Kiel Canal the Neutrality Order promulgated by her on July 25th, 1920;

3. that the German Government is bound to make good the prejudice sustained by the vessel and her charterers as the result of this action;

4. that the prejudice sustained may be estimated at the sum of 140, 749 frs. 35 centimes, together with interest at 6% per annum from the date of the present judgment;

5. that the German Government shall therefore pay to the Government of the French Republic, at Paris, in French francs, the sum of 140,749 frs. 35 centimes with interest at 6% per annum from the date of this judgment; payment to be effected within three months from this day;

6. and that each party shall bear its own costs.” | Declaratory Compensation |
| 2.  | Interpretation of Judgment No.3 (Bulgaria v. Greece) 26 March 1925 | “That the request of the Greek Government for an authoritative interpretation of the judgment of September 12th, 1924, in accordance with Article 60 of the Statute, cannot be granted.” | Rejected request |
| 3.  | Mavrommatis Jerusalem Concessions (Greece v. United Kingdom) 26 March 1925 | “1. That the concessions granted to M. Mavrommatis under the Agreements signed on January 27th, 1914, between him and the City of Jerusalem, regarding certain works to be carried out at Jerusalem, are valid;

That the existence, for a certain space of time, of a right on the part of M. Rutenberg to require the annulment of the aforesaid concessions of M. Mavrommatis was not in conformity with the international obligations accepted by the Mandatory for Palestine;” | Declaratory Rejected compensation claim |
<table>
<thead>
<tr>
<th>4.</th>
<th>Certain German Interests in Polish Upper Silesia (Merits) (Germany v. Poland)</th>
<th>25 May 1926</th>
<th>Declaratory</th>
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<td></td>
<td>That no loss to M. Mavrommatis, resulting from this circumstance, has been proved;</td>
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<td>That therefore the Greek Government’s claim for an indemnity must be dismissed;</td>
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<td></td>
<td>2. That Article 4 of the Protocol signed at Lausanne on July 23rd, 1923, concerning certain concessions granted in the Ottoman Empire, is applicable to the above-mentioned concessions granted to M. Mavrommatis.”</td>
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<td></td>
<td>(1) That the application both of Article 2 and of Article 5 of the law of July 14th, 1920, in Polish Upper Silesia, decreed by the law of June 16th, 1922, constitutes, in so far as it affects German nationals or companies controlled by German nationals covered by Part 1, Head III, of the Geneva Convention, a measure contrary to Article 6 and the following articles of that Convention;</td>
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<td>(2) (a) That the attitude of the Polish Government in regard to the Oberrschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies was not in conformity with Article 6 and the following articles of the Geneva Convention;</td>
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<td>(b) that the Court is not called upon to Say what attitude on the part of the Polish Government in regard to the Companies in question would have been in conformity with the above-mentioned provisions;</td>
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<td>(3) (a) That the notice of intention to liquidate the rural estates belonging to Count Nikolaus Ballestrem is not in conformity with the provisions of Articles 6 to 22 of the Geneva Convention;</td>
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<td></td>
<td>(b) that this also applies in regard to the notice of intention to liquidate the rural estates of the Giesche Company at Katowice;</td>
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<td>(c) that the applicant Government’s claim in respect of the notice of intention to liquidate the rural estates belonging to Christian Kraft, Prince of Hohenlohe-Oehringen, must be dismissed;</td>
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<td>(d) that the notice of intention to liquidate the rural estates belonging to the Vereinigte Königs- und Laurahütte Company is not in conformity with the provisions of Articles 6 to 22 of the Geneva Convention;</td>
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<td>(e) that the applicant Government’s claim in respect of the notice of intention to liquidate the rural estates belonging to Baroness Maria Anna von Goldschmidt-Rothschild, has no longer any object;</td>
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<td>(f) that the notice of intention to liquidate the rural estates belonging to Karl Maximilian, Prince of Lichnowsky, is not in conformity with the provisions of Articles 6 to 22 of the Geneva Convention;</td>
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<td>(g) that the applicant Government’s claim in respect of the notice of intention to liquidate the rural estates belonging to the City of Ratibor must be dismissed, except as regards the Waldpark;</td>
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</table>
(h) that the notice of intention to liquidate the rural estates belonging to the Godulla Company is not in conformity with the provisions of Articles 6 to 22 of the Geneva Convention;

(i) that the applicant Government's claim in respect of the notice of intention to liquidate the rural estates belonging to the Duke of Ratibor must be dismissed;

(j) that the applicant Government's claim in respect of the notice of intention to liquidate the rural estates of Count Saurma-Jeltsch must be dismissed.”

5. Denunciation of the Treaty of 2 November 1865 between China and Belgium (Belgium v. China)

Order (Discontinuance) 25 May 1929

“Records the fact that the Government of His Majesty the King of the Belgians intends to break off the action brought by it against the Government of the Republic of China by the Application instituting proceedings dated November 25th, 1926;

Declares that the proceedings begun in regard to the said suit are thus terminated; Instructs the Registrar to cause the said suit to be removed from the Court's list of cases.”

6. Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów) (Germany v. Poland)

16 December 1927

That, in Judgment No. 7, the Court did not reserve to the Polish Government the right of asking by process of law, even after the rendering of that Judgment and with application to that particular case, for a declaration that the entry, in pursuance of the Agreement of December 24th, 1919, of the name of the Oberschlesische Stickstoffwerke A.-G. in the land registers as owners of the Chorzow factory is null and void; but that, by the aforesaid Judgment, the Court meant to recognize, with binding effect between the Parties concerned and in respect of that particular case, amongst other things, the right of ownership of the Oberschlesische Stickstoffwerke A.-G. in the Chorzow factory under municipal law.”

7. Rights of Minorities in Upper Silesia (Minority Schools) (Germany v. Poland)

26 April 1928

“by eight votes to four, gives judgment as follows:

(1) that the objections, whether to the jurisdiction or respecting the admissibility of the suit, raised by the Respondent, must be overruled;

(2) that Articles 74, 106 and 131 of the German-Polish Convention of May 15th, 1922, concerning Upper Silesia, bestow upon every national the right freely to declare according to his conscience and on his personal responsibility that he does or does not belong to a racial, linguistic or religious minority and to declare what is the language of a pupil or child for whose education he is legally responsible;

that these declarations must set out what their author regards as the true position in regard to the point in question and that the right freely to declare what is the language of a pupil or child, though comprising, when necessary, the exercise of some discretion in the appreciation of circumstances, does not constitute an unrestricted right to choose the language in which instruction is to be imparted or the corresponding school;

that, nevertheless, the declaration contemplated by Article 131 of the Convention, and also the question..."
whether a person does or does not belong to a racial, linguistic or religious minority, are subject to no verification, dispute, pressure or hindrance whatever on the part of the authorities;

(3) that the Court is not called upon to give judgment on that portion of the Applicant's submission according to which any measure singling out the minority schools to their detriment is incompatible with the equal treatment guaranteed by Articles 65, 68, 72, paragraph 2, and by the Preamble of Division II of Part III of the Convention.”

<table>
<thead>
<tr>
<th>8. Factory at Chorzów (Merits) (Germany v. Poland)</th>
<th>13 September 1928</th>
<th>“by nine votes to three,” Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) gives judgment to the effect that, by reason of the attitude adopted by the Polish Government in respect of the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies, which attitude has been declared by the Court not to have been in conformity with the provisions of Article 6 and the following articles of the Geneva Convention, the Polish Government is under an obligation to pay, as reparation to the German Government, a compensation corresponding to the damage sustained by the said Companies as a result of the aforesaid attitude;</td>
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</tr>
<tr>
<td>(2) dismisses the pleas of the Polish Government with a view to the exclusion from the compensation to be paid of an amount corresponding to all or a part of the damage sustained by the Oberschlesische Stickstoffwerke, which pleas are based either on the judgment given by the Tribunal of Katowice on November 12th, 1927, or on Article 256 of the Treaty of Versailles;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) dismisses the submission formulated by the Polish Government to the effect that the German Government should in the first place hand over to the Polish Government the whole of the shares of the Oberschlesische Stickstoffwerke Company, of the nominal value of 110,000,000 marks, which are in the hands of the German Government under the contract of December 24th, 1919;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4) dismisses the alternative submission formulated by the Polish Government to the effect that the claim for indemnity, in so far as the Oberschlesische Stickstoffwerke Company is concerned, should be provisionally suspended;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) dismisses the submission of the German Government asking for judgment to the effect that, until June 30th, 1931, no nitrated lime and no nitrate of ammonia should be exported to Germany, to the United States of America, to France or to Italy, or, in the alternative, that the Polish Government should be obliged to cease working the factory or the chemical equipment for the production of nitrate of ammonia, etc.;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) gives judgment to the effect that no decision is called for on the submissions of the German Government asking for judgment to the effect that the Polish Government is not entitled to set off, against the above-mentioned claim for indemnity of the</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 9. | Interpretation of the Statute of the Memel Territory (United Kingdom, France, Italy, Japan v. Lithuania) | 11 August 1932 | "(1) that the Governor of the Memel Territory is entitled, for the protection of the interests of the State, to dismiss the President of the Directorate in case of serious acts which violate the Convention of Paris of May 8th, 1924, including its annexes, and are calculated to prejudice the sovereignty of Lithuania, and if no other action can be taken;  

(2) that the dismissal of the President of the Directorate does not by itself involve the termination of the appointments of the other members of the Directorate;  

(3) that the dismissal of M. Rottcher as President of the Directorate, carried out on February 6th, 1932, "as in order in the circumstances in which it took place;  

(4) to reject the objection of the Lithuanian Government to the admissibility of the points as to whether the appointment of the Directorate presided over by M. Simaitis and whether the dissolution of the Chamber of Representatives of the Memel Territory on March 22nd, 1932, were in order;  

(5) that, in the circumstances in which it took place, the appointment of the Directorate presided over by M. Simaitis was in order;  

(6) that the dissolution of the Chamber of Representatives of the Memel Territory which was carried out on March 22nd, 1932, by the Governor of the said Territory when the Directorate presided over by M. Simaitis had not received the confidence of the Chamber, was not in order."

| 10. | Legal Status of the South-Eastern Territory of Greenland | Order (Discontinuance) 11 May 1933 | “Noting the declarations made on April 18th, 1933, by the Royal Norwegian Government and by the Royal Danish Government announcing the withdrawal of their respective Applications instituting proceedings of July 18th, 1932, NA
<table>
<thead>
<tr>
<th>Case</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Norway v. Denmark; Denmark v. Norway)</td>
<td>Declares that the proceedings in regard to the legal status of the part of the south-eastern territory of Greenland which forms the subject of the Norwegian and Danish Applications of July 18th, 1932, are terminated; Decides that the said suits shall be removed from the Court's list.</td>
</tr>
<tr>
<td>11. Prince von Pless Administration (Germany v. Poland)</td>
<td>&quot;noting the communication received on October 27th, 1933, from the German Minister at The Hague, to the effect that the German Government withdraws the suit submitted by its Application of May 18th, 1932; placing on record the declaration made on November 15th, 1933, by the Agent of the Polish Government to the effect that that Government acquiesces in this withdrawal; declares that the proceedings begun by the Application of the German Government are terminated; decides that the said case shall be removed from the Court's list.&quot;</td>
</tr>
<tr>
<td>12. Legal Status of Eastern Greenland (Denmark v. Norway)</td>
<td>1) decides that the declaration of occupation promulgated by the Norwegian Government on July 10th, 1931, and any steps taken in this respect by that Government, constitute a violation of the existing legal situation and are accordingly unlawful and invalid; 2) rejects the opposing submissions of the Norwegian Government; (3) declares that there is no need to deviate from the general rule laid down in Article 64 of the Statute that each Party will bear its own costs.&quot;</td>
</tr>
<tr>
<td>13. Appeals from Certain Judgments of the Hungaro/Czecho slovak Mixed Arbitral Tribunal (Czechoslovakia v. Hungary)</td>
<td>&quot;Noting the declaration made by the Agent for the Government of the Czechoslovak Republic on April 8th, 1933, to the effect that the Government of the Czechoslovak Republic withdraws &quot;the appeals&quot; submitted by its Applications of July 7th and 20th, 1932, and Taking note of the declaration made on April 18th 1933, by the Agent of the Royal Hungarian Government, to the effect that the Royal Hungarian Government acquiesces in this withdrawal, declares that the proceedings begun by the Applications of the Czechoslovak Government are terminated; Decides that the said cases shall be removed from the Court's list.&quot;</td>
</tr>
<tr>
<td>14. Polish Agrarian Reform and German Minority (Germany v. Poland)</td>
<td>&quot;noting the communication received 011 October 27th, 1933, from the German Minister at The Hague, to the effect that the German Government withdraws the suit submitted by its Application of July 1st, 1933; placing on record the declaration made on November 15th, 1933, by the Agent of the Polish Government to the effect that that Government acquiesces in this...&quot;</td>
</tr>
<tr>
<td>No.</td>
<td>Case Title</td>
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</tbody>
</table>
| 15. | Appeal from a Judgment of the Hungaro/Czechoslovak Mixed Arbitral Tribunal (The Peter Pázmány University) (Czechoslovakia v. Hungary) | 15 December 1933 | (1) rejects the submissions of the Czechoslovak Government;  
(2) decides that, in its judgment No. 221 delivered on February 3rd, 1933, the Hungaro-Czechoslovak Mixed Arbitral Tribunal has rightly decided (a) that it is competent to take cognizance of the claim brought by the Royal Hungarian Peter Pazmany University of Budapest, against the Czechoslovak State, under Article 250 of the Treaty of Trianon; and (b) that the Czechoslovak Government is bound to restore to the Royal Hungarian Peter Pazmany University of Budapest the immovable property claimed by it, freed from any measure of transfer, compulsory administration, or sequestration, and in the condition in which it was before the application of the measures in question;  
(3) states that there is no need to depart from the general rule in Article 64 of the Statute that each Party will bear its own costs. |
| 16. | Pajzs, Czaky, Esterházy (Hungary v. Yugoslavia) | 16 December 1936 | “(1) decides that the appeal of the Hungarian Government against the three judgments rendered by the Hungaro-Yugoslav Mixed Arbitral Tribunal on July 2nd, 1935, in cases Nos. 749, 750 and 747 (Pajzs, Czaky and Esterhazy versus the State of Yugoslavia) cannot be entertained;  
(2) dismisses as ill-founded the preliminary objection lodged by the Yugoslav Government to the effect that the alternative submission of the Hungarian Government cannot be entertained;  
(3) adjudicating upon the alternative submission of the Hungarian Government, decides that the attitude of Yugoslavia towards the Hungarian nationals affected by the agrarian reform measures in Yugoslavia has been consistent with the provisions of the Paris Agreements;  
(4) rejects the alternative submission of the Yugoslav Government praying the Court to declare that the three Hungarian nationals, Paj-as, Csaky and Esterhazy, must be allowed to present their claims against the Agrarian Fund;  
(5) takes note that the Hungarian Government no longer relies on the Optional Clause of Article 36 of the Statute of the Court;  
(6) decides that there is no reason to deviate from the general rule laid down in Article 64 of the Statute of the Court to the effect that each party shall bear its own costs.” |
<p>| 17. | Losinger (Switzerland v. Order (Discontinuan) | | “places on record the communications from the Agent for the Swiss Government and from the Agent” |</p>
<table>
<thead>
<tr>
<th>Case Study</th>
<th>Date</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yugoslav Government's application against Switzerland (Yugoslavia)</td>
<td>14 December 1936</td>
<td>for the Yugoslav Government filed on November 30th, 1936, and November 25th, 1936, respectively, to the effect that the Swiss and Yugoslav Governments are discontinuing the proceedings instituted by the application presented by the Swiss Confederation on November 23rd, 1935; and orders that the case shall be removed from the Court's list.</td>
<td></td>
</tr>
<tr>
<td>Diversion of Water from the Meuse (Netherlands v. Belgium)</td>
<td>28 June 1937</td>
<td>“Rejects the various submissions of the Memorial presented by the Netherlands Government in pursuance of its Application dated August 1st, 1936. As regards the counter-claim presented in the Belgian Counter-Memorial, dated January 28th, 1937: The Court, by ten votes to three, Rejects the submissions of the aforesaid counter-claim.”</td>
<td>Rejected all claims</td>
</tr>
<tr>
<td>Phosphates in Morocco (Italy v. France)</td>
<td>14 June 1938</td>
<td>“decides that the Application filed on March 30th, 1936, by the Italian Government cannot be entertained.”</td>
<td>Rejected as inadmissible</td>
</tr>
<tr>
<td>Panevezys-Saldutiskis Railway (Estonia v. Lithuania)</td>
<td>28 February 1939</td>
<td>“Declares that the objection regarding the non-exhaustion of the remedies afforded by municipal law is well founded, and declares that the claim presented by the Estonian Government cannot be entertained.”</td>
<td>Rejected as inadmissible</td>
</tr>
<tr>
<td>Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria)</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Société Commerciale de Belgique (Belgium v. Greece)</td>
<td>15 June 1939</td>
<td>“1. Admits submission A of the Belgian Government and submission No. 3 of the Greek Government and, noting the agreement between the Parties, states that the arbitral awards made on January 3rd and July 25th, 1936, between the Greek Government and the Société commerciale de Belgique are definitive and obligatory; 2. Dismisses the other submissions of the two Parties.”</td>
<td>Declaratory Specific Performance</td>
</tr>
</tbody>
</table>
### 2. The International Court of Justice

**Annex 5. The Requests submitted before the International Court of Justice through Special Agreements**

<table>
<thead>
<tr>
<th>No.</th>
<th>Case</th>
<th>Date of Special Agreement</th>
<th>Special Agreement Provision</th>
<th>Type of Relief</th>
</tr>
</thead>
</table>
| 1.  | Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) | 25 March 1948             | “(1) Is Albania responsible under international law for the explosions which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation?  
(2) Has the United Kingdom under international law violated the sovereignty of the Albanian People’s Republic by reasons of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946 and is there any duty to give satisfaction?” | Declaratory, Compensation, Satisfaction |
| 2.  | Asylum (Colombia v. Peru)                 | 15 October 1949           | “First question - Within the limits of the obligations resulting in particular from the Bolivarian Agreement on Extradition of July 18th. 1911, and the Convention on Asylum of February 20th. 1928, both in force between Colombia and Peru and in general from American international law, was Colombia competent, as the country granting asylum, to qualify the offence for the purposes of said Asylum  
Second question - In the specific case under consideration, was Peru, as the territorial State, bound to give the guaranties necessary for the departure of the refugee from the country, with due regard to the inviolability of his person?” | Declaratory |
<p>| 3.  | Minquiers and Ecurehos (France v. United Kingdom) | 6 December 1951           | “The Court is requested to determine whether the sovereignty over the islets and rocks (to so far as they are capable of appropriation) of the Minquiers and Ecurehos groups, respectively belongs to the United Kingdom or the French Republic.” | Declaratory |
| 4.  | Sovereignty over Certain Frontier Land (Belgium v. Netherlands) | 27 November 1957          | “The Court is requested to determine whether the sovereignty over the parcels shown in the survey and known from 1836 to 1843 as Nos. 91 and 92, Section A, Zondereygen, belongs to the Kingdom of Belgium or the Kingdom of the Netherlands.” | Declaratory |
| 5.  | North Sea Continental Shelf (Federal Republic of Germany v. | 20 February 1967          | “What principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned Convention of 9 June | Declaratory |</p>
<table>
<thead>
<tr>
<th><strong>Denmark)</strong> Proceedings joined with North Sea Continental Shelf (Federal Republic of Germany v. Netherlands) on 26 April 1968</th>
<th>1965?“</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>6.</strong> North Sea Continental Shelf (Federal Republic of Germany v. Netherlands) Proceedings joined with North Sea Continental Shelf (Federal Republic of Germany v. Denmark) on 26 April 1968</td>
<td>20 February 1967 “What principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned Convention of 1 December 1964?” Declaratory</td>
</tr>
<tr>
<td><strong>7.</strong> Continental Shelf (Tunisia/Libyan Arab Jamahiriya)</td>
<td>1 December 1978 “Quels sont les principes et règles du droit international qui peuvent être appliqués pour la delimitation de la zone du plateau continental appartenant a la République tunisienne et de la zone du plateau continental appartenant a la Jamahiriya arabe libyenne populaire et socialiste et. en prenant sa décision, de tenir compte des principes équitables et des circonstances pertinentes propres a la region, ainsi que des tendances récentes admises a la troisième Conférence sur le droit de la mer. De même, il est demandé également a la Cour de clarifier avec précision la manière pratique par laquelle lesdits principes et règles s'appliquent dans cette situation precise, de manière a mettre les experts des deux pays en mesure de délimiter lesdites zones sans difficultés aucunes.” Declaratory</td>
</tr>
<tr>
<td><strong>8.</strong> Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)</td>
<td>25 November 1981 “What is the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America [...]” Declaratory</td>
</tr>
<tr>
<td><strong>9.</strong> Continental Shelf (Libyan Arab Jamahiriya/Malta)</td>
<td>26 July 1982 “What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic and how in practice such principles and rules can be applied by the two parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III” Declaratory</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>10</td>
<td>Frontier Dispute (Burkina Faso/Republic of Mali)</td>
</tr>
<tr>
<td>11</td>
<td>Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)</td>
</tr>
<tr>
<td>12</td>
<td>Territorial Dispute (Libyan Arab Jamahiriya/Chad)</td>
</tr>
</tbody>
</table>
| 13  | Gabčíkovo - Nagymaros Project (Hungary/Slovakia)                            | 2 July 1993        | “(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable:  
(a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;  
(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the "provisional solution" and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 185 1.7 on Czechoslovak territory and resulting consequences on water and navigation course);  
c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.  
(2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph 1 of this Article.” | Declaratory Specific Performance Reparation |
| 14  | Kasikili/Sedudu Island (Botswana/Namibia)                                   | 29 May 1996        | “The Court is asked to determine, on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island.” | Declaratory          |
| 15  | Sovereignty over Pulau Ligitan and Pulau Sipadan                            | 2 November 1998    | “The Court is requested to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau | Declaratory          |
### 16. Frontier Dispute (Benin/Niger)

- **Date of Judgment**: 3 May 2002
- **Judgment**: "Conformément au paragraphe 1 de l'Article 40 du Statut et à l'Article 2 du Compromis, le Gouvernement de la République du Bénin et le Gouvernement de la République du Niger prient la Cour de:
  a) déterminer le tracé de la frontière entre la République du Bénin et la République du Niger dans le secteur du fleuve Niger
  b) précisera à quel État appartient chacune des îles dudit fleuve et en particulier Île de Lété.

Type: Declaratory

### 17. Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)

- **Date of Judgment**: 24 July 2003
- **Judgment**: "The Court is requested to determine whether sovereignty over:
  (a) Pedra BrancaI, Pulau Batu Puteh;
  (b) Middle Rocks;
  (c) South Ledge,
  belongs to Malaysia or the Republic of Singapore."

Type: Declaratory

### 18. Frontier Dispute (Burkina Faso/Niger)

- **Date of Judgment**: 21 July 2010
- **Judgment**: 1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14°25′04″ N; longitude 00°12′47″ E) to the beginning of the Botou bend (latitude 12°36′18″ N; longitude 01°52′07″ E);
  2. place on record the Parties’ agreement on the results of the work of the Joint Technical Commission on Demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:
  (a) the sector from the heights of N’Gouma to the astronomic marker of Tong-Tong;
  (b) the sector from the beginning of the Botou bend to the River Mekrou."

Type: Declaratory

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**Annex 6. The Judgments of the International Court of Justice in the Cases submitted through Special Agreements**

<table>
<thead>
<tr>
<th>No.</th>
<th>CASE</th>
<th>DATE OF JUDGMENT</th>
<th>JUDGMENT</th>
</tr>
</thead>
</table>
| 1.  | Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) | 9 April 1949 | "on the first question put by the Special Agreement of March 25th, 1948, by eleven votes to five, gives judgment that the People's Republic of Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life that resulted therefrom; and by ten votes to six, reserves for further consideration the..." | Declaratory

Compensation
assessment of the amount of compensation and regulates the procedure on this subject by an Order dated this day;

on the second question put by the Special Agreement of March 25th, 1948,

by fourteen votes to two,

Gives judgment that the United Kingdom did not violate the sovereignty of the People's Republic of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946; and

unanimously,

Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.”

Judgment on compensation:

“by twelve votes to two,

Gives judgment in favour of the claim of the Government of the United Kingdom, and

Fixes the amount of compensation due from the People's Republic of Albania to the United Kingdom at £ 843,947.”

<table>
<thead>
<tr>
<th>2.</th>
<th>Asylum (Colombia v. Peru)</th>
<th>20 November 1950</th>
<th>Declaratory</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>“on the submissions of the Government of Colombia,</td>
<td>by fourteen votes to two,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rejects the first submission in so far as it involves a right for Colombia, as the country granting asylum, to qualify the nature of the offence by a unilateral and definitive decision, binding on Peru;</td>
<td>by fifteen votes to one,</td>
<td></td>
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<tr>
<td></td>
<td>Rejects the second submission;</td>
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<td></td>
<td>on the counter-claim of the Government of Peru,</td>
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<td></td>
<td>by fifteen votes to one,</td>
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<tr>
<td></td>
<td>Rejects it in so far as it is founded on a violation of Article 1, paragraph 1, of the Convention on Asylum signed at Havana in 1928;</td>
<td>by ten votes to six,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Finds that the grant of asylum by the Colombian Government to Victor Raúl Haya de la Torre was not made in conformity with</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Minquiers and Ecrehos (France v. United Kingdom)</strong></td>
<td><strong>17 November 1953</strong></td>
<td><strong>“unanimously, finds that the sovereignty over the islets and rocks of the Ecrehos and Minquiers groups, in so far as these islets and rocks are capable of appropriation, belongs to the United Kingdom.”</strong></td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>3.</td>
<td><strong>Sovereignty over Certain Frontier Land (Belgium v. Netherlands)</strong></td>
<td><strong>20 June 1959</strong></td>
<td><strong>“by ten votes to four, finds that sovereignty over the plots shown in the survey and known from 1836 to 1843 as Nos. 91 and 92, Section A, Zondereygen, belongs to the Kingdom of Belgium.”</strong></td>
</tr>
<tr>
<td>4.</td>
<td><strong>North Sea Continental Shelf (Federal Republic of Germany v. Denmark)</strong></td>
<td><strong>20 February 1969</strong></td>
<td><strong>“by eleven votes to six, finds that, in each case, (A) the use of the equidistance method of delimitation not being obligatory as between the Parties; and (B) there being no other single method of delimitation the use of which is in all circumstances obligatory; (C) the principles and rules of international law applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the agreements of 1 December 1964 and 9 June 1965, respectively, are as follows: (1) delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other; (2) if, in the application of the preceding sub-paragraph, the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a régime of joint jurisdiction, user, or exploitation for the zones of overlap or any part of them; (D) in the course of the negotiations, the factors to be taken into account are to include: (1) the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features; (2) so far as known or readily ascertainable, the physical and geological</strong></td>
</tr>
</tbody>
</table>
structure, and natural resources, of the continental shelf areas involved; 

(3) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of its Coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region.”

| 6. North Sea Continental Shelf (Federal Republic of Germany v. Netherlands) | 20 February 1969 | “by eleven votes to six, finds that, in each case,

(A) the use of the equidistance method of delimitation not being obligatory as between the Parties; and

(B) there being no other single method of delimitation the use of which is in all circumstances obligatory;

(C) the principles and rules of international law applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the agreements of 1 December 1964 and 9 June 1965, respectively, are as follows:

(1) delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other;

(2) if, in the application of the preceding sub-paragraph, the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a régime of joint jurisdiction, user, or exploitation for the zones of overlap or any part of them;

(D) in the course of the negotiations, the factors to be taken into account are to include:

(1) the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features;

(2) so far as known or readily ascertainable, the physical and geological structure, and natural resources, of the continental shelf areas involved;

(3) the element of a reasonable degree of proportionality, which a delimitation
carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of its Coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region."

<table>
<thead>
<tr>
<th>7.</th>
<th><strong>Continental Shelf (Tunisia/Libyan Arab Jamahiriya)</strong></th>
<th>24 February 1982</th>
<th>by ten votes to four, Declaratory</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>finds that:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. The principles and rules of international law</td>
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<tr>
<td></td>
<td>applicable for the delimitation, to be effected</td>
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<tr>
<td></td>
<td>by agreement in implementation of the present</td>
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<tr>
<td></td>
<td>Judgment, of the areas of continental shelf</td>
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<td>appertaining to the Republic of Tunisia and the</td>
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<td>Socialist People's Libyan Arab Jamahiriya</td>
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<td>respectively, in the area of the Pelagian Block</td>
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<td>in dispute between them as defined in</td>
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<td>paragraph B, subparagraph (l), below, are as</td>
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<td>follows:</td>
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<td>(1) the delimitation is to be effected in</td>
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<td>accordance with equitable principles, and</td>
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<td>taking account of all relevant circumstances;</td>
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<td>(2) the area relevant for the delimitation</td>
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<td>constitutes a single continental shelf as the</td>
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<td>natural prolongation of the land territory of</td>
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<td>both Parties, so that in the present case, no</td>
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<td>criterion for delimitation of shelf areas can</td>
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<td>be derived from the principle of natural</td>
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<td>prolongation as such;</td>
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<td>(3) in the particular geographical circumstances</td>
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<td>of the present case, the physical structure of</td>
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<td>the continental shelf areas is not such as to</td>
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<td>determine an equitable line of delimitation.</td>
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<td>B. The relevant circumstances referred to in</td>
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<td>paragraph A, subparagraph (l), above, to be</td>
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<td>taken into account in achieving an equitable</td>
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<td>delimitation include the following:</td>
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<td>(1) the fact that the area relevant to the</td>
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<td>delimitation in the present case is bounded by</td>
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<td>the Tunisian coast from Ras Ajdir to Ras</td>
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<td>Kaboudia and the Libyan coast from Ras Ajdir to</td>
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<td>passing through Ras Kaboudia and the</td>
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<td>meridian passing through Ras Tajoura, the</td>
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<td>rights of third States being reserved;</td>
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<td>(2) the general configuration of the coasts of</td>
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<td>the Parties, and in particular the marked</td>
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<td>change in direction of the Tunisian coastline</td>
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<td>between Ras Ajdir and Ras Kaboudia;</td>
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<td>(3) the existence and position of the Kerkennah</td>
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<td>Islands;</td>
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<td>(4) the land frontier between the Parties, and</td>
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<td>their conduct prior to 1974 in the grant of</td>
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petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a de facto maritime limit;

(5) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitation between States in the same region.

C. The practical method for the application of the aforesaid principles and rules of international law in the particular situation of the present case is the following:

(1) the taking into account of the relevant circumstances which characterize the area defined in paragraph B, subparagraph (l), above, including its extent, calls for it to be treated, for the purpose of its delimitation between the Parties to the present case, as made up of two sectors, each requiring the application of a specific method of delimitation in order to achieve an overall equitable solution;

(2) in the first sector, namely in the sector closer to the coast of the Parties, the starting point for the line of delimitation is the point where the outer limit of the territorial sea of the Parties is intersected by a straight line drawn from the land frontier point of Ras Ajdir through the point 33° 55' N, 12° E, which line runs at a bearing of approximately 26° east of north, corresponding to the angle followed by the north-western boundary of Libyan petroleum concessions numbers NC 76, 137, NC 41 and NC 53, which was aligned on the south-eastern boundary of Tunisian petroleum concession "Permis complémentaire offshore du Golfe de Gabès" (21 October 1966); from the intersection point so determined, the line of delimitation between the two continental shelves is to run north-east through the point 33° 55' N, 12° E, thus on that same bearing, to the point of intersection with the parallel passing through the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes;

(3) in the second sector, namely in the area which extends seawards beyond the parallel of the most westerly point of the Gulf of Gabes, the line of delimitation of the two continental shelves is to veer to the east in such a way as to
take account of the Kerkennah Islands; that is to say, the delimitation line is to run parallel to a line drawn from the most westerly point of the Gulf of Gabes bisecting the angle formed by a line from that point to RAS Kaboudia and a line drawn from that same point along the seaward Coast of the Kerkennah Islands, the bearing of the delimitation line parallel to such bisector being 52° to the meridian; the extension of this line northeastswards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States.”

| 8. | Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) | 12 October 1984 | “By four votes to one, Declaratory
Decides
That the course of the single maritime boundary that divides the continental shelf and the exclusive fisheries zones of Canada and the United States of America in the area referred to in the Special Agreement concluded by those two States on 29 March 1979 shall be defined by geodetic lines connecting the points with the following co-ordinates: (...)” |
| 9. | Continental Shelf (Libyan Arab Jamahiriya/Malta) | 3 June 1985 | “by fourteen votes to three, Declaratory
finds that, with reference to the areas of continental shelf between the coasts of the Parties within the limits defined in the present Judgment, namely the meridian 13° 50' E and the meridian 15° 10' E:

A. The principles and rules of international law applicable for the delimitation, to be effected by agreement in implementation of the present Judgment, of the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively are as follows:

(1) the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances, so as to arrive at an equitable result;

(2) the area of continental shelf to be found to appertain to either Party not extending more than 200 miles from the coast of the Party concerned, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation in the physical sense.

B. The circumstances and factors to be taken into account in achieving an equitable delimitation in the present case are the following:

(1) the general configuration of the coasts of the Parties, their oppositeness, and their relationship to each other within the general geographical context;
(2) the disparity in the lengths of the relevant coasts of the Parties and the distance between them;

(3) the need to avoid in the delimitation any excessive disproportion between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines.

C. In consequence, an equitable result may be arrived at by drawing, as a first stage in the process, a median line every point of which is equidistant from the low-water mark of the relevant coast of Malta (excluding the islet of Filfla), and the low-water mark of the relevant coast of Libya, that initial line being then subject to adjustment in the light of the above-mentioned circumstances and factors.

D. The adjustment of the median line referred to in subparagraph C above is to be effected by transposing that line northwards through 18° of latitude (so that it intersects the meridian 15° 10' E at approximately latitude 34° 30' N) such transposed line then constituting the delimitation line between the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively."

10. Frontier Dispute (Burkina Faso/Republic of Mali) 22 December 1986

"Unanimously,

Decides

A. That the frontier line between Burkina Faso and the Republic of Mali in the disputed area, as defined in the Special Agreement concluded on 16 September 1983 between those two States, is as follows:

(1) From a point with the geographical co-ordinates 1° 59' 01" W and 14° 24' 40" N (point A), the line runs in a northerly direction following the broken line of small crosses appearing on the map of West Africa on the scale 1:200,000 published by the French Institut géographique national (IGN) (hereinafter referred to as "the IGN line") as far as the point with the geographical co-ordinates 1° 58' 49" W and 14° 28' 30" N (point B).

(2) At point B, the line turns eastwards and intersects the track connecting Dionouga and Diguel at approximately 7.5 kilometres from Dionouga at a point with the geographical co-ordinates 1° 54' 24" W and 14° 29' 20" N (point C).

(3) From point C, the line runs approximately 2 kilometres to the south of the villages of Kounia and Oukoulourou, passing through the point with the geographical co-ordinates 1° 46' 38" W and 14° 28' 34" N (point D), and the point with the co-ordinates 1° 40' 40" W and 14° 30'
03° N (point El).

(4) From point E, the line continues straight as far as a point with the geographical co-ordinates 1° 19' 05" W and 14° 43' 45" N (point F), situated approximately 2.6 kilometres to the south of the pool of Toussougou.

(5) From point F, the line continues straight as far as the point with the geographical co-ordinates 1° 05' 34" W and 14° 47' 04" N (point G) situated on the West bank of the pool of Soum, which it crosses in a general west-east direction and divides equally between the two States; it then turns in a generally north/north-easterly direction to rejoin the IGN line at the point with the geographical co-ordinates 0° 43' 29" W and 15° 05' 00" N (point H).

(6) From point H, the line follows the IGN line as far as the point with the geographical co-ordinates 0° 26' 35" W and 15° 05' 00" N (point I); from there it turns towards the south-east and continues straight as far as point J defined below.

(7) Points J and K, the geographical co-ordinates of which will be determined by the Parties with the assistance of the experts nominated pursuant to Article IV of the Special Agreement, fulfil three conditions: they are situated on the same parallel of latitude; point J lies on the West bank of the pool of In Abao and point K on the east bank of the pool; the line drawn between them will result in dividing the area of the pool equally between the Parties.

(8) At point K the line turns towards the north-east and continues straight as far as the point with the geographical co-ordinates 0° 14' 44" W and 15° 04' 42" N (point L), and, from that point, continues straight to a point with the geographical co-ordinates 0° 14' 39" E and 14° 54' 48" N (point M), situated approximately 3 kilometres to the north of the Kabia ford.

B. That the Chamber will at a later date, by Order, nominate three experts in accordance with Article IV, paragraph 3, of the Special Agreement of 16 September 1983.”


“Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the first sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows: (…).

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the second sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties...
on 30 October 1980, is as follows: (…).

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the third sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows: (…).

By four votes to one,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fourth sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows: (…).

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fifth sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows: (…)

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the sixth sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows: (…)

(1) By four votes to one,

Decides that the Parties, by requesting the Chamber, in Article 2, paragraph 2, of the Special Agreement of 24 May 1986, “to determine the legal situation of the islands . . .”, have conferred upon the Chamber jurisdiction to determine, as between the Parties, the legal situation of all the islands of the Gulf of Fonseca; but that such jurisdiction should only be exercised in respect of those islands which have been shown to be the subject of a dispute;

(2) Decides that the islands shown to be in dispute between the Parties are:

(i) by four votes to one, El Tigre;

(ii) unanimously, Meanguera and Meanguerita.

(3) Unanimously,

Decides that the island of El Tigre is part of the sovereign territory of the Republic of Honduras.

(4) Unanimously,

Decides that the island of Meanguera is part of
(5) By four votes to one,
Decides that the island of Meanguerita is part of the sovereign territory of the Republic of El Salvador;

(1) By four votes to one,
Decides that the legal situation of the waters of the Gulf of Fonseca is as follows: (…).

(2) By four votes to one,
Decides that the Parties, by requesting the Chamber, in Article 2, paragraph 2, of the Special Agreement of 24 May 1986, "to determine the legal situation of the . . . maritime spaces", have not conferred upon the Chamber jurisdiction to effect any delimitation of those maritime spaces, whether within or outside the Gulf;

(3) By four votes to one,
Decides that the legal situation of the waters outside the Gulf is that, the Gulf of Fonseca being an historic bay with three coastal States, the closing line of the Gulf constitutes the baseline of the territorial sea; the territorial sea, continental shelf and exclusive economic zone of El Salvador and those of Nicaragua off the coasts of those two States are also to be measured outwards from a section of the closing line extending 3 miles (1 marine league) along that line from Punta Arnapala (in El Salvador) and 3 miles (1 marine league) from Punta Cosigüina (in Nicaragua) respectively; but entitlement to territorial sea, continental shelf and exclusive economic zone seaward of the central portion of the closing line appertains to the three States of the Gulf; El Salvador, Honduras and Nicaragua; and that any delimitation of the relevant maritime areas is to be effected by agreement on the basis of international law;"

12. **Territorial Dispute (Libyan Arab Jamahiriya/Chad)** 3 February 1994

"By 16 votes to 1,

(1) Finds that the boundary between the Great Socialist People’s Libyan Arab Jamahiriya and the Republic of Chad is defined by the Treaty of Friendship and Good Neighbourliness concluded on 10 August 1955 between the French Republic and the United Kingdom of Libya;

(2) Finds that the course of that boundary is as follows:

From the point of intersection of the 24th meridian east with the parallel 19° 30' of latitude north, a straight line to the point of intersection of the Tropic of Cancer with the 16th meridian east; and from that point a
straight line to the point of intersection of the 15th meridian east and the parallel 23° of latitude north;
these lines are indicated, for the purpose of illustration, on sketch-map No. 4 on page 39 of this Judgment.”


(1) Having regard to Article 2, paragraph 1, of the Special Agreement,
A. By fourteen votes to one,
Finds that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty of 16 September 1977 and related instruments attributed responsibility to it;
B. By nine votes to six,
Finds that Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement;
C. By ten votes to five,
Finds that Czechoslovakia was not entitled to put into operation, from October 1992, this "provisional solution";
D. By eleven votes to four,
Finds that the notification, on 19 May 1992, of the termination of the Treaty of 16 September 1977 and related instruments by Hungary did not have the legal effect of terminating them;

(2) Having regard to Article 2, paragraph 2, and Article 5 of the Special Agreement,
A. By twelve votes to three,
Finds that Slovakia, as successor to Czechoslovakia, became a party to the Treaty of 16 September 1977 as from 1 January 1993;
B. By thirteen votes to two,
Finds that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation, and must take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they may agree upon;
C. By thirteen votes to two,
Finds that, unless the Parties otherwise agree, a joint operational régime must be established in accordance with the Treaty of 16 September 1977;
D. By twelve votes to three.
Finds that, unless the Parties otherwise agree, Hungary shall compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia shall compensate Hungary for the damage it has sustained on account of the putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia;

E. By thirteen votes to two,

Finds that the settlement of accounts for the construction and operation of the works must be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as will have been taken by the Parties in application of points 2 B and 2 C of the present operative paragraph.”

| 14. Kasikili/Sedudu Island (Botswana/Namibia) | 13 December 1999 | “(1) By eleven votes to four,
Finds that the boundary between the Republic of Botswana and the Republic of Namibia follows the line of deepest soundings in the northern channel of the Chobe River around Kasikili/Sedudu Island;

(2) By eleven votes to four,

Finds that Kasikili/Sedudu Island forms part of the territory of the Republic of Botswana;

(3) Unanimously,

Finds that, in the two channels around Kasikili/Sedudu Island, the nationals of, and vessels flying the flags of, the Republic of Botswana and the Republic of Namibia shall enjoy equal national treatment.” | Declaratory |

| 15. Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia) | 17 December 2002 | “By sixteen votes to one,
Finds that sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia.” | Declaratory |

| 16. Frontier Dispute (Benin/Niger) | 12 July 2005 | “(1) By four votes to one,
Finds that the boundary between the Republic of Benin and the Republic of Niger in the River Niger sector takes the following course: (…)

and that the boundary line, proceeding downstream, passes through the points numbered from 1 to 154, the co-ordinates of which are indicated in paragraph 115 of the present Judgment;

(2) By four votes to one,

Finds that the islands situated in the River Niger therefore belong to the Republic of Benin.” | Declaratory |
or to the Republic of Niger as indicated in paragraph 117 of the present Judgment;

(3) By four votes to one,

Finds that the boundary between the Republic of Benin and the Republic of Niger on the bridges between Gaya and Malanville follows the course of the boundary in the river;

(4) Unanimously,

Finds that the boundary between the Republic of Benin and the Republic of Niger in the River Mekrou sector follows the median line of that river, from the intersection of the said line with the line of deepest soundings of the main navigable channel of the River Niger as far as the boundary of the Parties with Burkina Faso.”

## Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)

17. **Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)**  
   23 May 2008  

“(1) By twelve votes to four,

Finds that sovereignty over Pedra Branca/Pulau Batu Puteh belongs to the Republic of Singapore;

(2) By fifteen votes to one,

Finds that sovereignty over Middle Rocks belongs to Malaysia;

(3) By fifteen votes to one,

Finds that sovereignty over South Ledge belongs to the State in the territorial waters of which it is located.”

## Frontier Dispute (Burkina Faso/Niger)

18. **Frontier Dispute (Burkina Faso/Niger)**  
   16 April 2013  

“(1) Unanimously,

Finds that it cannot uphold the requests made in points 1 and 3 of the final submissions of Burkina Faso;

(2) Unanimously,

Decides that, from the Tong-Tong astronomic marker, situated at the point with geographic co-ordinates $14^\circ 24^\prime 53.2^\prime\prime \, N; 00^\circ 12^\prime 51.7^\prime\prime \, E$, to the Tao astronomic marker, the precise co-ordinates of which remain to be determined by the Parties as specified in paragraph 72 of the present Judgment, the course of the frontier between Burkina Faso and the Republic of Niger takes the form of a straight line;

(3) Unanimously,

Decides that, from the Tao astronomic marker, the course of the frontier follows the line that appears on the 1:200,000-scale map of the Institut géographique national (IGN) de France, 1960 edition, (hereinafter the “IGN line”) until its intersection with the median line of the River Sirba at the point with geographic co-ordinates $13^\circ 21^\prime 15.9^\prime\prime \, N; 01^\circ 17^\prime 07.2^\prime\prime \, E$;
(4) Unanimously, Decides that, from this latter point, the course of the frontier follows the median line of the River Sirba upstream until its intersection with the IGN line, at the point with geographic co-ordinates 13° 20´ 01.8˝ N; 01° 07´ 29.3˝ E; from that point, the course of the frontier follows the IGN line, turning up towards the north-west, until the point, with geographic co-ordinates 13° 22´ 28.9˝ N; 00° 59´ 34.8˝ E, where the IGN line turns south. At that point, the course of the frontier leaves the IGN line and continues due west in a straight line until the point, with geographic co-ordinates 13° 22´ 28.9˝ N; 00° 59´ 30.9˝ E, where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba; it then runs southwards along that meridian until the said intersection, at the point with geographic co-ordinates 13° 06´ 12.08˝ N; 00° 59´ 30.9˝ E;

(5) Unanimously, Decides that, from this last point to the point situated at the beginning of the Botou bend, with geographic co-ordinates 12° 36´ 19.2˝ N; 01° 52´ 06.9˝ E, the course of the frontier takes the form of a straight line;

(6) Unanimously, Decides that it will nominate at a later date, by means of an Order, three experts in accordance with Article 7, paragraph 4, of the Special Agreement of 24 February 2009.”

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Annex 7. The Requests submitted before the International Court of Justice through Unilateral Applications

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<tr>
<th>No.</th>
<th>Case Name (Parties)</th>
<th>Date of Institution of Proceedings</th>
<th>Request in Unilateral Application</th>
<th>Type</th>
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<tr>
<td>1.</td>
<td>Fisheries (United Kingdom v. Norway)</td>
<td>28 September 1949</td>
<td>“I. Accordingly the Government of the United Kingdom asks the Court, after considering the contentions of the Parties (a) to declare the principles of international law to be applied in defining the base-lines, by reference to which the Norwegian Government is entitled to delimit a fisheries zone, extending to seaward 4 sea miles from those lines and exclusively reserved for its own nationals, and to define the said base-lines in so far as it appears necessary, in the light of the arguments of the Parties, in order to avoid further legal differences between them; (b) to award damages to the Government of the United Kingdom in respect of all interferences by the Norwegian authorities with British fishing vessels outside the zone which, in accordance with the...”</td>
<td>Declaratory Compensation</td>
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| 2. | **Protection of French Nationals and Protected Persons in Egypt**  
( France v. Egypt) | 13 October 1949 |
|   | “that the measures taken by the Egyptian Government regarding the persons, property, rights and interests of French citizens and protected persons in Egyptian territory are contrary to the principles of international law and to the Convention of Montreux of May 8th, 1937, regarding the abrogation of the Capitulations in Egypt; that compensation for the damage suffered by the French Government in the person of the victims of the said measures is due by the Government of Egypt.” | Declaratory Compensation |
| 3. | **Rights of Nationals of the United States of America in Morocco**  
( France v. United States of America) | 28 October 1950 |
|   | “To judge and declare (...) That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that, since the most-favoured-nation clause contained in Article 24 of the said treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties; That the Government of the United States of America is not entitled to claim that the application of all laws and regulations to its nationals in Morocco requires its express consent; That the nationals of the United States of America in Morocco are subject to the laws and regulations in force in the Shereefian Empire, and in particular the regulation of December 30th, 1948, on imports not involving an allocation of currency, without the prior consent of the United States Government; That the dahir of December 30th, 1948, concerning the regulation of imports not involving an allocation of currency, is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States.” | Declaratory |
| 4. | **Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case**  
( Colombia v. Peru) | 20 November 1950 |
|   | “First. - Must the Judgment of November 20th, 1950, be interpreted in the sense that the qualification made by the Colombian Ambassador of the offence attributed to M. Haya de la Torre, was correct, and that, consequently, it is necessary to recognize that the above-mentioned qualification, in so far as it has been confirmed by the Court, has legal effect? Second. – Must the Judgment of November 20th, 1950, be interpreted in the sense that the Government of Peru is not entitled to demand the surrender of the political refugee M. Haya de la Torre, and that, consequently, the Government of Colombia is not bound to surrender him even in the event of this surrender being requested? Third. - Or, on the contrary, does the Court's decision on the counter-claim of Peru imply that Colombia is bound to surrender the refugee Victor Raúl Haya de la Torre to the Peruvian authorities,” | Declaratory |
even if the latter do not so demand, in spite of the fact that he is a political offender and not a common criminal, and that the only convention applicable to the present case does not order the surrender of political offenders?"

<table>
<thead>
<tr>
<th>5.</th>
<th>Haya de la Torre (Colombia v. Peru)</th>
<th>13 December 1950</th>
<th>&quot;Principal Claim, (...)&quot;</th>
</tr>
</thead>
</table>
|  |  |  | In pursuance of the provisions of Article 7 of the Protocol of Friendship and Co-operation between the Republic of Colombia and the Republic of Peru signed on May 24th, 1934, to determine the manner in which effect shall be given to the Judgment of November 20th, 1950;
|  |  |  | And, furthermore, to state in this connection, particularly:
|  |  |  | Whether Colombia is, or is not, bound to deliver to the Government of Peru M. Victor Raul Haya de la Torre, a refugee in the Colombian Embassy at Lima.
|  |  |  | Alternative Claim
|  |  |  | In the event of the above-mentioned claim being dismissed,
|  |  |  | (...) to adjudge and declare whether, in accordance with the law in force between the Parties and particularly American international law, the Government of Colombia is, or is not, bound to deliver M. Victor Raul Haya de la Torre to the Government of Peru."

<table>
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<tr>
<th>6.</th>
<th>Ambatielos (Greece v. United Kingdom)</th>
<th>9 April 1951</th>
<th>&quot;To adjudge and declare (...)&quot;:</th>
</tr>
</thead>
</table>
|  |  |  | 1. That the arbitral procedure referred to in the Final Protocol of the Treaty of 1886 must receive application in the present case;
|  |  |  | 2. That the Commission of Arbitration provided for in the said Protocol shall be constituted within a reasonable period, to be fixed by the Court.
|  |  |  | The Hellenic Government reserves its right, in case His Britannic Majesty's Government should have failed to designate its arbitrator or arbitrators, within the time-limit fixed by the Court, to seize the Court of the merits of the dispute."

| 7. | Anglo-Iranian Oil Co. (United Kingdom v. Iran) | 26 May 1951 | "(a) To declare that the Imperial Government of Iran are under a duty to submit the dispute between themselves and the Anglo-Iranian Oil Company, Limited, to arbitration under the provisions of Article 22 of the Convention concluded on the 29th April 1933, between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, and to accept and carry out any award issued as a result of such arbitration.
|  |  |  | (b) Alternatively, (i) To declare that the putting into effect of the Iranian Nationalization Act of the 1st May, 1951, in so far as it purports to effect a unilateral annulment, or alteration of the terms, of the Convention concluded on the 29th April, 1933, between the..."
| 8. Nottebohm (Liechtenstein v. Guatemala) | 17 December 1951 | Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, contrary to Articles 21 and 26 thereof, would be an act contrary to international law for which the Imperial Government of Iran would be internationally responsible; (ii) To declare that Article 22 of the aforesaid Convention continues to be legally binding on the Imperial Government of Iran and that, by denying to the Anglo-Iranian Oil Company, Limited, the exclusive legal remedy provided in Article 22 of the aforesaid Convention, the Imperial Government have committed a denial of justice contrary to international law; (iii) To declare that the aforesaid Convention cannot lawfully be annulled, or its terms altered, by the Imperial Government of Iran, otherwise than as the result of agreement with the Anglo-Iranian Oil Company, Limited, or under the conditions provided in Article 26 of the Convention; (iv) To adjudge that the Imperial Government of Iran should give full satisfaction and indemnity for all acts committed in relation to the Anglo-Iranian Oil Company, Limited, which are contrary to international law or the aforesaid Convention, and to determine the manner of such satisfaction and indemnity. |

"I. That the Government of Guatemala restore to Mr. Friedrich Nottebohm his sequestrated movable and immovable assets as shown on the enclosed list. II. That in case such restitution should prove impossible for reasons of physical destruction or for other reasons, the Government of Guatemala pay Mr. Friedrich Nottebohm compensation in respect of the property in question, such compensation to be fixed by agreement between the Government of Guatemala and the representatives of Mr. Friedrich Nottebohm or, in case of disagreement, by an umpire agreed jointly by the Government of Guatemala and the Government of the Principality or, if no agreement can be reached on the selection of the umpire, by an umpire appointed by the President of the International Court of Justice. III. That the Government of Guatemala pay Mr. Friedrich Nottebohm compensation for the use of and for profits derived from the sequestrated properties and assets to the amount of U.S.$ 70,000 p.a. IV. That the Government of Guatemala pay to Mr. Friedrich Nottebohm compensation in respect of damage, depreciation and other losses sustained in respect of the said assets and properties as the result of or in connection with their sequestration by the Government of Guatemala-such compensation to be fixed in the manner set out under II above. V. That the Government of Guatemala should agree to reinstate upon Mr. Friedrich Nottebohm his registration as a citizen of Liechtenstein. VI. That the Government of Guatemala will forthwith restore to Mr. Friedrich Nottebohm all his movable
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<th>No.</th>
<th>Case Title</th>
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<th>Judgment</th>
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<td>9.</td>
<td>Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)</td>
<td>19 May 1953</td>
<td>“(1) that the Governments of the French Republic, Great Britain and Northern Ireland and the United States of America should deliver to Italy any share of the monetary gold that might be due to Albania under Part III of the Paris Act of January 14th, 1946, in partial satisfaction for the damages caused to Italy by the Albanian law of January 13th, 1945; (2) that Italy’s right to receive the said share of monetary gold must have priority over the claim of the United Kingdom to receive the gold in partial satisfaction of the Judgment in the Corfu Channel case.” Compensation</td>
</tr>
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<td>10.</td>
<td>Electricité de Beyrouth Company (France v. Lebanon)</td>
<td>15 August 1953</td>
<td>“That the alterations of the situation of the Société Électricité de Beyrouth made unilaterally by the Lebanese Government are contrary to the undertaking given in the Agreement of January 24th, 1948, between France and Lebanon; That the Lebanese Government has accordingly failed to carry out the obligation to negotiate with the concessionary Company which it assumed under the Agreement of January 24th, 1948; That the Lebanese Government is under an obligation to enter into negotiations with the Société Électricité de Beyrouth in respect of any modifications of its situation and to make good the damage suffered until the date of the Court's decision as the result of the measures which have prevented the Société Électricité de Beyrouth from operating according to the rules which the Lebanese Government was under an obligation to observe.” Declaratory</td>
</tr>
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<td>11.</td>
<td>Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. Hungarian People's Republic)</td>
<td>3 March 1954</td>
<td>“that the Court decide that the accused Governments are jointly and severally liable to the United States for the damage caused; that the Court award damages in favor of the United States Government against the Hungarian Government in the sum of $637,894.11, with interest, as demanded in the annexed notes; that the Court determine the nature and extent of other reparation and redress, which the Court may deem fit and proper; and that the Court make the necessary orders and awards, including an award of costs, to effectuate its determinations.” Declaratory Compensation Reparation</td>
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<tr>
<td>12.</td>
<td>Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. Union of Soviet Socialist Republics)</td>
<td>3 March 1954</td>
<td>“that the Court decide that the accused Governments are jointly and severally liable to the United States for the damage caused; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of $637,894.11, with interest, as demanded in the annexed notes; that the Court determine the nature and extent of other reparation and redress, which the Court may deem fit and proper; and that the Court make the necessary orders and awards, including an award of costs, to effectuate its determinations.” Declaratory Compensation Reparation</td>
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<td>13.</td>
<td>Aerial Incident of 10 March</td>
<td>22 March 1955</td>
<td>“It will request that the Court find that the Czechoslovak Government is liable to the United Declaratory</td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Decision</td>
<td>Type</td>
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<td>1953</td>
<td>United States of America v. Czechoslovakia (1953)</td>
<td>The Court awarded damages in favor of the United States Government against the Czechoslovak Government in the sum of $271,384.16 with interest, and such other reparation and redress as the Court may deem to be fit and proper; and that the Court make all other necessary orders and awards, including an award of costs, to effectuate its determinations.</td>
<td>Compensation, Reparation</td>
</tr>
</tbody>
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| 14.  | Antarctica (United Kingdom v. Argentina) (1955)                     | (1) that the United Kingdom, as against the Republic of Argentina, possesses, and at all material dates has possessed, valid and subsisting legal titles to the sovereignty over all the territories comprised in the Falkland Islands Dependencies, and in particular South Sandwich Islands, South Georgia, the South Orkneys, South Shetlands, Graham Land and Coats Land;  
(2) that the pretensions of the Republic of Argentina to the territories comprised in the Falkland Islands Dependencies, and in particular South Sandwich Islands, South Georgia, the South Orkneys, South Shetlands, Graham Land and Coats Land, and her encroachments and pretended acts of sovereignty in or relative to any of those territories are, under international law, illegal and invalid;  
(3) that the Republic of Argentina is bound to respect the United Kingdom's sovereignty over the territories comprised in the Falkland Islands Dependencies, and in particular South Sandwich Islands, South Georgia, the South Orkneys, South Shetlands, Graham Land and Coats Land, to cease her pretensions to exercise sovereignty in or relative to those territories and, if called on by the United Kingdom, to withdraw from them all or any Argentine personnel and equipment. | Declaratory, Cessation, Specific performance |
| 15.  | Antarctica (United Kingdom v. Chile) (1955)                        | (1) that the United Kingdom, as against the Republic of Chile, possesses, and at all material dates has possessed, valid and subsisting legal titles to the sovereignty of the South Shetlands and Graham Land;  
(2) that the pretensions of the Republic of Chile to the South Shetlands and Graham Land and her encroachments and pretended acts of sovereignty in or relative to those territories are, under international law, illegal and invalid;  
(3) that the Republic of Chile is bound to respect the United Kingdom’s sovereignty over the South Shetlands and Graham Land, to cease her pretensions to exercise sovereignty in, or relative to those territories and, if called on by the United Kingdom, to withdraw from them all or any Chilean personnel or equipment. | Declaratory, Cessation, Specific performance |
<p>| 16.  | Aerial Incident of 7 October 1952 (United States of America v. Union of Soviet Socialist Republics) (1955) | “It will request that the Court find that the Soviet Government is liable to the United States Government for the damages caused; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of $1,620,295.01 with interest and such other reparation and redress as the Court may deem to be fit and proper; and that the Court make all other necessary orders and awards, including an award of costs, to effectuate its determinations.” | Compensation, Reparation        |</p>
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<th>Case Description</th>
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<th>Decision Type</th>
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<td>17.</td>
<td>Certain Norwegian Loans (France v. Norway)</td>
<td>6 July 1955</td>
<td>Declaratory</td>
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<td></td>
<td>“That the international loans issued by the Kingdom of Norway (…), the international loans issued by the Mortgage Bank of the Kingdom of Norway, (…), the international loan issued by the Small Holding and Workers’ Housing Bank, (…), stipulate in gold the amount of the borrower’s obligation for the service of coupons and redemption of bonds; And that the borrower can only discharge the substance of his debt by the payment of the gold value of the coupons on the date of payment and of the gold value of the redeemed bonds on the date of repayment.”</td>
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<td>18.</td>
<td>Right of Passage over Indian Territory (Portugal v. India)</td>
<td>22 December 1955</td>
<td>Declaratory Cessation</td>
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<td>“(a) To recognize and declare that Portugal is the holder or beneficiary of a right of passage between its territory of Damão (littoral Damão) and its enclaved territories of Dadrá and Nagar-Aveli, and between each of the latter, and that this right comprises the faculty of transit for persons and goods, including armed forces or other upholders of law and order, without restrictions or difficulties and in the manner and to the extent required by the effective exercise of Portuguese sovereignty in the said territories. (b) To recognize and declare that India has prevented and continues to prevent the exercise of the right in question, thus committing an offense to the detriment of Portuguese sovereignty over the enclaves of Dadrá and Nagar-Aveli and violating its international obligations deriving from the above-mentioned sources and from any others, particularly treaties, which may be applicable. (c) To adjudge that India should put an immediate end to this de facto situation by allowing Portugal to exercise the above-mentioned right of passage in the conditions herein set out.”</td>
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<td>19.</td>
<td>Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)</td>
<td>10 July 1957</td>
<td>Declaratory Cessation</td>
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<td>“That the measure taken and maintained by the Swedish authorities in respect of Marie Elisabeth Boll, namely, the “skyddsuppfostran” instituted and maintained by the decrees of (…), is not in conformity with the obligations binding upon Sweden vis-à-vis the Netherlands by virtue of the 1902 Convention governing the guardianship of infants; That Sweden is under an obligation to end this measure.”</td>
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<td>20.</td>
<td>Interhandel (Switzerland v. United States of America)</td>
<td>2 October 1957</td>
<td>Restitution in kind Declaratory</td>
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<td>“1. that the Government of the United States of America is under an obligation to restore the assets of the Société internationale pour participations industrielles et commerciales S.A. (Interhandel) to that company; 2. in the alternative, that the dispute is one which is fit for submission for judicial settlement, arbitration or conciliation under the conditions which it will be for the Court to determine.”</td>
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<td>“(a) Subject to the presentation of such written and oral pleadings as the Court may direct, to adjudge and declare that the People's Republic of Bulgaria is responsible under international law for the</td>
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<td>Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)</td>
<td>28 October 1957</td>
<td>“It will request that the Court find that the Bulgarian Government is liable to the United States Government for the damage caused; that the Court award damages in favor of the United States Government against the Bulgarian Government in the sum of $257,875.00, with interest, and such other reparation and redress as the Court may deem to be fit and proper; and that the Court make all other orders and awards, including an award of costs, to effectuate its determinations.”</td>
<td>Declaratory Compensation Reparation</td>
</tr>
<tr>
<td>Aerial Incident of 27 July 1955 (United Kingdom v. Bulgaria)</td>
<td>22 November 1957</td>
<td>“(a) to declare that the People’s Republic of Bulgaria is responsible to the Government of the United Kingdom under international law for the losses sustained by citizens of the United Kingdom and Colonies by reason of the death of persons on board the Constellation aircraft on July 27, 1955; as well as for the loss of personal effects and freight owned by citizens of the United Kingdom and Colonies which were carried on that aircraft; (b) to award damages in favor of the Government of the United Kingdom against the Government of the People’s Republic of Bulgaria in the amount of £58,869.11.5d. with interest, and any such other reparation and redress as the Court may deem appropriate, including the award of costs against the Government of the People’s Republic of Bulgaria.”</td>
<td>Declaratory Compensation Reparation</td>
</tr>
<tr>
<td>Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)</td>
<td>1 July 1958</td>
<td>“1. that failure by the Government of Nicaragua to give effect to the arbitral award made on 23 December 1906 by His Majesty the King of Spain constitutes a breach of an international obligation within the meaning of Article 36, paragraph 2 (c), of the Statute of the International Court of Justice and of general international law; 2. that the Government of the Republic of Nicaragua is under an obligation to give effect to the award made on 23 December 1906 by His Majesty the King of Spain and in particular to comply with any measures for this purpose which it will be for the Court to determine.”</td>
<td>Declaratory Specific performance</td>
</tr>
<tr>
<td>Aerial Incident of 4 September 1954 (United States of America v. Union of Soviet Socialist Republics)</td>
<td>22 August 1958</td>
<td>“It will request that the Court find that the Soviet Government is liable to the United States Government for the damages caused; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of $1,355,650.52 with interest, and such other reparation and redress as the Court may deem to be fit and proper; and that the Court make all other orders and awards, including an award of costs, to effectuate its determination.”</td>
<td>Declaratory Compensation Reparation</td>
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</table>
| Case | Date | Facts | Relief
|------|------|-------|-------|
| **26.** Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) | 23 September 1958 | “I. que les mesures, actes, décisions et omissions des organes de l'État espagnol en vertu desquels la Barcelona Traction a été déclarée en faillite et ses biens liquidés dans les circonstances relevées dans la présente requête, sont contraires au droit des gens et que l'État espagnol est responsable du préjudice qui en est résulté;  
II. que l’État espagnol est en conséquence tenu de rétablir intégralement la Barcelona Traction dans ses biens, droits et intérêts tels qu'ils existaient avant le 12 février 1948 et qu'il est tenu de plus d’assurer l’indemnisation de cette société pour tous autres préjudices résultant de la faillite et des procédures y relatives et notamment pour la privation de jouissance soufferte par la Barcelona Traction depuis le 12 février 1948 jusqu’aux restitutions susvisées, le montant de ladite indemnité à verser à l'État belge étant à déterminer par la Cour après expertise, conformément à l'article 50 de son Statut.  
III. Subsidiairement, dire qu'en cas où la restitution in integrum demande ci-dessus s'avaierait en tout ou partie impossible, a raison notamment d'obstacles constitutionnels l'État espagnol serait tenu de verser à l'État belge une indemnité équivalant à la valeur des biens, droits et intérêts dont la Barcelona Traction a été dépouillée, en ce compris l'indemnisation de tous autres préjudices comme indiqué sub II. le montant de ladite indemnité étant à déterminer par la Cour après expertise, conformément à l'article 50 de son Statut.  
IV. En ordre plus subsidiaire, et pour le cas où la Cour estimerait que nonobstant la prépondérance des intérêts de ressortissants belges dans la Barcelona Traction le Gouvernement belge n'est justifié a poursuivre la réparation du préjudice subi par cette société que dans la mesure où ses ressortissants y sont intéressés, dire que les indemnités prévues sub III devront être versées à l'État belge à concurrence de la part du capital de la Barcelona Traction possédée par des ressortissants belges à la date du 12 février 1948, et du montant des créances existant à cette date en faveur de ressortissants belges.” | Declaratory Restitution in kind Compensation
| **27.** Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon) | 13 February 1959 | “- that the alterations of the situation of the Compagnie du Port de Beyrouth and the Société Radio-Orient made unilaterally by way of legislation by the Lebanese Government are, in the circumstances in which they were made, contrary to the undertaking given in the Agreement of 24 January 1946 between France and Lebanon;  
- that the Lebanese Government has accordingly failed to carry out the obligation to negotiate with the concessionary companies which it assumed under the Agreement of 24 January 1948;  
- that, by failing to act upon the proposals for arbitration made by the Compagnie du Port de Beyrouth, the Lebanese Government has moreover failed to observe the obligation it had also assumed in the Agreement of 24 January 1948 to continue to respect the concessionary instruments of French companies in force on 1 January 1944;” | Declaratory Compensation
-that, furthermore, the Lebanese Government has incurred international responsibility by upsetting, of its own authority, the equilibrium of contracts concluded by it with foreign companies;

-that the Lebanese Government cannot introduce modifications in the situation of the Compagnie du Port and of the Société Radio-Orient except by virtue of an agreement or of arbitration;

-that the Lebanese Government is under an obligation to make good the damage suffered by the Compagnie du Port and the Société Radio-Orient until the date of the Court's decision as the result of the measures which have prevented those companies from operating according to the rules which the Lebanese Government was under an obligation to observe."

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<tr>
<th>Case Title</th>
<th>Date</th>
<th>Decision Highlights</th>
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<tr>
<td>Aerial Incident of 7 November 1954 (United States of America v. Union of Soviet Socialist Republics)</td>
<td>8 July 1957</td>
<td>&quot;It will request that the Court find that the Soviet Government is liable to the United States Government for the damages caused; that the Court award damages in favor of the United States Government against the Soviet Government in the amount of $756,604.09, and such other reparation and redress as the Court may deem fit and proper; and that the Court make all other necessary awards and orders, including an award of costs, to effectuate its determinations.&quot;</td>
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<tr>
<td>Temple of Preah Vihear (Cambodia v. Thailand)</td>
<td>6 October 1959</td>
<td>(1) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear; (2) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia.</td>
</tr>
</tbody>
</table>
| South West Africa (Ethiopia v. South Africa) | 4 November 1960 | "(...) to adjudge and declare (...) that:
A. South West Africa is a territory under the Mandate conferred upon His Britannic Majesty by the Principal Allied and Associated Powers, to be exercised on his behalf by the Government of the Union of South Africa, accepted by His Britannic Majesty for and on behalf of the Government of the Union of South Africa, and confirmed by the Council of the League of Nations on December 17, 1920; and that the aforesaid Mandate is a treaty in force, within the meaning of Article 37 of the Statute of the International Court of Justice.

B. The Union of South Africa remains subject to the international obligations set forth in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa; that the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory; and that the Union is under an obligation to submit to the supervision and control of the General Assembly with regard to the exercise of the Mandate.

C. The Union of South Africa remains subject to the obligations to transmit to the United Nations petitions from the inhabitants of the Territory, as well |
as to submit an annual report to the satisfaction of the United Nations in accordance with Article 6 of the Mandate.

D. The Union has substantially modified the terms of the Mandate without the consent of the United Nations; that such modification is a violation of Article 7 of the Mandate and Article 22 of the Covenant; and that the consent of the United Nations is a necessary prerequisite and condition to attempts on the part of the Union directly or indirectly to modify the terms of the Mandate.

E. The Union has failed to promote to the utmost the material and moral well-being and social progress of the inhabitants of the Territory; its failure to do so is a violation of Article 2 of the Mandate and Article 22 of the Covenant; and that the Union has the duty forthwith to take all practicable action to fulfil its duties under such Articles.

F. The Union, in administering the Territory, has practised apartheid, i.e. has distinguished as to race, color, national or tribal origin in establishing the rights and duties of the inhabitants of the Territory; that such practice is in violation of Article 2 of the Mandate and Article 22 of the Covenant; and that the Union has the duty forthwith to cease the practice of apartheid in the Territory.

G. The Union, in administering the Territory, has adopted and applied legislation, regulations, proclamations, and administrative decrees which are by their terms and in their application, arbitrary, unreasonable, unjust and detrimental to human dignity; that the foregoing actions by the Union violate Article 2 of the Mandate and Article 22 of the Covenant; and that the Union has the duty forthwith to repeal and not to apply such legislation, regulations, proclamations, and administrative decrees.

H. The Union has adopted and applied legislation, administrative regulations, and official actions which suppress the rights and liberties of inhabitants of the Territory essential to their orderly evolution toward self-government, the right to which is implicit in the Covenant of the League of Nations, the terms of the Mandate, and currently accepted international standards, as embodied in the Charter of the United Nations and the Declaration of Human Rights; that the foregoing actions by the Union violate Article 2 of the Mandate and Article 22 of the Covenant; and that the Union has the duty forthwith to cease and desist from any action which thwarts the orderly development of self-government in the Territory.

I. The Union has exercised powers of administration and legislation over the Territory inconsistent with the international status of the Territory; that the foregoing action by the Union is in violation of Article 2 of the Mandate and Article 22 of the Covenant; that the Union has the duty to refrain from acts of administration and legislation which are inconsistent with the international status of the Territory.
J. The Union has failed to render to the General Assembly of the United Nations annual reports containing information with regard to the Territory and indicating the measures it has taken to carry out its obligations under the Mandate; that such failure is a violation of Article 6 of the Mandate; and that the Union has the duty forthwith to render such annual reports to the General Assembly.

K. The Union has failed to transmit to the General Assembly of the United Nations petitions from the Territory's inhabitants addressed to the General Assembly; that such failure is a violation of the League of Nations rules; and that the Union has the duty to transmit such petitions to the General Assembly.

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| 32. Northern Cameroons (Cameroon v. United Kingdom) | 30 May 1961 | “Dire et juger, tant en l'absence qu'en présence dudit Gouvernement et après tels délais qu'il appartiendra à la Cour de fixer: que le Royaume-Uni, dans l'application de l'Accord de Tutelle du 13 décembre 1946 n'a pas respecté certaines obligations qui en découlent directement ou indirectement sur les divers points relevés cidessus.” | Declaratory |

| 33. Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962) | 19 June 1962 | “1° dire et juger que les mesures, actes, décisions et omissions des organes de l'État espagnol décrits dans la présente requête sont contraires au droit des gens et que l'État espagnol est tenu, à l'égard de la Belgique, de réparer le préjudice qui en est résulté pour les ressortissants belges, personnes physiques et morales, actionnaires de la Barcelona Traction;

2° dire et juger que cette réparation doit, autant que possible, effacer toutes les conséquences que ces actes contraires au droit des gens ont eues pour lesdits ressortissants et que l'État espagnol est tenu, dès lors, d'assurer, si possible, l'annulation du jugement de faillite et des actes judiciaires et autres qui en ont découlé, en assurant aux ressortissants belges lésé tous les effets juridiques devant résulter pour eux de cette annulation; déterminer, en outre, l'indemnité à verser par l'État espagnol à l'État belge à raison de tous les préjudices a.ccessoires subis par les ressortissants belges par suite des actes incriminés, en ce compris la privation de jouissance et les frais exposés pour la défense de leurs droits;

3° dire et juger, au cas où l'effacement des conséquences des actes incriminés se révélerait impossible, que l'État espagnol sera tenu deverser l'État belge, à titre d'indemnité, une somme équivalant à 88% de la valeur nette de l'affaire au 12 février 1948; cette indemnité devant être augmentée d'une somme correspondant à tous les préjudices accessoires subis par les ressortissants belges par...” | Declaratory | Compensation |
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| **34.** Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan) | 30 August 1971 | “to adjudge and declare (...) that the aforesaid decision of the Council is illegal, null and void, or erroneous, on the following grounds or any others:  
A. The Council has no jurisdiction to handle the matters presented by the Respondent in its Application and Complaint, as the Convention and the Transit Agreement have been terminated or suspended as between the two States.  
B. The Council has no jurisdiction to consider the Respondent's Complaint since no action has been taken by the Applicant under the Transit Agreement; in fact no action could possibly be taken by the Applicant under the Transit Agreement since that Agreement has been terminated or suspended as between the two States.  
C. The question of Indian aircraft overflying Pakistan and Pakistan aircraft overflying India is governed by the Special Régime of 1966 and not by the Convention or the Transit Agreement. Any dispute between the two States can arise only under the Special Régime, and the Council has no jurisdiction to handle any such dispute.” | Declaratory |
| **35.** Fisheries Jurisdiction (United Kingdom of Great Britain and Northern Ireland v. Iceland) | 14 April 1972 | “ACCORDINGLY, THE UNITED KINGDOM ASKS THE COURT TO ADJUDGE AND DECLARE:  
(a) That there is no foundation in international law for the claim by Iceland to be entitled to extend its fisheries jurisdiction by establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles from the baselines hereinbefore referred to; and that its claim is therefore invalid; and  
(b) that questions concerning the conservation of fish stocks in the waters around Iceland are not susceptible in international law to regulation by the unilateral extension by Iceland of its exclusive fisheries jurisdiction to 50 nautical miles from the aforesaid baselines but are matters that may be regulated, as between Iceland and the United Kingdom, by arrangements agreed between those two countries, whether or not together with other interested countries and whether in the form of arrangements reached in accordance with the North-East Atlantic Fisheries Convention of 24 January 1959, or in the form of arrangements for collaboration in accordance with the Resolution on Special Situations relating to Coastal Fisheries of 26 April 1958, or otherwise in the form of arrangements agreed between them that give effect to the continuing rights and interests of both of them in the fisheries of the waters in question.” | Declaratory |
| **36.** Fisheries Jurisdiction (Federal Republic of Germany v. Iceland) | 5 June 1972 | “to adjudge and declare  
(a) that the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction to 50 nautical miles from the present baseline, to be effective from 1 September 1972, which has been decided upon by the | Declaratory |
Parliament (Althing) and the Government of Iceland and communicated by the Minister for Foreign Affairs of Iceland to the Federal Republic of Germany by aide-mémoire handed to its Ambassador in Reykjavik on 24 February 1972, would have no basis in international law and could therefore not be opposed to the Federal Republic of Germany and to its fishing vessels;

(b) that if Iceland, as a coastal State specially dependent on coastal fisheries, establishes a need for special fisheries conservation measures in the waters adjacent to its coast but beyond the exclusive fisheries zone provided for by the Exchange of Notes of 1961, such conservation measures, as far as they would affect fisheries of the Federal Republic of Germany, may not be taken, under international law, on the basis of a unilateral extension by Iceland of its fisheries jurisdiction, but only on the basis of an agreement between the Federal Republic of Germany and Iceland concluded either bilaterally or within a multilateral framework.”

| 37. Nuclear Tests (Australia v. France) | 9 May 1973 | “ACCORDINGLY, THE GOVERNMENT OF AUSTRALIA ASKS THE COURT TO ADJUDGE AND DECLARE that, for the abovementioned reasons or any of them or for any other reason that the Court deems to be relevant, the carrying out of further atmospheric nuclear weapon tests in the South Pacific Ocean is not consistent with applicable rules of international law. AND TO ORDER that the French Republic shall not carry out any further such tests.” | Declaratory Cessation |

| 38. Nuclear Tests (New Zealand v. France) | 9 May 1973 | “ACCORDINGLY, NEW ZEALAND ASKS THE COURT TO ADJUDGE AND DECLARE: That the conduct by the French Government of nuclear tests in the South Pacific region that give rise to radioactive fallout constitutes a violation of New Zealand's rights under international law, and that these rights will be violated by any further such tests.” | Declaratory |

| 39. Trial of Pakistani Prisoners of War (Pakistan v. India) | 11 May 1973 | “To adjudge and declare (…):

(1) That Pakistan has an exclusive right to exercise jurisdiction over the one hundred and ninety-five Pakistani nationals or any other number, now in Indian custody, and accused of committing acts of genocide in Pakistani territory, by virtue of the application of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and that no other Government or authority is competent to exercise such jurisdiction.

(2) That the allegations against the aforesaid prisoners of war are related to acts of genocide, and the concept of “crimes against humanity” or “war crimes” is not applicable.

(3) That there can be no ground whatever in international law, justifying the transfer of custody of these one hundred and ninety-five or any other number of prisoners of war to “Bangla Desh” for trial in the face of Pakistan’s exclusive right to exercise jurisdiction over its nationals accused of committing offences in Pakistan territory, and that | Declaratory |
India would act illegally in transferring such persons to “Bangla Desh” for trials.

(4) That a “Competent Tribunal” within the meaning of Article VI of the Genocide Convention means a Tribunal of impartial judges, applying international law, and permitting the accused to be defended by counsel of their choice. The Tribunal cannot base itself on ex-post facto laws nor violate any provisions of the Declaration of Human Rights. In view of these and other requirements of a “Competent Tribunal”, even if India could legally transfer Pakistani Prisoners of War to “Bangla Desh” for trial, which is not admitted, it would be divested of that freedom since in the atmosphere of hatred that prevails in “Bangla Desh”, such a “Competent Tribunal” cannot be created in practice nor can it be expected to perform in accordance with accepted international standards of justice.”

| 40. Aegean Sea Continental Shelf (Greece v. Turkey) | 10 August 1976 | "ADJUDGE AND DECLARE:
(i) that the Greek islands referred to in paragraph 29 above, as part of the territory of Greece, are entitled to the portion of the continental shelf which appertains to them according to the applicable principles and rules of international law;

(ii) what is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to Greece and Turkey in the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea;

(iii) that Greece is entitled to exercise over its continental shelf sovereign and exclusive rights for the purpose of researching and exploring it and exploiting its natural resources;

(iv) that Turkey is not entitled to undertake any activities on the Greek continental shelf, whether by exploration, exploitation, research or otherwise, without the consent of Greece;

(v) that the activities of Turkey described in paragraphs 25 and 26 above constitute infringements of the sovereign and exclusive rights of Greece to explore and exploit its continental shelf or to authorize scientific research respecting the continental shelf;

(vi) that Turkey shall not continue any further activities as described above in subparagraph (iv) within the areas of the continental shelf which the Court shall adjudge appertain to Greece." | Declaratory Cessation

| 41. United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran) | 29 November 1979 | "Accordingly, the United States requests the Court to adjudge and declare as follows:
(a) That the Government of Iran in tolerating, encouraging, and failing to prevent and punish the conduct described in the preceding Statement of Facts, violated its international legal obligations to the United States as provided by | Declaratory Specific performance Compensation
- Articles 22, 24, 25, 27, 29, 31, 37 and 47 of the Vienna Convention on Diplomatic Relations.
- Articles 28, 31, 33, 34, 36 and 40 of the Vienna Convention on Consular Relations.
- Articles 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and
- Articles 11 (4), XIII, XVIII and XXI of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, and
- Articles 2 (3), 2 (4) and 33 of the Charter of the United Nations;

(b) That pursuant to the foregoing international legal obligations, the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals currently being detained within the premises of the United States Embassy in Tehran and to assure that all such persons and all other United States nationals in Tehran are allowed to leave Iran safely;

(c) That the Government of Iran shall pay to the United States, in its own right and in the exercise of its right of diplomatic protection of its nationals, reparation for the foregoing violations of Iran's international legal obligations to the United States, in a sum to be determined by the Court; and

(d) That the Government of Iran submit to its competent authorities for the purpose of prosecution those persons responsible for the crimes committed against the premises and staff of the United States Embassy and against the premises of its Consulates.”

42. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) 9 April 1984

“to adjudge and declare as follows:

(a) That the United States, in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Nicaragua, has violated and is violating its express charter and treaty obligations to Nicaragua and, in particular, its charter and treaty obligations under:

- Article 2 (4) of the United Nations Charter;
- Articles 18 and 20 of the Charter of the Organization of American States;
- Article 8 of the Convention on Rights and Duties of States;
- Article 1, Third, of the Convention concerning the Duties and Rights of States in the Event of Civil Strife.

(b) That the United States, in breach of its obligation under general and customary international law, has violated and is violating the sovereignty of Nicaragua by:

- armed attacks against Nicaragua by air, land and sea;
- incursions into Nicaraguan territorial waters;
- aerial trespass into Nicaraguan airspace;
- efforts by direct and indirect means to

Declaratory Cessation Compensation
coerce and intimidate the Government of Nicaragua.

(c) That the United States, in breach of its obligation under general and customary international law, has used and is using force and the threat of force against Nicaragua.

(d) That the United States, in breach of its obligation under general and customary international law, has intervened and is intervening in the internal affairs of Nicaragua.

(e) That the United States, in breach of its obligation under general and customary international law, has infringed and is infringing the freedom of the high seas and interrupting peaceful maritime commerce.

(f) That the United States, in breach of its obligation under general and customary international law, has killed, wounded and kidnapped and is killing, wounding and kidnapping citizens of Nicaragua.

(g) That, in view of its breaches of the foregoing legal obligations, the United States is under a particular duty to cease and desist immediately:

- from all use of force - whether direct or indirect, overt or covert - against Nicaragua, and from all threats of force against Nicaragua;
- from all violations of the sovereignty, territorial integrity or political independence of Nicaragua, including all intervention, direct or indirect, in the internal affairs of Nicaragua;
- from all support of any kind - including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support - to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Nicaragua;
- from all efforts to restrict, block or endanger access to or from Nicaraguan ports;
- and from all killings, woundings and kidnappings of Nicaraguan citizens.

(h) That the United States has an obligation to pay Nicaragua, in its own right and as parens patriae for the citizens of Nicaragua, reparations for damages to person, property and the Nicaraguan economy caused by the foregoing violations of international law in a sum to be determined by the Court. Nicaragua reserves the right to introduce to the Court a precise evaluation of the damages caused by the United States.”

| 43. | Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf | 27 July 1984 | “to adjudge and declare:

1. As regards the first sector of the delimitation:

That there is a new fact of such a character as to lay the Judgment open to revision within the meaning of Article 61 of the Statute of the Court;

That the application for revision submitted by the | Declaratory |
(Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)  

Tunisian Republic is on that account admissible.  

Altogether subsidiarily:  

That there is cause to construe the Judgment of 24 February 1982 and to correct an error;  

That the starting-point for the line of delimitation is the point where the outer limit of the territorial sea of the Parties is intersected by a straight line drawn from the land frontier point of Ras Ajdir through the point 33° 50' 17" N, 11° 54' 53" E, and aligned on the south-eastern boundary of Tunisian petroleum concession "Permis complémentaire offshore du golfe de Gabès" (21 October 1966); from the intersection point so determined, the line of delimitation between the two continental shelves is to run north-east through the point 33° 50’ 17” N, 11° 59’ 53” E, thus on the same bearing, to the point of intersection with the parallel through the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes.  

2. As regards the second sector of the delimitation:  

That it will be for the experts of both Parties to establish the exact coordinates of the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, or in other words the most westerly point of the shoreline (low-water mark) of the Gulf of Gabes, making use of all available cartographic documents and, if necessary, carrying out an ad hoc survey in loco.”

44. Border and Transborder Armed Actions (Nicaragua v. Costa Rica)  

28 July 1986  

“to adjudge and declare as follows:  

(a) that the acts and omissions of Costa Rica in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Costa Rica bears legal responsibility;  

(b) that Costa Rica is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;  

(c) that Costa Rica is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions.”

45. Border and Transborder Armed Actions (Nicaragua v. Honduras)  

28 July 1986  

“to adjudge and declare as follows:  

(a) that the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Honduras bears legal responsibility;  

(b) that Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;  

Declaratory Cessation Reparation
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<tr>
<td>Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)</td>
<td>6 February 1987</td>
<td>“to adjudge and declare as follows: (a) that the Government of Italy has violated the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic of 1948, in particular Articles II, III, V and VII of the Treaty, and Articles I and V of the 1961 Supplement; and (b) that the Government of Italy is responsible to pay compensation to the United States in an amount to be determined by the Court, as measured by the injuries suffered by United States nationals as a result of these violations, including the additional financial losses which Raytheon suffered in repaying the guaranteed loans and in not recovering amounts due on open accounts, as well as expenses incurred in defending against Italian bank lawsuits, in mitigating the damage to its reputation and credit, and in pursuing its claim for redress.”</td>
<td>Declaratory Compensation</td>
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<td>Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)</td>
<td>16 August 1988</td>
<td>“(a) to decide, in accordance with international law, where a single line of delimitation shall be drawn between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen; (…).”</td>
<td>Declaratory</td>
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<tr>
<td>Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)</td>
<td>17 May 1989</td>
<td>“to adjudge and declare as follows: (a) that the ICAO Council decision is erroneous in that the Government of the United States has violated the Chicago Convention, including the Preamble, Articles 1, 2, 3 bis and 44 (a) and (h) and Annex 15 of the Chicago Convention as well as Recommendation 2.6/1 of the Third Middle East Regional Air Navigation Meeting of ICAO; (b) that the Government of the United States has violated Articles 1, 3 and 10 (1) of the Montreal Convention; and (c) that the Government of the United States is responsible to pay compensation to the Islamic Republic, in the amount to be determined by the Court, as measured by the injuries suffered by the Islamic Republic and the bereaved families as a result of these violations, including additional financial losses which Iran Air and the bereaved families have suffered for the disruption of their activities.”</td>
<td>Declaratory Compensation</td>
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<td>Certain Phosphate Lands in Nauru (Nauru v. Australia)</td>
<td>19 May 1989</td>
<td>“to adjudge and declare that Australia has incurred an international legal responsibility and is bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered. Nauru further requests that the nature and amount of such restitution be determined by the Court.”</td>
<td>Declaratory Restitution Reparation</td>
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restitution or reparation should, in the absence of agreement between the Parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings.

In respect of the bases of claim enumerated in paragraphs 43 to 49 (inclusive) above, Nauru reserves the right to ask the Court, at the appropriate stage of the proceedings, to reflect the particular elements of excess and the lack of ordinary consideration in the conduct of the Respondent State by an award of aggravated or moral damages (in the compensatory mode).”

| 50. | Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) | 23 August 1989 | "to adjudge and declare:

- that that so-called decision is inexistent in view of the fact that one of the two arbitrators making up the appearance of a majority in favour of the text of the "award", has, by a declaration appended to it, expressed a view in contradiction with the one apparently adopted by the vote;

- subsidiarily, that that so-called decision is null and void, as the Tribunal did not give a complete answer to the two-fold question raised by the Agreement and so did not arrive at a single delimitation line duly recorded on a map, and as it has not given the reasons for the restrictions thus improperly placed upon its jurisdiction;

- that the Government of Senegal is thus not justified in seeking to require the Government of Guinea-Bissau to apply the so-called award of 31 July 1989." |
|---|---|---|---|
| 51. | East Timor (Portugal v. Australia) | 22 February 1991 | "(1) To adjudge and declare that, first, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paragraphs 5 and 6 of the present Application) and to permanent sovereignty over its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the administering Power of the Territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them.

(2) To adjudge and declare that Australia, inasmuch as in the first place it has negotiated, concluded and initiated performance of the agreement referred to in paragraph 18 of the statement of facts, has taken internal legislative measures for the application thereof, and is continuing to negotiate, with the State party to that agreement, the delimitation of the continental shelf in the area of the "Timor Gap"; and inasmuch as it has furthermore excluded any negotiation with the administering Power with respect to the exploration and exploitation of the continental shelf in that same area: and, finally, inasmuch as it contemplates exploring and exploiting the subsoil of the sea in the "Timor Gap" on the basis of a plurilateral title to which Portugal is not a party (each of these facts sufficing on its own):

(a) has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, |
|---|---|---|---|
and is in breach of the obligation not to disregard but to respect that right, that integrity and that sovereignty;

(b) has infringed and is infringing the powers of Portugal as the administering Power of the Territory of East Timor, is impeding the fulfilment of its duties to the people of East Timor and to the international community, is infringing the right of Portugal to fulfill its responsibilities and is in breach of the obligation not to disregard but to respect those powers and duties and that right;

(c) is contravening Security Council resolutions 384 and 389 and, as a consequence, is in breach of the obligation to accept and carry out Security Council resolutions laid down by Article 75 of the Charter of the United Nations and, more generally, is in breach of the obligation incumbent on member States to cooperate in good faith with the United Nations;

(3) To adjudge and declare that, inasmuch as it has excluded and is excluding any negotiation with Portugal as the administering Power of the Territory of East Timor, with respect to the exploration and exploitation of the continental shelf in the area of the "Timor Gap", Australia has failed and is failing in its duty to negotiate in order to harmonize the respective rights in the event of a conflict of rights or of claims over maritime areas.

(4) To adjudge and declare that, by the breaches indicated in paragraphs 2 and 3 of the present submissions, Australia has incurred international responsibility and has caused damage, for which it owes reparation to the people of East Timor and to Portugal, in such form and manner as may be indicated by the Court.

(5) To adjudge and declare that Australia is bound, in relation to the people of East Timor, to Portugal and to the international community, to cease from all breaches of the rights and international norms referred to in paragraphs 1, 2 and 3 of the present submissions and in particular, until such time as the people of East Timor shall have exercised its right to self-determination, under the conditions laid down by the United Nations:

(a) to refrain from any negotiation, signature or ratification of any agreement with a State other than the administering Power concerning the delimitation, and the exploration and exploitation, of the continental shelf, or the exercise of jurisdiction over that shelf, in the area of the "Timor Gap";

(b) to refrain from any act relating to the exploration and exploitation of the continental shelf in the area of the "Timor Gap" or to the exercise of jurisdiction over that shelf, on the basis of any plurilateral title to which Portugal, as the administering Power of the Territory of East Timor, is not a party.

52. **Maritime Delimitation between Guinea-Bissau**

12 March 1991

**Declaratory**

What should be, on the basis of the international law of the sea and of all the relevant elements of the case.
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<td>and Senegal (Guinea-Bissau v. Senegal)</td>
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<td>including the future decision of the Court in the case concerning, the arbitral award of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal.”</td>
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<td>53. Passage through the Great Belt (Finland v. Denmark)</td>
<td>17 May 1991</td>
<td>“to adjudge and declare: (a) that there is a right of free passage through the Great Belt which applies to all ships entering and leaving Finnish ports and shipyards; (b) that this right extends to drill ships, oil rigs and reasonably foreseeable ships; (c) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs (a) and (b) above; (d) that Denmark and Finland should start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs (a) to (c) above, shall be guaranteed.”</td>
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<td>54. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)</td>
<td>8 July 1991</td>
<td>“I. To adjudge and declare in accordance with international law (A) that the State of Qatar has sovereignty over the Hawar islands; and, (B) that the State of Qatar has sovereign rights over Dibal and Qif’at Jaradah shoals; and II. With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain.”</td>
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<td>55. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)</td>
<td>3 March 1992</td>
<td>“to adjudge and declare as follows: (a) that Libya has fully complied with all of its obligations under the Montreal Convention; (b) that the United Kingdom has breached, and is continuing to breach, its legal obligations to Libya under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and (c) that the United Kingdom is under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.”</td>
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<tr>
<td>56. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the</td>
<td>3 March 1992</td>
<td>“to adjudge and declare as follows: (a) that Libya has fully complied with all of its obligations under the Montreal Convention; (b) that the United States has breached, and is continuing to breach, its legal obligations to Libya”</td>
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| 57.    | Aerial Incident  |      | under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and  
|        | at Lockerbie    |      | (c) that the United States is under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.”  
|        | (Libyan Arab    |      |                                |                  |
|        | Jamahiriya v.    |      |                                |                  |
|        | United States of |      |                                |                  |
|        | America)         |      |                                |                  |
| 57.    | Oil Platforms   | 2 November 1992 | “to adjudge and declare as follows:  
|        | (Islamic Republic of Iran v. United States of America) |      | (a) that the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;  
|        |                  |      | (b) that in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, inter alia, under Articles I and X (1) of the Treaty of Amity and international law;  
|        |                  |      | (c) that in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including Articles I and X (1), and international law;  
|        |                  |      | (d) that the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and  
|        |                  |      | (e) any other remedy the Court may deem appropriate.”  
|        |                  |      |                                | Declaratory      |
|        |                  |      |                                | Compensation     |
| 57.    | Declaratory     |      |                                |                  |
| 58.    | Application of  | 20 March 1993 | “to adjudge and declare as follows:  
|        | the Convention  |      | (a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the People and State of Bosnia and Herzegovina under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of  
|        | on the Prevention and Punishment of the Crime of Genocide |      |                                | Declaratory      |
|        |                  |      |                                | Cessation        |
|        |                  |      |                                | Compensation     |
the Genocide Convention;

(b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the People and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles 1 (3), 55 and 56 of the United Nations Charter

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4) and 33 (1), of the United Nations Charter;

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

• armed attacks against Bosnia and Herzegovina by air and land; — aerial trespass into Bosnian airspace;
• efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affaire of Bosnia and Herzegovina;

(j) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by
means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2 (4), of the United Nations Charter, as well as its obligations under general and customary international law;

(k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its People under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

(l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment, supplies, troops, etc.);

(m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24 (1) and 51 of the United Nations Charter and in accordance with the customary doctrine of ultra vires;

(p) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina — at its request — including by means of immediately providing it with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);

(q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

• from its systematic practice of so-called "ethnic cleansing" of the citizens and sovereign territory of Bosnia and Herzegovina;
• from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;
• from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina
• from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
• from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
• from the starvation of the civilian population in Bosnia and Herzegovina;
• from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;
• from all use of force — whether direct or indirect, overt or covert — against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;
• from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;
• from all support of any kind — including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina:

(r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)."


"to adjudge and declare:

(a) that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that Peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris);

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, Declaratory
Specific performance
Compensation
mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;

(e') that the internationally unlawful acts referred to under (a), (b), (c), (d), and (e) above involve the responsibility of the Federal Republic of Nigeria;

(e") that, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of proceedings for the precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions."

| 60. Fisheries Jurisdiction (Spain v. Canada) | 28 March 1995 | ‘A. that the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;  

B. that the Court adjudge and declare that Canada is bound to refrain from any repetition of the acts complained of, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and  

C. that, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship Estai flying the flag of Spain, and the measures of coercion and the exercise of jurisdiction over that ship and over its captain, constitute a concrete violation of the aforementioned principles and norms of international law.’” | Declaratory Guarantee of non-repetition Compensation |

| 61. Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case | 21 August 1995 | ‘to adjudge and declare:  

(i) that the conduct of the proposed nuclear tests will constitute a violation of the rights under international law of New Zealand, as well as of other States;  

further or in the alternative;  

(ii) that it is unlawful for France to conduct such nuclear tests before it has undertaken an Environmental Impact Assessment according to accepted international standards. Unless such an assessment establishes that the tests will not give rise, directly or indirectly, to radioactive contamination of the marine environment the rights under international law of New Zealand, as well as the rights of other States, will be violated.” | Declaratory |

| 62. Vienna | 3 April 1998 | ‘to adjudge and declare:” | Declaratory |
| Convention on Consular Relations (Paraguay v. United States of America) | (1) that the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by Articles 5 and 36 of the Vienna Convention;  
(2) that Paraguay is therefore entitled to restitutio in integrum;  
(3) that the United States is under an international legal obligation not to apply the doctrine of "procedural default" or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and  
(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character; and that, pursuant to the foregoing international legal obligations,  
(1) any criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;  
(2) the United States should restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and  
(3) the United States should provide Paraguay a guarantee of the non-repetition of the illegal acts.” |
|---|---|
| 63. Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon) | 28 October 1998 | ‘to adjudge and declare that the Court's Judgment of 11 June 1998 is to be interpreted as meaning that:  
so far as concerns the international responsibility which Nigeria is said to bear for certain alleged incidents:  
(a) the dispute before the Court does not include any alleged incidents other than (at most) those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994:  
(b) Cameroon's freedom to present additional facts and legal considerations relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994: and  
(c) the question whether facts alleged by Cameroon | Declaratory |
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<td><strong>64.</strong></td>
<td>Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)</td>
<td>28 December 1998</td>
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<td>“As to the merits: To order the authorities of the Democratic Republic of the Congo to make an official public apology to the State of the Republic of Guinea for the numerous wrongs done to it in the person of its national Ahmadou Sadio Diallo;</td>
<td>Satisfaction</td>
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<td>To find that the sums claimed are certain, liquidated and legally due;</td>
<td>Compensation</td>
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<td>To find that these sums are properly payable by the Congolese State, in accordance with the principles of State responsibility and civil liability;</td>
<td>Restitution in kind</td>
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<td>To order that the Congolese State pay to the State of Guinea on behalf of its national, Mr. Diallo Ahmadou Sadio, the sums of US$31,334,685,888.45 and Z 14,207,082,872.7 in respect of the financial loss suffered by the latter;</td>
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<td>To pay also to the State of Guinea damages equal to 15 per cent of the principal award, that is to say US$4,700,202,883.26 and Z 2,131,062,430.9;</td>
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<td>To award to the applicant State bank and moratory interest at respective annual rates of 15 per cent and 26 per cent from the end of the year 1995 until the date of payment in full;</td>
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<td>To order that the said State return to the Applicant all the non-monetary assets set out in the list of miscellaneous claims;</td>
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<td>To order that the Democratic Republic of the Congo submit within one month an acceptable schedule for the repayment of the above sums;</td>
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<td>In the event that the said timetable is not produced by the date indicated, to authorize the State of Guinea to seize the assets of the Congolese State wherever they may be found, up to an amount equal to the principal sum due and such further amounts as the Court shall have ordered. To order that the costs of the present proceedings be borne by the Congolese State.”</td>
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|   | LaGrand (Germany v. United States of America) | 2 March 1999 |
|   | “to adjudge and declare | Declaratory |
|   | (1) that the United States, in arresting, detaining, trying, convicting and sentencing Karl and Walter LaGrand, as described in the preceding statement of facts, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, as provided by Articles 5 and 36 of the Vienna Convention, | Reparation |
|   | (2) that Germany is therefore entitled to reparation, | Specific performance |
|   | (3) that the United States is under an international legal obligation not to apply the doctrine of "procedural default" or any other doctrine of national law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and | Satisfaction |
|   |   | Compensation |
(4) that the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or subordinate position in the organization of the United States, and whether that power’s functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999:

(3) the United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States' international legal obligation took place; and

(4) the United States should provide Germany a guarantee of the non-repetition of the illegal acts.

66. Legality of Use of Force (Serbia and Montenegro v. Belgium) 29 April 1999

"to adjudge and declare:

- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;

- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called "Kosovo Liberation Army", The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

- by taking part in attacks on civilian targets, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

- by taking part in destroying or damaging monasteries, monuments of culture, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to

Declaratory Cessation Compensation
cause unnecessary suffering;
- by taking part in the bombing of oil refineries and chemical plants, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;
- by taking part in the use of weapons containing depleted uranium, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;
- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;
- by taking part in destroying bridges on international rivers, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;
- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;
- The Kingdom of Belgium is responsible for the violation of the above international obligations;
- The Kingdom of Belgium is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;
- The Kingdom of Belgium is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.”

67. **Legality of Use of Force (Serbia and Montenegro v. Canada)**

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<tr>
<th>Date</th>
<th>Document</th>
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<tbody>
<tr>
<td>29 April 1999</td>
<td>to adjudge and declare:</td>
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<tr>
<td>29 April 1999</td>
<td>- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;</td>
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<tr>
<td>29 April 1999</td>
<td>- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called &quot;Kosovo Liberation Army&quot;, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;</td>
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<tr>
<td>29 April 1999</td>
<td>- by taking part in attacks on civilian targets, Canada has acted against the Federal Republic of Yugoslavia</td>
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| 274 |
...in breach of its obligation to spare the civilian population, civilians and civilian objects;

- by taking part in destroying or damaging monasteries, monuments of culture, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rivers, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- Canada is responsible for the violation of the above international obligations;

- Canada is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

- Canada is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons."

68. **Legality of Use of Force (Serbia and Montenegro v. Canada)**  
29 April 1999  
“...to adjudge and declare:

- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the Republic of...”

<p>| Declaratory | Cessation |</p>
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<tr>
<th>Country</th>
<th>Violations</th>
<th>Compensation</th>
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<tr>
<td>France</td>
<td>France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State; - by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called &quot;Kosovo Liberation Army&quot;, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State; - by taking part in attacks on civilian targets, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects; - by taking part in destroying or damaging monasteries, monuments of culture, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people; - by taking part in the use of cluster bombs, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering; - by taking part in the bombing of oil refineries and chemical plants, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage; - by taking part in the use of weapons containing depleted uranium, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage; - by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights; - by taking part in destroying bridges on international rivers, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers; - by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the Republic of France has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;</td>
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<td>69.</td>
<td><strong>Legality of Use of Force (Serbia and Montenegro v. Germany)</strong></td>
<td>29 April 1999</td>
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<td>- The Republic of France is responsible for the violation of the above international obligations;</td>
<td>to adjudge and declare: - by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;</td>
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<td>- The Republic of France is obliged to stop immediately the violation of the above obligations vis-a-vis the Federal Republic of Yugoslavia;</td>
<td>- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called &quot;Kosovo Liberation Army&quot;, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;</td>
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<td>- The Republic of France is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.”</td>
<td>- by taking part in attacks on civilian targets, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;</td>
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<td>- by taking part in destroying or damaging monasteries, monuments of culture, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;</td>
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<td>- by taking part in the use of cluster bombs, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;</td>
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<td>- by taking part in the bombing of oil refineries and chemical plants, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;</td>
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<td>- by taking part in the use of weapons containing depleted uranium, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;</td>
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<td>- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;</td>
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- by taking part in destroying bridges on international rivers, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the Federal Republic of Germany has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- The Federal Republic of Germany is responsible for the violation of the above international obligations;

- The Federal Republic of Germany is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

- The Federal Republic of Germany is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons."

| 70. Legality of Use of Force (Serbia and Montenegro v. Italy) | 29 April 1999 | 'to adjudge and declare:
- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;
- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called "Kosovo Liberation Army", the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;
- by taking part in attacks on civilian targets, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;
- by taking part in destroying or damaging monasteries, monuments of culture, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;
- by taking part in the use of cluster bombs, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;
- by taking part in the bombing of oil refineries and chemical plants, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable... | Declaratory Cessation Compensation |
environmental damage;
- by taking part in the use of weapons containing depleted uranium, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;
- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;
- by taking part in destroying bridges on international rivers, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;
- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the Republic of Italy has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;
- The Republic of Italy is responsible for the violation of the above international obligations;
- The Republic of Italy is obliged to stop immediately the violation of the above obligations vis-a-vis the Federal Republic of Yugoslavia;
- The Republic of Italy is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.”

71. Legality of Use of Force (Serbia and Montenegro v. Netherlands) 29 April 1999

“to adjudge and declare:
- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;
- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called “Kosovo Liberation Army”, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;
- by taking part in attacks on civilian targets, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;
- by taking part in destroying or damaging monasteries, monuments of culture, the Kingdom of the Netherlands has acted against the Federal

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Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rivers, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the Kingdom of the Netherlands has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- the Kingdom of the Netherlands is responsible for the violation of the above international obligations;

- the Kingdom of the Netherlands is obliged to stop immediately the violation of the above obligations vis-a-vis the Federal Republic of Yugoslavia;

- the Kingdom of the Netherlands is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.

| 72. | Legality of Use of Force (Serbia and Montenegro v. Portugal) | 29 April 1999 | to adjudge and declare:
- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State; | Declaratory Cessation Compensation |
- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called "Kosovo Liberation Army", Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

- by taking part in attacks on civilian targets, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

- by taking part in destroying or damaging monasteries, monuments of culture, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rivers, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, Portugal has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- Portugal is responsible for the violation of the above international obligations;

- Portugal is obliged to stop immediately the violation of the above obligations vis-a-vis the
Federal Republic of Yugoslavia;

- Portugal is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.

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73. Legality of Use of Force (Yugoslavia v. Spain)
29 April 1999
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- to adjudge and declare:

- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;

- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called "Kosovo Liberation Army", the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

- by taking part in attacks on civilian targets, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

- by taking part in destroying or damaging monasteries, monuments of culture, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rivers, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

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<tr>
<th>Article</th>
<th>Legality of Use of Force (Serbia and Montenegro v. United Kingdom)</th>
<th>29 April 1999</th>
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</tr>
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</table>
| 74. | - by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the Kingdom of Spain has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;  
- The Kingdom of Spain is responsible for the violation of the above international obligations;  
- The Kingdom of Spain is obliged to stop immediately the violation of the above obligations vis-a-vis the Federal Republic of Yugoslavia;  
- The Kingdom of Spain is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.” | | |

The Kingdom of Spain is responsible for the violation of the above international obligations;  
The Kingdom of Spain is obliged to stop immediately the violation of the above obligations vis-a-vis the Federal Republic of Yugoslavia;  
The Kingdom of Spain is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.” |
depleted uranium, The United Kingdom of Great Britain and Northern Ireland has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, The United Kingdom of Great Britain and Northern Ireland has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rivers, The United Kingdom of Great Britain and Northern Ireland has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, The United Kingdom of Great Britain and Northern Ireland has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- The United Kingdom of Great Britain and Northern Ireland is responsible for the violation of the above international obligations;

- The United Kingdom of Great Britain and Northern Ireland is obliged to stop immediately the violation of the above obligations vis-a-vis the Federal Republic of Yugoslavia;

- The United Kingdom of Great Britain and Northern Ireland is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons."

75. **Legality of Use of Force (Yugoslavia v. United States of America)**

29 April 1999

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"to adjudge and declare:

- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;

- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called "Kosovo Liberation Army", the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

- by taking part in attacks on civilian targets, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

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| 76. | Armed Activities on the Territory of the Congo (Democratic) | 23 June 1999 |

- by taking part in destroying or damaging monasteries, monuments of culture, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rivers, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the United States of America has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- The United States of America is responsible for the violation of the above international obligations;

- The United States of America is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

- The United States of America is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.”
| Republic of the Congo v. Burundi | December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter; (b) further, Burundi is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law; (c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Burundi has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area; (d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Burundi has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that: (1) all Burundian armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo; (2) Burundi shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons; (3) the Democratic Republic of the Congo is entitled to compensation from Burundi in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Burundi, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.” | Restitution in kind |
law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;
(c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;
(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;
(2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;
(3) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.”

78. **Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)**

23 June 1999

“Adjudge and declare that:

(a) Rwanda is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;
(b) further, Rwanda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;
(c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Rwanda has rendered...

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<th>Declaratory</th>
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<th>Declaratory</th>
<th>Specific performance</th>
<th>Compensation</th>
<th>Restitution in kind</th>
</tr>
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itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Rwanda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(1) all Rwandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

(2) Rwanda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(3) the Democratic Republic of the Congo is entitled to compensation from Rwanda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Rwanda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.”

| 79. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia) | 2 July 1999 | “to adjudge and declare as follows:

(1) that the Federal Republic of Yugoslavia has breached its legal obligations toward the people and Republic of Croatia under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;

(b) that the Federal Republic of Yugoslavia has an obligation to pay to the Republic of Croatia, in its own right and as parens patriae for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. The Republic of Croatia reserves the right to introduce to the Court at a future date a precise evaluation of the damages caused by the Federal Republic of Yugoslavia.” | Declaratory Compensation |

| 80. Aerial Incident of 10 August 1999 (Pakistan v. India) | 21 September 1999 | “to judge and declare as follows:

(a) that the acts of India (as stated above) constitute breaches of the various obligations under the Charter of the United Nations, customary international law and treaties specified in the body of this Application for which the Republic of India bears exclusive legal responsibility;

(b) that India is under an obligation to make | Declaratory Compensation |
| 81. | **Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)** | 8 December 1999 | “Accordingly, the Court is asked to determine the course of the single maritime boundary between the areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.

This request for the determination of a single maritime boundary is subject to the power of the Court to establish different delimitations, for shelf rights and fisheries respectively, if, in the light of the evidence, this course should be necessary in order to achieve an equitable solution.

Whilst the principal purpose of this Application is to obtain a declaration concerning the determination of the maritime boundary or boundaries, the Government of Nicaragua reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua, found to the north of the parallel of latitude 14° 59' 08" claimed by Honduras to be the course of the delimitation line. Nicaragua also reserves the right to claim compensation for any natural resources that may have been extracted or may be extracted in the future to the south of the line of delimitation that will be fixed by the Judgment of the Court.” | Declaratory |
| 82. | **Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)** | 17 October 2000 | “The Court is requested to declare that the Kingdom of Belgium shall annul the international arrest warrant issued on 11 April 2000 by a Belgian investigating judge, Mr. Vandermeersch, of the Brussels tribunal de première instance against the Minister for Foreign Affairs in office of the Democratic Republic of the Congo, Mr. Abdulaye Yerodia Ndombasi, seeking his provisional detention pending a request for extradition to Belgium for alleged crimes constituting “serious violations of international humanitarian law”, that warrant having been circulated by the judge to all States, including the Democratic Republic of the Congo, which received it on 12 July 2000.” | Specific performance |
| 83. | **Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and** | 24 April 2001 | “to adjudge and declare that:

there is a new fact of such a character as to lay the case open to revision under Article 61 of the Statute of the Court.

Furthermore, Applicant is respectfully asking the Court to suspend proceedings regarding the merits of the case until a decision on this Application is rendered.” | Declaratory |
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Date</th>
<th>Decision</th>
<th>Type</th>
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<tr>
<td>Herzegovina v. Yugoslavia, Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)</td>
<td></td>
<td>“to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered. Liechtenstein further requests that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings.”</td>
<td>Declaratory Reparation</td>
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<td>Certain Property (Liechtenstein v. Germany)</td>
<td>1 June 2001</td>
<td>“to adjudge and declare:</td>
<td>Declaratory</td>
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<tr>
<td>Territorial and Maritime Dispute (Nicaragua v. Colombia)</td>
<td>6 December 2001</td>
<td>“to adjudge and declare: First, that the Republic of Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueno keys (in so far as they are capable of appropriation); Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary. Whilst the principal purpose of this Application is to obtain declarations concerning title and the determination of maritime boundaries, the Government of Nicaragua reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title. The Government of Nicaragua also reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.”</td>
<td>Declaratory</td>
</tr>
<tr>
<td>Armed Activities on the Territory of the Congo (New Application: 2002)</td>
<td>28 May 2002</td>
<td>“dire et juger que: 1) toute force armée rwandaise à la base de l'agression doit quitter sans délai le territoire de la République Démocratique du Congo; afin de permettre à la population congolaise de jouir pleinement de ses droits à la paix, à la sécurité, à ses ressources et au développement; 2) le Rwanda a l'obligation de faire en sorte que ses forces armées et autres se retirent immédiatement et sans condition du territoire congolais; 3) la République Démocratique du Congo a droit à obtenir du Rwanda le dédommagement de tous actes de pillages, destructions, massacres, déportations de</td>
<td>Cessation Compensation</td>
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| Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras) | 10 September 2002 | "(a) To proceed to form the Chamber that will hear the application for revision of the Judgment, bearing in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1985;
(b) To declare the application of the Republic of El Salvador admissible on the grounds of the existence of new facts of such a character as to lay the case open to revision under Article 61 of the Statute of the Court; and
(c) Once the application is admitted, to proceed to the revision of the Judgment of 11 September 1992, so that a new Judgment will determine the boundary line in the sixth disputed sector of the land frontier between El Salvador and Honduras to be as follows:

"Starting from the old mouth of the Goascorán river in the inlet known as the La Cutú Estuary situated at latitude 13°22'00"N and longitude 87°41'25"W, the frontier follows the old course of the Goascorán river for a distance of 17,300 metres as far as the place known as the Rompición de los Amates situated at latitude 13°26'29"N and longitude 87°43'25"W, which is where the Goascorán river changed its course."

| Avena and Other Mexican Nationals (Mexico v. United States of America) | 9 January 2003 | "to adjudge and declare:
(1) that the United States, in arresting, detaining, trying, convicting, and sentencing the 54 Mexican nationals on death row described in this Application, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided by Articles 5 and 36, respectively of the Vienna Convention;
(2) that Mexico is therefore entitled to restitutio in integrum;
(3) that the United States is under an international legal obligation not to apply the doctrine of procedural default, or any other doctrine of its municipal law, to preclude the exercise of the rights afforded by Article 36 of the Vienna Convention;
(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against the 54 Mexican nationals on death row or any other Mexican national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power’s functions are international or internal in character;
(5) that the right to consular notification under the..." |
Vienna Convention is a human right;
and that, pursuant to the foregoing international legal obligations,

(1) the United States must restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico’s nationals in violation of the United States international legal obligations;

(2) the United States must take the steps necessary and sufficient to ensure that the provisions of its municipal law enable full effect to be given to the purposes for which the rights afforded by Article 36 are intended;

(3) the United States must take the steps necessary and sufficient to establish a meaningful remedy at law for violations of the rights afforded to Mexico and its nationals by Article 36 of the Vienna Convention, including by barring the imposition, as a matter of municipal law, of any procedural penalty for the failure timely to raise a claim or defence based on the Vienna Convention where competent authorities of the United States have breached their obligation to advise the national of his or her rights under the Convention; and

(4) the United States, in light of the pattern and practice of violations set forth in this Application, must provide Mexico a full guarantee of the non-repetition of the illegal acts.”

| 89. Certain Criminal Proceedings in France (Republic of the Congo v. France) | 11 April 2003 | “to declare that the French Republic shall cause to be annulled the measures of investigation and prosecution taken by the Procureur de la République of the Paris Tribunale de grande instance, the Procureur de la République of the Meaux Tribunale de grande instance and the investigating judges of those courts, which judicial officers, on the basis of a complaint whereby associations describing themselves as “humanitarian” reported to the French judiciary alleged crimes against humanity and instances of torture having been committed in the Congo, by Congolese, against victims said to be of Congolese nationality, which complaint named H.E. Mr. Denis Sassou Nguesso, President of the Republic of the Congo, and H.E. Mr. Pierre Oba, Minister of the Interior of the Republic of the Congo, together with other individuals, including General Norbert Dabira, Inspector-General of the Congolese Armed Forces:
— as to the Procureur de la République of the Paris Tribunale de grande instance: transmitted the complaint to the Procureur de la République of the Meaux Tribunale de grande instance purportedly having territorial jurisdiction, failing thereby to take account of the French courts’ lack of international jurisdiction or of the violation of the immunity attaching to the office of President of the Republic,
— as to the Procureur de la République of the Meaux Tribunale de grande instance: ordered a preliminary enquiry into the acts complained of and then filed an application for the opening of a criminal... | Declaratory |
investigation against X, in violation of the same principles of international law,
— as to the investigating judge of that same tribunal: initiated an investigation on the basis of that application when he ought, proprio motu, to have declared himself to be without jurisdiction internationally, and to have refused to conduct an investigation against the President of the Republic of the Congo; and, moreover, issued a commission rogatoire (warrant) instructing police officers to take testimony from H.E. President Denis Sassou Nguesso.”

90. Maritime Delimitation in the Black Sea (Romania v. Ukraine) 16 September 2004 “to draw in accordance with the international law, and specifically the criteria laid down in Article 4 of the Additional Agreement, a single maritime boundary between the continental shelf and the exclusive economic zones of the two States in the Black Sea.” Declaratory

91. Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) 29 September 2005 “to adjudge and declare that Nicaragua is in breach of its international obligations as referred to in paragraph 1 of this Application in denying to Costa Rica the free exercise of its rights of navigation and associated rights on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has violated:

(a) the obligation to facilitate and expedite traffic on the San Juan River within the terms of the Treaty of 15 April 1858 and its interpretation given by arbitration on 22 March 1888;

(b) the obligation to allow Costa Rican boats and their passengers to navigate freely and without impediment on the San Juan River for commercial purposes, including the transportation of passengers and tourism;

(c) the obligation to allow Costa Rican boats and their passengers while engaged in such navigation to moor freely on any of the San Juan River banks without paying any charges, unless expressly agreed by both Governments;

(d) the obligation not to require Costa Rican boats and their passengers to stop at any Nicaraguan post along the river;

(e) the obligation not to impose any charges or fees on Costa Rican boats and their passengers for navigating on the river;

(f) the obligation to allow Costa Rica the right to navigate the river in accordance with Article Second of the Cleveland Award;

(g) the obligation to allow Costa Rica the right to navigate the San Juan River in official boats for supply purposes, exchange of personnel of the border posts along the right bank of the San Juan River, with their official equipment, including the necessary arms and ammunitions, and for the purposes of protection, as established in the pertinent instruments;

(h) the obligation to collaborate with Costa Rica in
order to carry out those undertakings and activities which require a common effort by both States in order to facilitate and expedite traffic in the San Juan River within the terms of the Treaty of Limits and its interpretation given by the Cleveland Award, and other pertinent instruments;

(i) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including unlawful economic sanctions contrary to treaties in force or general international law, or involving further changes in the régime of navigation and associated rights on the San Juan River not permitted by the instruments referred to above.

Further, the Court is requested to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in paragraph 10 above.”

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<td>(a) clarify the rights and duties of a host State, of a sending State and those of the United Nations, the Specialized Agencies and the WTO, with regard to Permanent Missions and their diplomatic personnel; and further to adjudge and declare as follows:</td>
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<td>(b) that the Respondents have breached, and are continuing to breach, their legal obligations toward the Commonwealth of Dominica under Articles 23-47 of the Vienna Convention on Diplomatic Relations of 18 April 1961, the Headquarters Agreement between the Respondents and the United Nations of 11 June and 1 July 1946, the Agreement on Privileges and Immunities between the Respondents and the United Nations of 11 April 1946, the multilateral Convention on Privileges and Immunities of the United Nations of 13 February 1946 and under general international law;</td>
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<td>(c) that the Respondents, in breach of their obligations under the aforementioned treaties and conventions as well as under general and customary international law, have violated the fundamental rules of immunity of diplomats;</td>
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<td>(d) that the Respondents, in breach of their obligations under the aforementioned treaties and conventions as well as under general and customary international law, in the event also failed to recognize the rights under international law concerning active legation of the Applicants and on passive legation of international organizations;</td>
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<td>(e) that the Respondents, in breach of their obligations under the aforementioned treaties and conventions as well as under general and customary international law, have violated rules concerning their rights and duties as a host State;</td>
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<td>(f) that the Respondents have violated and continue to violate relevant sections on sovereignty and equality of the Declaration on Principles of International Law Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations of 24 October 1970, sections which also reflect binding general international law.</td>
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(g) that the Respondents have violated, and continue to violate, their solemn obligations under Articles 1 (3), 55 and 56 of the United Nations Charter;

(h) that the Respondents, in breach of their obligations under general and customary international law, have violated and are violating the sovereignty of the Applicants, the Government of the Commonwealth of Dominica, and the rights of its diplomatic Envoy;

(i) that the Respondents, in breach of their obligations under general and customary international law, and under Article 2 (7) of the Charter of the United Nations, have intervened and are intervening in the internal affairs of the Applicants, the Commonwealth of Dominica;

(j) that the Respondents and their agents and surrogates are under an obligation to cease and desist immediately from their breaches of the foregoing legal obligations;

(k) that the Respondents have an obligation to pay the Applicants, the Commonwealth of Dominica, in their own right and as parens patriae for their citizens, reparations for damages to the trade and economy of the Applicants, the Commonwealth of Dominica, caused by the foregoing violations of international law in a sum to be determined by the Court. The Applicants reserve the right to introduce to the Court a precise evaluation of the damages caused by the Respondents.”

93. **Pulp Mills on the River Uruguay**
   *Argentina v. Uruguay*
   4 May 2006

   “to adjudge and declare:

1. that Uruguay has breached the obligations incumbent upon it under the 1975 Statute and the other rules of international law to which that instrument refers, including but not limited to:

   (a) the obligation to take all necessary measures for the optimum and rational utilization of the River Uruguay;

   (b) the obligation of prior notification to CARU and to Argentina;

   (c) the obligation to comply with the procedures prescribed in Chapter II of the 1975 Statute;

   (d) the obligation to take all necessary measures to preserve the aquatic environment and prevent pollution and the obligation to protect biodiversity and fisheries, including the obligation to prepare a full and objective environmental impact study;

   (e) the obligation to co-operate in the prevention of pollution and the protection of biodiversity and of fisheries; and

2. that, by its conduct, Uruguay has engaged its international responsibility to Argentina;

3. that Uruguay shall cease its wrongful conduct and comply scrupulously in future with the obligations

   | Declaratory | Cessation | Reparation |
4. that Uruguay shall make full reparation for the injury caused by its breach of the obligations incumbent upon it. Argentina reserves the right to amplify or amend these requests at a subsequent stage of the proceedings.”

| 94. Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France) | 9 August 2006 | “Adjudge and declare:

(a) that the French Republic is under an international legal obligation to foster all co-operation aimed at promoting the speedy disposition of the “Case against X for the murder of Bernard Borrel”, in compliance with the principle of sovereign equality between States, as laid down in Article 2, paragraph 1, of the United Nations Charter and in Article 1 of the Treaty of Friendship and Co-operation between the French Republic and the Republic of Djibouti;

(b) that the French Republic cannot invoke principles or doctrines under its internal law (such as those relating to separation of powers) to hinder the exercise of the rights conferred upon the Republic of Djibouti by the Convention on Mutual Assistance in Criminal Matters;

(c) that the French Republic is under an international legal obligation to execute the international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investigation in the “Case against X for the murder of Bernard Borrel”;

(d) that the French Republic is under an international legal obligation to act in conformity with the obligations laid down by the Convention on Mutual Assistance in Criminal Matters in the context not only of the investigation in the “Case against X for the murder of Bernard Borrel” but also of any other proceedings it may initiate in the future, whether such proceedings are undertaken by a delegated, legislative, executive, judicial or other authority, whether such authority occupies a superior or subordinate position in the organization of the French Republic and whether such authority’s functions are international or domestic in nature;

(e) that the French Republic is under an international obligation to ensure that the Head of State of the Republic of Djibouti, as a foreign Head of State, is not subjected to any insults or attacks on his dignity on French territory;

(f) that the French Republic is under a legal obligation scrupulously to ensure respect, vis-à-vis the Republic of Djibouti, of the principles and rules concerning diplomatic privileges, prerogatives and immunities, as reflected in the Vienna Convention on Diplomatic Relations of 18 April 1961;

(g) that the French Republic bears responsibility for the violation of the international obligations referred to above;

(h) that the French Republic is under an obligation immediately to cease and desist from breaching the

| | Declaratory | Specific performance | Cessation | Reparation | Guarantee of non-repetition |
obligations referred to above and, to that end, shall in particular:

(i) execute without further delay the letter rogatory cited in point (c) above, by immediately placing the record referred to above in Djiboutian hands, and

(ii) withdraw and cancel the summonses of the Head of State of the Republic of Djibouti and of internationally protected Djiboutian nationals to testify as témoins assistés [legally represented witnesses] in respect of subornation of perjury in the “Case against X for the murder of Bernard Borrel”;

(i) that the French Republic owes reparation for the prejudice caused to the Republic of Djibouti and to its citizens;

(ij) that the French Republic shall give the Republic of Djibouti a guarantee that such wrongful acts will not reoccur.

5. The Republic of Djibouti reserves the right subsequently to specify the appropriate form and nature of the reparation owed to it.”

| 95. | Maritime Dispute (Peru v. Chile) | 16 January 2008 | “to determine the course of the boundary between the maritime zones of the two States in accordance with international law, as indicated in Section IV above, and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile’s exclusive economic zone or continental shelf.” | Declaratory |
| 96. | Aerial Herbicide Spraying (Ecuador v. Colombia) | 31 March 2008 | “to adjudge and declare that:

(A) Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;

(B) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:

(i) death or injury to the health of any person or persons arising from the use of such herbicides; and

(ii) any loss of or damage to the property or livelihood or human rights of such persons; and

(iii) environmental damage or the depletion of natural resources; and

(iv) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia’s use of herbicides; and

(v) any other loss or damage; and

(C) Colombia shall | Declaratory | Compensation | Specific performance |
### 97. Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)  
5 June 2008

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<th><em>Declaratory Specific performance</em></th>
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| “to adjudge and declare that the obligation incumbent upon the United States under paragraph 153 (9) of the Avena Judgment constitutes an obligation of result as it is clearly stated in the Judgment by the indication that the United States must provide “review and reconsideration of the convictions and sentences” but leaving it the “means of its own choosing”;

and that, pursuant to the foregoing obligation of result,

1. the United States must take any and all steps necessary to provide the reparation of review and reconsideration mandated by the Avena Judgment; and

2. the United States must take any and all steps necessary to ensure that no Mexican national entitled to review and reconsideration under the Avena Judgment is executed unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation.” |

### 98. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)  
12 August 2008

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| “to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of or under the direction and control of the Russian Federation, has violated its obligations under CERD by:

(a) engaging in acts and practices of “racial discrimination against persons, groups of persons or institutions” and failing “to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation” contrary to Article 2 (1) (a) of CERD;

(b) “sponsoring, defending and supporting racial discrimination” contrary to Article 2 (1) (b) of CERD;

(c) failing to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination” contrary to Article 2 (1) (d) of CERD;

(d) failing to condemn “racial segregation” and failing to “eradicate all practices of this nature” in South Ossetia and Abkhazia, contrary to Article 3 of CERD;

(e) failing to “condemn all propaganda and all...” |

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organizations . . . which attempt to justify or promote racial hatred and discrimination in any form” and failing “to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”, contrary to Article 4 of CERD;

(f) undermining the enjoyment of the enumerated fundamental human rights in Article 5 by the ethnic Georgian, Greek and Jewish populations in South Ossetia and Abkhazia, contrary to Article 5 of CERD;

(g) failing to provide “effective protection and remedies” against acts of racial discrimination, contrary to Article 6 of CERD.

The Republic of Georgia, on its own behalf and as parens patriae for its citizens, respectfully requests the Court to order the Russian Federation to take all steps necessary to comply with its obligations under CERD, including:

(a) immediately ceasing all military activities on the territory of the Republic of Georgia, including South Ossetia and Abkhazia, and immediate withdrawing of all Russian military personnel from the same;

(b) taking all necessary and appropriate measures to ensure the prompt and effective return of IDPs to South Ossetia and Abkhazia in conditions of safety and security;

(c) refraining from the unlawful appropriation of homes and property belonging to IDPs;

(d) taking all necessary measures to ensure that the remaining ethnic Georgian populations of South Ossetia and the Gali District are not subject to discriminatory treatment including but not limited to protecting them against pressures to assume Russian citizenship, and respect for their right to receive education in their mother tongue;

(e) paying full compensation for its role in supporting and failing to bring to an end the consequences of the ethnic cleansing that occurred in the 1991-1994 conflicts, and its subsequent refusal to allow the return of IDPs;

(f) not to recognize in any manner whatsoever the de facto South Ossetian and Abkhaz separatist authorities and the fait accompli created by ethnic cleansing;

(g) not to take any measures that would discriminate against persons, whether legal or natural, having Georgian nationality or ethnicity within its jurisdiction or control;

(h) allow Georgia to fulfil its obligations under CERD by withdrawing its forces from South Ossetia and Abkhazia and allowing Georgia to restore its authority and jurisdiction over those regions; and

(i) to pay full compensation to Georgia for all injuries resulting from its internationally wrongful acts.”
| 99. | Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece) | 17 November 2008 | “(i) to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; (ii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant’s membership of the North Atlantic Treaty Organization and/or of any other “international, multilateral and regional organizations and institutions” of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organizations or institutions by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993).” | Declaratory Specific performance Cessation |
| 100. | Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening) | 23 December 2008 | “adjudge and declare that the Italian Republic: (1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September 1943 to May 1945, to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law; (2) by taking measures of constraint against “Villa Vigoni”, German State property used for government non-commercial purposes, also committed violations of Germany’s jurisdictional immunity; (3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany’s jurisdictional immunity. Accordingly, the Federal Republic of Germany prays the Court to adjudge and declare that: (4) the Italian Republic’s international responsibility is engaged; (5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany’s sovereign immunity become unenforceable; (6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above.” | Declaratory Specific performance |
| 101. | Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) | 19 February 2009 | “to adjudge and declare that: — the Court has jurisdiction to entertain the dispute between the Kingdom of Belgium and the Republic of Senegal regarding Senegal’s compliance with its obligation to prosecute Mr. H. Habré or to extradite him to Belgium for the purposes of criminal proceedings; — Belgium’s claim is admissible;” | Specific performance |
— the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as perpetrator, co-perpetrator or accomplice;
— failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for these crimes before the Belgian courts.”

102. Certain Questions concerning Diplomatic Relations (Honduras v. Brazil) 28 October 2009
‘to adjudge and declare that Brazil does not have the right to allow the premises of its Mission in Tegucigalpa to be used to promote manifestly illegal activities by Honduran citizens who have been staying within it for some time now and that it shall cease to do so. Just as Brazil rightly demands that the Honduran authorities guarantee the security and inviolability of the Mission premises, Honduras demands that Brazil’s diplomatic staff stationed in Tegucigalpa devote themselves exclusively to the proper functions of the Mission and not to actions constituting interference in the internal affairs of another State.

While the primary purpose of this Application is to secure a declaration that Brazil has breached its obligations under Article 2 (7) of the Charter and those under the 1961 Vienna Convention on Diplomatic Relations, the Government of Honduras reserves the right to claim reparation for any damage resulting from the actions of Brazil, of its Mission, and of the Honduran persons sheltered by it in the Mission.”

103. Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland) 21 December 2009
‘to adjudge and declare that:
— the Court has jurisdiction to entertain the dispute between the Kingdom of Belgium and the Swiss Confederation concerning the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, and of the rules of general international law governing the exercise by States of their authority, in particular in judicial matters;
— Belgium’s claim is admissible;
— Switzerland, by virtue of the decision of its courts to hold that the future judgment in Belgium on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and to Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) will not be recognized in Switzerland in the SAirGroup and SAirLines debt-scheduling proceedings, is breaching the Lugano Convention, in particular: Articles 1, second paragraph, provision (2); 16 (5); 26, first paragraph; and 28, thereof;
— Switzerland, by refusing to stay the proceedings pursuant to its municipal law in the disputes between, on the one hand, the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the liquidation estates (masses) of SAirGroup and SAirLines, companies in
| 104. | **Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)** | 31 May 2010 | “to adjudge and declare that Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean.

In addition, Australia requests the Court to order that Japan:

(a) cease implementation of JARPA II;

(b) revoke any authorizations, permits or licences allowing the activities which are the subject of this application to be undertaken; and

(c) provide assurances and guarantees that it will not

Declaratory

Cessation

Specific performance

Guarantee of non-repetition
| 105. Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) | 18 November 2010 | “to adjudge and declare that Nicaragua is in breach of its international obligations as referred to in paragraph 1 of this Application as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River.

In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:

(a) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;

(b) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;

(c) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;

(d) the obligation not to damage Costa Rican territory;

(e) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;

(f) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;

(g) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;

(h) the obligations under the Ramsar Convention on Wetlands;

(i) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica’s territorial integrity under international law.

The Court is also requested to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in paragraph 41 above.” | Declaratory Reparation |

| 106. Request for Interpretation | 28 April 2011 | “to adjudge and declare that:” | Declaratory |
of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)

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<th>107.</th>
<th>Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)</th>
<th>21 December 2011</th>
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|      | Proceedings joined with Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) on 17 April 2013 | "to adjudge and declare that Costa Rica has breached:

(a) Its obligation not to violate Nicaragua’s territorial integrity as delimited by the 1858 Treaty of Limits, the Cleveland Award of 1888 and the five Awards of the Umpire E. P. Alexander of 30 September 1897, 20 December 1897, 22 March 1898, 26 July 1899 and 10 March 1900;

(b) Its obligation not to damage Nicaraguan territory;

(c) Its obligations under general international law and the relevant environmental conventions, including the Ramsar Convention on Wetlands, the Agreement over the Border Protected Areas between Nicaragua and Costa Rica (International System of Protected Areas for Peace [SI-A-PAZ] Agreement), the Convention on Biological Diversity and the Convention for the Conservation of the Biodiversity and the Protection of Wilderness Areas in Central America. Furthermore, Nicaragua requests the Court to adjudge and declare that Costa Rica must:

(a) Restore the situation to the status quo ante;

(b) Pay for all damages caused including the costs added to the dredging of the San Juan River;

(c) Not undertake any future development in the area without an appropriate transboundary Environmental Impact assessment and that this assessment must be presented in a timely fashion to Nicaragua for its analysis and reaction.

Finally, Nicaragua requests the Court to adjudge and declare that Costa Rica must:

(a) Cease all the constructions underway that affect or may affect the rights of Nicaragua;

(b) Produce and present to Nicaragua an adequate environmental impact assessment with all the details of the works." | |

108. | Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile) | 24 April 2013 | Declaratory Specific performance |
|------|-----------------------------------------------------------------|-----------------|-------------------------------------------------|
|      | "to adjudge and declare that:

(a) Chile has the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean;

(b) Chile has breached the said obligation; | | |
| 109. | Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia) | 16 September 2013 | “to adjudge and declare:
First: The precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012.
Second: The principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua’s coast.” | Declaratory |
| 110. | Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia) | 26 November 2013 | “to adjudge and declare that Colombia is in breach of:
— its obligation not to use or threaten to use force under Article 2 (4) of the UN Charter and international customary law;
— its obligation not to violate Nicaragua’s maritime zones as delimited in paragraph 251 of the ICJ Judgment of 19 November 2012 as well as Nicaragua’s sovereign rights and jurisdiction in these zones;
— its obligation not to violate Nicaragua’s rights under customary international law as reflected in Parts V and VI of UNCLOS;
— and that, consequently, Colombia is bound to comply with the Judgment of 19 November 2012, wipe out the legal and material consequences of its internationally wrongful acts, and make full reparation for the harm caused by those acts.” | Declaratory, Specific performance, Reparation |
| 111. | Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia) | 17 December 2013 | “to adjudge and declare:
First: That the seizure by Australia of the documents and data violated (i) the sovereignty of Timor-Leste and (ii) its property and other rights under international law and any relevant domestic law;
Second: That continuing detention by Australia of the documents and data violates (i) the sovereignty of Timor-Leste and (ii) its property and other rights under international law and any relevant domestic law;
Third: That Australia must immediately return to the nominated representative of Timor-Leste any and all of the aforesaid documents and data, and destroy beyond recovery every copy of such documents and data that is in Australia’s possession or control, and ensure the destruction of every such copy that Australia has directly or indirectly passed to a third person or third State;
Fourth: That Australia should afford satisfaction to Timor-Leste in respect of the above-mentioned | Declaratory, Satisfaction, Restitution in kind, Specific performance |
violations of its rights under international law and any relevant domestic law, in the form of a formal apology as well as the costs incurred by Timor-Leste in preparing and presenting the present Application."

"to determine the complete course of a single maritime boundary between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean, on the basis of international law.

Costa Rica further requests the Court to determine the precise geographical co-ordinates of the single maritime boundaries in the Caribbean Sea and in the Pacific Ocean."

113. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India) 24 April 2014
"to adjudge and declare

a) that India has violated and continues to violate its international obligations under customary international law, by failing to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, in particular by engaging a course of conduct, the quantitative buildup and qualitative improvement of its nuclear forces, contrary to the objective of nuclear disarmament;

b) that India has violated and continues to violate its international obligations under customary international law with respect to cessation of the nuclear arms race at an early date, by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for the indefinite future;

c) that India has failed and continues to fail to perform in good faith its obligations under customary international law by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for the indefinite future; and

d) that India has failed and continues to fail to perform in good faith its obligations under customary international law by effectively preventing the great majority of non-nuclear-weapon States from fulfilling their part of the obligations under customary international law and Article VI of the NPT with respect to nuclear disarmament and cessation of the nuclear arms race at an early date.

to order India to take all steps necessary to comply with its obligations under customary international law with respect to cessation of the nuclear arms race at an early date and nuclear disarmament within one year of the Judgment, including the pursuit, by initiation if necessary, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control."

114. Obligations concerning Negotiations relating to 24 April 2014
"to adjudge and declare

a) that Pakistan has violated and continues to violate its international obligations under customary..."
### Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)

international law, by failing to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, in particular by engaging a course of conduct, the quantitative buildup and qualitative improvement of its nuclear forces, contrary to the objective of nuclear disarmament;

b) that Pakistan has violated and continues to violate its international obligations under customary international law with respect to cessation of the nuclear arms race at an early date, by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for the indefinite future, and by blocking negotiations on a Fissile Materials Cut-off Treaty;

c) that Pakistan has failed and continues to fail to perform in good faith its obligations under customary international law by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for the indefinite future, and by blocking negotiations on a Fissile Materials Cut-off Treaty; and

d) that Pakistan has failed and continues to fail to perform in good faith its obligations under customary international law by effectively preventing the great majority of non-nuclear-weapon States from fulfilling their part of the obligations under customary international law and Article VI of the NPT with respect to nuclear disarmament and cessation of the nuclear arms race at an early date.

To order Pakistan to take all steps necessary to comply with its obligations under customary international law with respect to cessation of the nuclear arms race at an early date and nuclear disarmament within one year of the Judgment, including the pursuit, by initiation if necessary, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control.”

### Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)

24 April 2014

“to adjudge and declare

a) that the United Kingdom has violated and continues to violate its international obligations under the NPT, more specifically under Article VI of the Treaty, by failing to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;

b) that the United Kingdom has violated and continues to violate its international obligations under the NPT, more specifically under Article VI of the Treaty, by taking actions to qualitatively improve its nuclear weapons system and to maintain it for the indefinite future, and by failing to pursue negotiations that would end nuclear arms racing through comprehensive nuclear disarmament or other measures;

c) that the United Kingdom has violated and
continues to violate its international obligations under customary international law, by failing to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;

d) that the United Kingdom has violated and continues to violate its international obligations under customary international law, by taking actions to qualitatively improve its nuclear weapons system and to maintain it for the indefinite future, and by failing to pursue negotiations that would end nuclear arms racing through comprehensive nuclear disarmament or other measures;

e) that the United Kingdom has failed and continues to fail to perform in good faith its obligations under the NPT and under customary international law by modernizing, updating and upgrading its nuclear weapons capacity and maintaining its declared nuclear weapons policy for an unlimited period of time, while at the same time failing to pursue negotiations as set out in the four preceding counts; and

f) that the United Kingdom has failed and continues to fail to perform in good faith its obligations under the NPT and under customary international law by effectively preventing the great majority of non-nuclear-weapon States Parties to the Treaty from fulfilling their part of the obligations under Article VI of the Treaty and under customary international law with respect to nuclear disarmament and cessation of the nuclear arms race at an early date.

to order the United Kingdom to take all steps necessary to comply with its obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and under customary international law within one year of the Judgment, including the pursuit, by initiation if necessary, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control."

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<td></td>
<td>“to determine, on the basis of international law, the complete course of the single maritime boundary dividing all the maritime areas appertaining to Somalia and to Kenya in the Indian Ocean, including in the continental shelf beyond 200 M. Somalia further requests the Court to determine the precise geographical co-ordinates of the single maritime boundary in the Indian Ocean.”</td>
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<table>
<thead>
<tr>
<th>117.</th>
<th>Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)</th>
<th>6 June 2016</th>
<th>Declaratory</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>“to adjudge and declare that:</td>
<td>Specific performance</td>
<td></td>
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<td></td>
<td>(a) The Silala River system, together with the subterranean portions of its system, is an international watercourse, the use of which is governed by customary international law;</td>
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<td></td>
<td>(b) Chile is entitled to the equitable and reasonable use of the waters of the Silala River system in accordance with customary international law;</td>
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</table>
(c) Under the standard of equitable and reasonable utilization, Chile is entitled to its current use of the waters of the Silala River;

(d) Bolivia has an obligation to take all appropriate measures to prevent and control pollution and other forms of harm to Chile resulting from its activities in the vicinity of the Silala River;

(e) Bolivia has an obligation to cooperate and to provide Chile with timely notification of planned measures which may have an adverse effect on shared water resources, to exchange data and information and to conduct where appropriate an environmental impact assessment, in order to enable Chile to evaluate the possible effects of such planned measures, obligations that Bolivia has breached.”

| 118. Immunities and Criminal Proceedings (Equatorial Guinea v. France) | 13 June 2016 | "(a) En ce qui concerne le non-respect de la souveraineté de la République de Guinée équatoriale par la République française:

i) de dire et juger que la République française a manqué à son obligation de respecter les principes de l’égalité souveraine des États et de la nonintervention dans les affaires intérieures d'autres États à l'égard de la République de Guinée équatoriale, conformément au droit international, en permettant que ses juridictions engagent des procédures judiciaires pénales contre son Second Vice-Président pour des allégations qui, lors même qu’elles auraient été établies, quod non, relèveraient de la seule compétence des juridictions équato-guinéennes, et qu’elles ordonnent la saisie d’un immeuble appartenant à la République de Guinée équatoriale et utilisé aux fins de la mission diplomatique de ce pays en France;

b) En ce qui concerne le Second Vice-Président de la République de Guinée équatoriale chargé de la Défense et de la Sécurité de l’État:

i) de dire et juger qu’en engageant des procédures pénales contre le Second Vice-Président de la République de Guinée équatoriale chargé de la Défense et la Sécurité de l’État, Son Excellence M. Teodoro Obiang Mangue, la République française a agi et agit en violation de ses obligations en vertu du droit international, notamment la Convention des Nations Unies contre la criminalité transnationale organisée et le droit international général ;

ii) d’ordonner à la République française de prendre toutes les mesures nécessaires pour mettre fin à toutes les procédures en cours contre le Second Vice-Président de la République de Guinée équatoriale chargé de la Défense et de la Sécurité de l’État;

iii) d’ordonner à la République française de prendre toutes les mesures pour prévenir de nouvelles atteintes à l’immunité du Second Vice-Président de la Guinée équatoriale chargé de la Défense et de la Sécurité de l’État, et notamment s’assurer qu’à l’avenir, ses juridictions n’engagent pas de procédures pénales contre le Second Vice-Président de Guinée équatoriale; | Declaratory Specific performance Compensation |
c) En ce qui concerne l'immeuble sis au 42 Avenue Foch, à Paris:

   i) de dire et juger que la République française, en saisissant l'immeuble sis au 42 avenue Foch à Paris, propriété de la République de Guinée équatoriale et utilisé aux fins de la mission diplomatique de ce pays en France, agit en violation de ses obligations en vertu du droit international, notamment la Convention de Vienne sur les relations diplomatiques et la Convention des Nations Unies, ainsi qu'en vertu du droit international général;

   ii) d'ordonner à la République française de reconnaître à l'immeuble sis au 42 avenue Foch à Paris, le statut de propriété de la République de Guinée équatoriale ainsi que de locaux de sa mission diplomatique à Paris, et de lui assurer en conséquence la protection requise par le droit international;

d) En conséquence de l'ensemble des violations par la République française de ses obligations internationales dues à la République de Guinée équatoriale:

   i) de dire et juger que la responsabilité de la République française est engagée du fait du préjudice que les violations de ses obligations internationales ont causé et causent encore à la République de Guinée équatoriale;

   ii) d'ordonner à la République française de payer à la République de Guinée équatoriale une pleine réparation pour le préjudice subi, dont le montant sera déterminé à une étape ultérieure.

119. Certain Iranian Assets (Islamic Republic of Iran v. United States of America) 14 June 2016

to adjudge, order and declare as follows:

a. That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by Iran;

b. That by its acts, including the acts referred to above and in particular its (a) failure to recognise the separate juridical status (including the separate legal personality) of all Iranian companies including Bank Markazi, and (b) unfair and discriminatory treatment of such entities, and their property, which impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights, and (c) failure to accord to such entities and their property the most constant protection and security that is in no case less than that required by international law, (d) expropriation of the property of such entities, and (e) failure to accord to such entities freedom of access to the US courts, including the abrogation of the immunities to which Iran and Iranian State-owned companies, including Bank Markazi, and their property, are entitled under customary international law and as required by the Treaty of Amity, and (f) failure to respect the right of such entities to acquire and dispose of property, and (g) application of restrictions to such entities on the making of payments and other transfers of funds to or from the USA, and (h) interference with the freedom

Declaratory
Specific performance
Compensation
of commerce, the USA has breached its obligations to Iran, inter alia, under Articles III (1), III (2), IV (1), IV (2), V (1), VII (1) and X (1) of the Treaty of Amity;

c. That the USA shall ensure that no steps shall be taken based on the executive, legislative and judicial acts (as referred to above) at issue in this case which are, to the extent determined by the Court, inconsistent with the obligations of the USA to Iran under the Treaty of Amity;

d. That Iran and Iranian State-owned companies are entitled to immunity from the jurisdiction of the US courts and in respect of enforcement proceedings in the USA, and that such immunity must be respected by the USA (including US courts), to the extent established as a matter of customary international law and required by the Treaty of Amity;

e. That the USA (including the US courts) is obliged to respect the juridical status (including the separate legal personality), and to ensure freedom of access to the US courts, of all Iranian companies, including State-owned companies such as Bank Markazi, and that no steps based on the executive, legislative and judicial acts (as referred to above), which involve or imply the recognition or enforcement of such acts shall be taken against the assets or interests of Iran or any Iranian entity or national;

f. That the USA is under an obligation to make full reparations to Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the USA; and

g. Any other remedy the Court may deem appropriate.”

| 120. Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua) | 16 January 2017 | a. To determine the precise location of the land boundary separating both ends of the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos, and in doing so to determine that the only Nicaraguan territory existing today in the area of Isla Portillos is limited to the enclave consisting of Los Portillos/Harbor Head Lagoon and the sandbar separating the Lagoon from the Caribbean Sea, insofar as this sandbar remains above water at all times and thus this enclave is capable of constituting territory appertaining to a State. Consequently, that the land boundary runs today from the northeastern corner of the Lagoon by the shortest line to the Caribbean Sea and from the northwestern corner of the Lagoon by the shortest line to the Caribbean Sea.

b. to adjudge and declare that, by establishing and maintaining a new military camp on the beach of Isla Portillos, Nicaragua has violated the sovereignty and territorial integrity of Costa Rica, and is in breach of the Judgment of the Court of 16 December 2015 in the Certain Activities case. Consequently, Costa Rica further requests the Court to declare that Nicaragua must withdraw its military camp situated in Costa Rican territory and fully comply with the Court’s 2015 Judgment. Costa Rica reserves it rights to seek Declaratory Specific performance
any further remedies with respect to any damage that Nicaragua has or may cause to its territory.

| 121. | 16 January 2017 | Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the Terrorism Financing Convention by:

- Supplying funds, including in-kind contributions of weapons and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Article 18;

- Failing to take appropriate measures to detect, freeze, and seize funds used to assist illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Articles 8 and 18;

- Failing to investigate, prosecute, or extradite perpetrators of the financing of terrorism found within its territory, in violation of Articles 9, 10, 11, and 18;

- Failing to provide Ukraine with the greatest measure of assistance in connection with criminal investigations of the financing of terrorism, in violation of Articles 12 and 18; and

- Failing to take all practicable measures to prevent and counter acts of financing of terrorism committed by Russian public and private actors, in violation of Article 18.

Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation bears international responsibility, by virtue of its sponsorship of terrorism and failure to prevent the financing of terrorism under the Convention, for the acts of terrorism committed by its proxies in Ukraine, including:

- The shoot-down of Malaysian Airlines Flight MH17;

- The shelling of civilians, including in Volnovakha, Mariupol, and Kramatorsk; and

- The bombing of civilians, including in Kharkiv.

Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the Terrorism Financing Convention, including that the Russian Federation:

- Immediately and unconditionally cease and desist from all support, including the provision of money, weapons, and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated... | Declaratory Cessation Specific performance Reparation
groups and individuals;

b. Immediately make all efforts to ensure that all weaponry provided to such armed groups is withdrawn from Ukraine;

c. Immediately exercise appropriate control over its border to prevent further acts of financing of terrorism, including the supply of weapons, from the territory of the Russian Federation to the territory of Ukraine;

d. Immediately stop the movement of money, weapons, and all other assets from the territory of the Russian Federation and occupied Crimea to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, including by freezing all bank accounts used to support such groups;

e. Immediately prevent all Russian officials from financing terrorism in Ukraine, including Sergei Shoigu, Minister of Defense of the Russian Federation; Vladimir Zhirinovsky, Vice-Chairman of the State Duma; Sergei Mironov, member of the State Duma; and Gennadiy Zyuganov, member of the State Duma, and initiate prosecution against these and other actors responsible for financing terrorism;

f. Immediately provide full cooperation to Ukraine in all pending and future requests for assistance in the investigation and interdiction of the financing of terrorism relating to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;

g. Make full reparation for the shoot-down of Malaysian Airlines Flight MH17;

h. Make full reparation for the shelling of civilians in Volnovakha;

i. Make full reparation for the shelling of civilians in Mariupol;

j. Make full reparation for the shelling of civilians in Kramatorsk;

k. Make full reparation for the bombing of civilians in Kharkiv; and

l. Make full reparation for all other acts of terrorism the Russian Federation has caused, facilitated, or supported through its financing of terrorism, and failure to prevent and investigate the financing of terrorism.

B. Relief Sought Under the CERD

Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, including the de facto authorities administering the illegal Russian occupation of
Crimea, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the CERD by:

a. Systematically discriminating against and mistreating the Crimean Tatar and ethnic Ukrainian communities in Crimea, in furtherance of a state policy of cultural erasure of disfavored groups perceived to be opponents of the occupation regime;

b. Holding an illegal referendum in an atmosphere of violence and intimidation against non-Russian ethnic groups, without any effort to seek a consensual and inclusive solution protecting those groups, and as an initial step toward depriving these communities of the protection of Ukrainian law and subjecting them to a regime of Russian dominance;

c. Suppressing the political and cultural expression of Crimean Tatar identity, including through the persecution of Crimean Tatar leaders and the ban on the Mejlis of the Crimean Tatar People;

d. Preventing Crimean Tatars from gathering to celebrate and commemorate important cultural events;

e. Perpetrating and tolerating a campaign of disappearances and murders of Crimean Tatars;

f. Harassing the Crimean Tatar community with an arbitrary regime of searches and detention;

g. Silencing Crimean Tatar media;

h. Suppressing Crimean Tatar language education and the community's educational institutions;

i. Suppressing Ukrainian language education relied on by ethnic Ukrainians;

j. Preventing ethnic Ukrainians from gathering to celebrate and commemorate important cultural events; and

k. Silencing ethnic Ukrainian media.

Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the CERD, including:

a. Immediately cease and desist from the policy of cultural erasure and take all necessary and appropriate measures to guarantee the full and equal protection of the law to all groups in Russian-occupied Crimea, including Crimean Tatars and ethnic Ukrainians;

b. Immediately restore the rights of the Mejlis of the Crimean Tatar People and of Crimean Tatar leaders in Russian-occupied Crimea;

c. Immediately restore the rights of the Crimean Tatar people in Russian-occupied Crimea to engage in cultural gatherings, including the annual commemoration of the Sürgün;
|   | d. Immediately take all necessary and appropriate measures to end the disappearance and murder of Crimean Tatars in Russian-occupied Crimea, and to fully and adequately investigate the disappearances of Reshat Ametov, Timur Shaimardanov, Ervin Ibragimov, and all other victims;  
|   | e. Immediately take all necessary and appropriate measures to end unjustified and disproportionate searches and detentions of Crimean Tatars in Russian-occupied Crimea;  
|   | f. Immediately restore licenses and take all other necessary and appropriate measures to permit Crimean Tatar media outlets to resume operations in Russian-occupied Crimea;  
|   | g. Immediately cease interference with Crimean Tatar education and take all necessary and appropriate measures to restore education in the Crimean Tatar language in Russian-occupied Crimea;  
|   | h. Immediately cease interference with ethnic Ukrainian education and take all necessary and appropriate measures to restore education in the Ukrainian language in Russian-occupied Crimea;  
|   | i. Immediately restore the rights of ethnic Ukrainians to engage in cultural gatherings in Russian-occupied Crimea;  
|   | j. Immediately take all necessary and appropriate measures to permit the free operation of ethnic Ukrainian media in Russian-occupied Crimea; and  
|   | k. Make full reparation for all victims of the Russian Federation’s policy and pattern of cultural erasure through discrimination in Russian-occupied Crimea.  
|   | Application for revision of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Malaysia v. Singapore)  
|   | 2 February 2017 “to adjudge and declare:  
|   | That there exists a new fact of such a nature as to be a decisive factor within the meaning of Article 61 of the Statute of the Court;  
|   | That this Application for revision of the Judgment is admissible; and  
|   | That the Court should, in accordance with Article 99 of the Rules of the Court, fix a time to proceed with consideration of the application for revision.”  
|   | 123. Jadhav Case (India v. Pakistan)  
|   | 8 May 2017 “(1) A relief by way of immediate suspension of the sentence of death awarded to the accused.  
|   | (2) A relief by way of restitution in interregnum by declaring that the sentence of the military court arrived at, in brazen defiance of the Vienna Convention rights under Article 36, particularly Article 36 paragraph 1 (b), and in defiance of elementary human rights of an accused which are also to be given effect as mandated under Article 14 of the 1966 International Covenant on Civil and Political Rights, is violative of international law and
the provisions of the Vienna Convention, and

(3) Restraining Pakistan from giving effect to the sentence awarded by the military court, and directing it to take steps to annul the decision of the military court as may be available to it under the law in Pakistan.

(4) If Pakistan is unable to annul the decision, then this Court to declare the decision illegal being violative of international law and treaty rights and restrain Pakistan from acting in violation of the Vienna Convention and international law by giving effect to the sentence or the conviction in any manner, and directing it to release the convicted Indian National forthwith.”

Annex 8. The Judgments of the International Court of Justice in the Cases submitted through Unilateral Applications

<table>
<thead>
<tr>
<th>NO.</th>
<th>CASE NAME AND PARTIES</th>
<th>DATE OF JUDGMENT</th>
<th>JUDGMENT OF THE COURT</th>
<th>TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Fisheries (United Kingdom v. Norway)</td>
<td>18 December 1951</td>
<td>“rejecting all submissions to the contrary, Finds by ten votes to two, that the method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12th, 1935, is not contrary to international law; and by eight votes to four, that the base-lines fixed by the said Decree in application of this method are not contrary to international law.”</td>
<td>Declaratory</td>
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<tr>
<td>2.</td>
<td>Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)</td>
<td>Order (Discontinuance) 29 March 1950</td>
<td>Discontinued due to the fact that France stated that the measures taken by the Egyptian Government against the persons, property, rights and interests of French nationals and protected persons had been withdrawn, and, as such, that the dispute was virtually settled. Therefore, France notified the Court that it was not going on with the proceedings and requested that its case be removed from the general list.</td>
<td>NA</td>
</tr>
<tr>
<td>3.</td>
<td>Rights of Nationals of the United States of America in Morocco (France v. United States of America)</td>
<td>27 August 1952</td>
<td>“on the Submissions of the Government of the French Republic, unanimously, Rejects its Submissions relating to the Decree of December 30th, 1948, issued by the Resident General of the French Republic in Morocco; unanimously, Finds that the United States of America is</td>
<td>Declaratory</td>
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</table>
entitled, by virtue of the provisions of its Treaty with Morocco of September 16th, 1836, to exercise in the French Zone of Morocco consular jurisdiction in all disputes, civil or criminal, between citizens or protégés of the United States;

by ten votes to one,

Finds that the United States of America is also entitled, by virtue of the General Act of Algeciras of April 7th, 1906, to exercise in the French Zone of Morocco consular jurisdiction in all cases, civil or criminal, brought against citizens or protégés of the United States, to the extent required by the provisions of the Act relating to consular jurisdiction;

by six votes to five,

Rejects, except as aforesaid, the Submissions of the United States of America concerning consular jurisdiction;

unanimously,

Finds that the United States of America is not entitled to claim that the application to citizens of the United States of all laws and regulations in the French Zone of Morocco requires the assent of the Government of the United States, but that the consular courts of the United States may refuse to apply to United States citizens laws or regulations which have not been assented to by the Government of the United States;

on the Counter-Claim of the Government of the United States of America,

by six votes to five,

Rejects the Submissions of the United States of America relating to exemption from taxes;

by seven votes to four,

Rejects the Submissions of the United States of America relating to the consumption taxes imposed by the Shereefian Dahir of February 28th, 1948;

by six votes to five,

Finds that, in applying Article 95 of the General Act of Algeciras, the value of merchandise in the country of origin and its value in the local Moroccan market are both elements in the appraisal of its cash wholesale value delivered at the customhouse."
<table>
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<tr>
<th>Case Study</th>
<th>(Colombia v. Peru)</th>
<th>Findings</th>
<th>Decisions</th>
<th>Specific Performance</th>
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<tbody>
<tr>
<td><strong>Colombia v. Peru</strong></td>
<td>of Colombia and the first Submission of the Government of Peru, unanimously, finds that it cannot give effect to these Submissions and consequently rejects them; on the alternative Submission of the Government of Colombia and the second Submission of the Government of Peru, by thirteen votes to one, finds that Colombia is under no obligation to surrender Victor Raúl Haya de la Torre to the Peruvian authorities; on the third Submission of the Government of Peru, unanimously, finds that the asylum granted to Victor Raúl Haya de la Torre on January 3rd-4th, 1949, and maintained since that time, ought to have ceased after the delivery of the Judgment of November 20th, 1950, and should terminate.</td>
<td><strong>6. Ambatielos (Greece v. United Kingdom)</strong></td>
<td>19 May 1953</td>
<td>“by ten votes to four, finds that the United Kingdom is under an obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity, under the Treaty of 1886, of the Ambatielos claim.”</td>
</tr>
<tr>
<td><strong>Ambatielos (Greece v. United Kingdom)</strong></td>
<td>6.</td>
<td><strong>7. Anglo-Iranian Oil Co. (United Kingdom v. Iran)</strong></td>
<td>22 July 1952</td>
<td>The Court found that it lacked jurisdiction in the present case. Therefore there was no decision on the merits.</td>
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<td><strong>Ambatielos (Greece v. United Kingdom)</strong></td>
<td>6.</td>
<td><strong>8. Nottebohm (Liechtenstein v. Guatemala)</strong></td>
<td>6 April 1955</td>
<td>“by eleven votes to three, Holds that the claim submitted by the Government of the Principality of Liechtenstein is inadmissible.”</td>
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<td><strong>Ambatielos (Greece v. United Kingdom)</strong></td>
<td>6.</td>
<td><strong>9. Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)</strong></td>
<td>15 June 1954</td>
<td>“unanimously, finds that the jurisdiction conferred upon it by the common agreement of France, the United Kingdom, the United States of America and Italy does not, in the absence of the consent of Albania, authorize it to adjudicate upon the first Submission in the Application of the Italian Government; by thirteen votes to one, finds that it cannot adjudicate upon the second Submission in the Application of the Italian Government.”</td>
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<tr>
<td><strong>Ambatielos (Greece v. United Kingdom)</strong></td>
<td>6.</td>
<td><strong>10. Electricité de Beyrouth Company (France v. Lebanon)</strong></td>
<td>Order (Discontinuance) 29 July 1954</td>
<td>Discontinued at France’s request.</td>
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<tr>
<td>Case Description</td>
<td>Decision Date</td>
<td>Decision</td>
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<td>Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. Hungarian People's Republic)</td>
<td>12 July 1954</td>
<td>“the Court finds that it has not before it any acceptance by the Government of the Hungarian People's Republic of the jurisdiction of the Court to deal with the dispute which is the subject of the Application submitted to it by the Government of the United States of America and that therefore it can take no further steps upon this Application.”</td>
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<tr>
<td>Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. Union of Soviet Socialist Republics)</td>
<td>12 July 1954</td>
<td>NA</td>
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<tr>
<td>Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia)</td>
<td>14 March 1956</td>
<td>“the Court finds that it has not before it any acceptance by the Government of the Czechoslovak Republic of the jurisdiction of the Court to deal with the dispute which is the subject of the Application submitted to it by the Government of the United States of America and that therefore it can take no further steps upon this Application.”</td>
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<td>Antarctica (United Kingdom v. Argentina)</td>
<td>16 March 1956</td>
<td>NA</td>
<td></td>
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<tr>
<td>Antarctica (United Kingdom v. Chile)</td>
<td>16 March 1956</td>
<td>“the Court finds that it has not before it any acceptance by the Government of Chile of the jurisdiction of the Court to deal with the dispute which is the subject of the Application submitted to it by the United Kingdom Government and that therefore it can take no further steps upon this Application.”</td>
<td></td>
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<tr>
<td>Aerial Incident of 7 October 1952 (United States of America v. Union of Soviet Socialist Republics)</td>
<td>14 March 1956</td>
<td>NA</td>
<td></td>
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</tr>
<tr>
<td>Certain Norwegian Loans (France v. Norway)</td>
<td>6 July 1957</td>
<td>The Court found that it lacked jurisdiction to hear the case. “by twelve votes to three, finds that it is without jurisdiction to adjudicate upon the dispute which has been brought before it by the Application of the Government of the French Republic of July 6th, 1955.”</td>
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<tr>
<td>Right of Passage over Indian Territory (Portugal v. India)</td>
<td>12 April 1960</td>
<td>“by thirteen votes to two, rejects the Fifth Preliminary Objection;” Declaratory</td>
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</table>
by eleven votes to four,
rejects the Sixth Preliminary Objection;
by eleven votes to four,
finds that Portugal had in 1954 a right of passage over intervening Indian territory between the enclaves of Dadra and Nagar-Aveli and the coastal district of Daman and between these enclaves, to the extent necessary for the exercise of Portuguese sovereignty over the enclaves and subject to the regulation and control of India, in respect of private persons, civil officials and goods in general;
by eight votes to seven,
finds that Portugal did not have in 1954 such a right of passage in respect of armed forces, armed police, and arms and ammunition;
by nine votes to six,
finds that India has not acted contrary to its obligations resulting from Portugal's right of passage in respect of private persons, civil officials and goods in general.”

<table>
<thead>
<tr>
<th>19.</th>
<th>Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)</th>
<th>28 November 1958</th>
<th>&quot;By twelve votes to four, rejects the claim of the Government of the Netherlands.&quot;</th>
<th>Rejected the claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>Interhandel (Switzerland v. United States of America)</td>
<td>21 March 1959</td>
<td>Claim was found inadmissible for not exhausting local remedies available in United States courts. &quot;(...) and by nine votes to six, upholds the Third Preliminary Objection and holds that the Application of the Government of the Swiss Confederation is inadmissible.&quot;</td>
<td>NA</td>
</tr>
<tr>
<td>21.</td>
<td>Aerial Incident of 27 July 1955 (Israel v. Bulgaria)</td>
<td>26 May 1959</td>
<td>&quot;by twelve votes to four, finds that it is without jurisdiction to adjudicate upon the dispute brought before it on October 16th, 1957, by the Application of the Government of Israel.&quot;</td>
<td>NA</td>
</tr>
<tr>
<td>22.</td>
<td>Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)</td>
<td>Order (Discontinuance) 30 May 1960</td>
<td>Discontinued due to request from United States.</td>
<td>NA</td>
</tr>
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<td>23.</td>
<td>Aerial Incident of 27 July 1955 (United Kingdom v. Bulgaria)</td>
<td>Order (Discontinuance) 3 August 1959</td>
<td>Discontinued due to request from United Kingdom.</td>
<td>NA</td>
</tr>
<tr>
<td>24.</td>
<td>Arbitral Award Made by the King of</td>
<td>18 November 1960</td>
<td>&quot;by fourteen votes to one,</td>
<td>Declaratory</td>
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<td>Case Description</td>
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<td>Decision</td>
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<tr>
<td>Spain on 23 December 1906 (Honduras v. Nicaragua)</td>
<td>23 December 1906</td>
<td>Finds that the Award made by the King of Spain on 23 December 1906 is valid and binding and that Nicaragua is under an obligation to give effect to it.</td>
<td>Specific performance</td>
<td></td>
</tr>
<tr>
<td>Aerial Incident of 4 September 1954 (United States of America v. Union of Soviet Socialist Republics)</td>
<td>9 December 1958</td>
<td>“The Court finds that it has not before it any acceptance by the Government of the Union of Soviet Socialist Republics of the jurisdiction of the Court to deal with the dispute which is the subject of the Application submitted to it by the Government of the United States of America and that therefore it can take no further steps upon this Application.”</td>
<td>NA</td>
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<tr>
<td>Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)</td>
<td>Order (Discontinuance) 10 April 1961</td>
<td>Discontinued at the request of the Belgian Government.</td>
<td>NA</td>
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</tr>
<tr>
<td>Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon)</td>
<td>Order (Discontinuance) 31 August 1960</td>
<td>Discontinued due to settlement between the parties.</td>
<td>NA</td>
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</tr>
<tr>
<td>Aerial Incident of 7 November 1954 (United States of America v. Union of Soviet Socialist Republics)</td>
<td>Order (Discontinuance) 7 October 1959</td>
<td>“The Court finds that it has not before it any acceptance by the Government of the Union of Soviet Socialist Republics of the jurisdiction of the Court to deal with the dispute which is the subject of the Application submitted to it by the Government of the United States of America and that therefore it can take no further steps upon this Application.”</td>
<td>NA</td>
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<tr>
<td>Temple of Preah Vihear (Cambodia v. Thailand)</td>
<td>15 June 1962</td>
<td>“By nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia; finds in consequence, by nine votes to three, that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory; by seven votes to five, that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.”</td>
<td>Declaratory Specific performance Restitution in kind</td>
<td></td>
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<td>South West Africa (Ethiopia v. South Africa) Proceedings joined with South West Africa (Liberia v. South Africa)</td>
<td>18 July 1966</td>
<td>“By the President's casting vote - the votes being equally divided, decides to reject the claims of the Empire of Ethiopia and the Republic of Liberia.”</td>
<td>Claims rejected</td>
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<td>Case</td>
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<tr>
<td>South West Africa (Liberia v. South Africa)</td>
<td>18 July 1966</td>
<td>“by the President's casting vote - the votes being equally divided, decides to reject the claims of the Empire of Ethiopia and the Republic of Liberia.”</td>
<td>Claims rejected</td>
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<tr>
<td>Northern Cameroons (Cameroon v. United Kingdom)</td>
<td>2 December 1963</td>
<td>“(...) The Court finds that the proper limits of its judicial function do not permit it to entertain the claims submitted to it in the Application of which it has been seised, with a view to a decision having the authority of res judicata between the Republic of Cameroon and the United Kingdom. Any judgment which the Court might pronounce would be without object. For these reasons, by ten votes to five, finds that it cannot adjudicate upon the merits of the claim of the Federal Republic of Cameroon.”</td>
<td>NA</td>
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<tr>
<td>Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)</td>
<td>5 February 1970</td>
<td>“Since no jus standi before the Court has been established, it is not for the Court in its Judgment to pronounce upon any other aspect of the case, on which it should take a decision only if the Belgian Government had a right of protection in respect of its nationals, shareholders in Barcelona Traction. 103. Accordingly, THE COURT rejects the Belgian Government's claim by fifteen votes to one, twelve votes of the majority being based on the reasons set out in the present Judgment.”</td>
<td>Claim rejected</td>
<td></td>
</tr>
<tr>
<td>Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)</td>
<td>18 August 1972</td>
<td>“by thirteen votes to three, (1) rejects the Government of Pakistan's objections on the question of its competence, and finds that it has jurisdiction to entertain India's appeal; by fourteen votes to two, (2) holds the Council of the International Civil Aviation Organization to be competent to entertain the Application and Complaint laid before it by the Government of Pakistan on 3 March 1971; and in consequence, rejects the appeal made to the Court by the Government of India against the decision of the Council assuming jurisdiction in those respects.”</td>
<td>Declaratory</td>
<td></td>
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<tr>
<td>Fisheries Jurisdiction (United Kingdom of Great Britain and Northern Ireland v. Iceland)</td>
<td>25 July 1974</td>
<td>“by ten votes to four, (1) finds that the Regulations concerning the Fishery Limits off Iceland (Reglagerio urn fiskveilandhelgni jislands) promulgated by the Government of Iceland on 14 July 1972 and constituting a unilateral extension of the exclusive fishing rights of Iceland to 50 nautical miles from the baselines specified therein are not opposable</td>
<td>Declaratory, Specific performance</td>
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to the Government of the United Kingdom;

(2) finds that, in consequence, the Government of Iceland is not entitled unilaterally to exclude United Kingdom fishing vessels from areas between the fishery limits agreed to in the Exchange of Notes of 11 March 1961 and the limits specified in the Icelandic Regulations of 14 July 1972, or unilaterally to impose restrictions on the activities of those vessels in such areas;

by ten votes to four,

(3) holds that the Government of Iceland and the Government of the United Kingdom are under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences concerning their respective fishery rights in the areas specified in subparagraph 2;

(4) holds that in these negotiations the Parties are to take into account, inter alia:

(a) that in the distribution of the fishing resources in the areas specified in subparagraph 2 Iceland is entitled to a preferential share to the extent of the special dependence of its people upon the fisheries in the seas around its coasts for their livelihood and economic development;

(b) that by reason of its fishing activities in the areas specified in subparagraph 2, the United Kingdom also has established rights in the fishery resources of the said areas on which elements of its people depend for their livelihood and economic well-being;

(c) the obligation to pay due regard to the interests of other States in the conservation and equitable exploitation of these resources;

(d) that the above-mentioned rights of Iceland and of the United Kingdom should each be given effect to the extent compatible with the conservation and development of the fishery resources in the areas specified in subparagraph 2 and with the interests of other States in their conservation and equitable exploitation;

(e) their obligation to keep under review those resources and to examine together, in the light of scientific and other available information, such measures as may be required for the conservation and development, and equitable exploitation, of those resources, making use of the machinery established by the North-East Atlantic Fisheries Convention or such other means as may be agreed upon as a result of international negotiations.”

| 36. | Fisheries Jurisdiction (Federal Republic of Germany v. Iceland) | 25 July 1974 | by ten votes to four, | Declaratory Specific performance |
the baselines specified therein are not opposable to the Government of the Federal Republic of Germany;

(2) finds that, in consequence, the Government of Iceland is not entitled unilaterally to exclude fishing vessels of the Federal Republic of Germany from areas between the fishery limits agreed to in the Exchange of Notes of 19 July 1961 and the limits specified in the Icelandic Regulations of 14 July 1972, or unilaterally to impose restrictions on the activities of those vessels in such areas;

by ten votes to four,

(3) holds that the Government of Iceland and the Government of the Federal Republic of Germany are under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences concerning their respective fishery rights in the areas specified in subparagraph 2;

(4) holds that in these negotiations the Parties are to take into account, inter alia:

(a) that in the distribution of the fishing resources in the areas specified in subparagraph 2 Iceland is entitled to a preferential share to the extent of the special dependence of her people upon the fisheries in the seas around her coasts for their livelihood and economic development;

(b) that by reason of its fishing activities in the areas specified in subparagraph 2, the Federal Republic of Germany also has established rights in the fishery resources of the said areas on which elements of its people depend for their livelihood and economic well-being;

(c) the obligation to pay due regard to the interests of other States in the conservation and equitable exploitation of these resources;

(d) that the above-mentioned rights of Iceland and of the Federal Republic of Germany should each be given effect to the extent compatible with the conservation and development of the fishery resources in the areas specified in subparagraph 2 and with the interests of other States in their conservation and equitable exploitation;

(e) their obligation to keep under review those resources and to examine together, in the light of scientific and other available information, such measures as may be required for the conservation and development, and equitable exploitation of those resources, making use of the machinery established by the North-East Atlantic Fisheries Convention or such other means as may be agreed upon as a result of international negotiations;

by ten votes to four,

(5) finds that it is unable to accede to the fourth
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<tr>
<th>No.</th>
<th>Case Description</th>
<th>Date(s)</th>
<th>Decision</th>
<th>Jurisdiction</th>
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<tr>
<td>37.</td>
<td>Nuclear Tests (Australia v. France)</td>
<td>20 December 1974</td>
<td>“by nine votes to six, finds that the claim of Australia no longer has any object and that the Court is therefore not called upon to give a decision thereon.”</td>
<td>NA</td>
</tr>
<tr>
<td>38.</td>
<td>Nuclear Tests (New Zealand v. France)</td>
<td>20 December 1974</td>
<td>“by nine votes to six, finds that the claim of New Zealand no longer has any object and that the Court is therefore not called upon to give a decision thereon.”</td>
<td>NA</td>
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<td>39.</td>
<td>Trial of Pakistani Prisoners of War (Pakistan v. India)</td>
<td>Order (Discontinuance) 15 December 1973</td>
<td>Discontinued at the request of Pakistan due to settlement and ongoing negotiations.</td>
<td>NA</td>
</tr>
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<td>40.</td>
<td>Aegean Sea Continental Shelf (Greece v. Turkey)</td>
<td>19 December 1978</td>
<td>“by 12 votes to 2, finds that it is without jurisdiction to entertain the Application filed by the Government of the Hellenic Republic on 10 August 1976.”</td>
<td>NA</td>
</tr>
<tr>
<td>41.</td>
<td>United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)</td>
<td>24 May 1980</td>
<td>“1. By thirteen votes to two, Decides that the Islamic Republic of Iran, by the conduct which the Court has set out in this Judgment, has violated in several respects, and is still violating, obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general international law; 2. By thirteen votes to two, Decides that the violations of these obligations engage the responsibility of the Islamic Republic of Iran towards the United States of America under international law; 3. Unanimously, Decides that the Government of the Islamic Republic of Iran must immediately take all steps to redress the situation resulting from the events of 4 November 1979 and what followed from these events, and to that end: (a) must immediately terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power (Article 45 of the 1961 Vienna Convention on Diplomatic Relations); (b) must ensure that all the said persons have the necessary means of leaving Iranian territory, including means of transport; (c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy in Tehran and of its Consulates in Iran;”</td>
<td>Declaratory Specific performance Reparation</td>
</tr>
</tbody>
</table>
| 42. | **Military and Paramilitary Activities in and against Nicaragua**  
(Nicaragua v. United States of America) | 27 June 1986 | …(1) By eleven votes to four,  
Decides that in adjudicating the dispute brought before it by the Application filed by the Republic of Nicaragua on 9 April 1984, the Court is required to apply the "multilateral treaty reservation" contained in proviso (c) to the declaration of acceptance of jurisdiction made under Article 36, paragraph 2, of the Statute of the Court by the Government of the United States of America deposited on 26 August 1946;  
(2) By twelve votes to three,  
Rejects the justification of collective self-defence maintained by the United States of America in connection with the military and paramilitary activities in and against Nicaragua the subject of this case;  
(3) By twelve votes to three,  
Decides that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State;  
(4) By twelve votes to three,  
Decides that the United States of America, by certain attacks on Nicaraguan territory in 1983-1984, namely attacks on Puerto Sandino on 13 September and 14 October 1983; an attack on Corinto on 10 October 1983; an attack on Potosi Naval Base on 4/5 January 1984; an attack on San Juan del Sur on 7 March 1984; attacks on patrol boats at Puerto Sandino on 28 and 30 | Declaratory Cessation Reparation |
March 1984; and an attack on San Juan del Norte on 9 April 1984; and further by those acts of intervention referred to in subparagraph (3) hereof which involve the use of force, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to use force against another State;

(5) By twelve votes to three,

Decides that the United States of America, by directing or authorizing overflights of Nicaraguan territory, and by the acts imputable to the United States referred to in subparagraph (4) hereof, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to violate the sovereignty of another State;

(6) By twelve votes to three,

Decides that, by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce;

(7) By fourteen votes to one,

Decides that, by the acts referred to in subparagraph (6) hereof, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Nicaragua signed at Managua on 21 January 1956;

(8) By fourteen votes to one,

Decides that the United States of America, by failing to make known the existence and location of the mines laid by it, referred to in subparagraph (6) hereof, has acted in breach of its obligations under customary international law in this respect;

(9) By fourteen votes to one,

Finds that the United States of America, by producing in 1983 a manual entitled Operaciones sicológicas en guerra de guerrillas, and disseminating it to contra forces, has encouraged the commission by them of acts contrary to general principles of humanitarian law; but does not find a basis for concluding that any such acts which may have been committed are imputable to the United States of America as acts of the United States of America;

(10) By twelve votes to three,

Decides that the United States of America, by the attacks on Nicaraguan territory referred to in
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<th>Paragraph</th>
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<td>subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has committed acts calculated to deprive of its object and purpose the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;</td>
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<td>(11) By twelve votes to three,</td>
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<tr>
<td>Decides that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has acted in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;</td>
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<td>(12) By twelve votes to three,</td>
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<td>Decides that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;</td>
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<td>(13) By twelve votes to three,</td>
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<td>Decides that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law enumerated above;</td>
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<td>(14) By fourteen votes to one,</td>
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<tr>
<td>Decides that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;</td>
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<td>(15) By fourteen votes to one,</td>
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<td>Decides that the form and amount of such reparation, failing agreement between the Parties, will be settled by the Court, and reserves for this purpose the subsequent procedure in the case;</td>
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<td>(16) Unanimously,</td>
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<td>Recalls to both Parties their obligation to seek a solution to their disputes by peaceful means in accordance with international law.”</td>
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<tr>
<th>Division</th>
<th>Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)</th>
<th>10 December 1985</th>
<th>“A. Unanimously,</th>
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<td>Finds inadmissible the request submitted by the Republic of Tunisia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 24 February 1982;</td>
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<td>B. Unanimously,</td>
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<td></td>
<td>(1) Finds admissible the request submitted by the</td>
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Republic of Tunisia for interpretation, under Article 60 of the Statute of the Court, of the Judgment of 24 February 1982 as far as it relates to the first sector of the delimitation contemplated by that Judgment;

(2) Declares, by way of interpretation of the Judgment of 24 February 1982, that the meaning and scope of that part of the Judgment which relates to the first sector of the delimitation are to be understood according to paragraphs 32 to 39 of the present Judgment;

(3) Finds that the submission of the Republic of Tunisia of 14 June 1985 relating to the first sector of the delimitation, cannot be upheld;

C. Unanimously,

Finds that the request of the Republic of Tunisia for the correction of an error is without object and that the Court is therefore not called upon to give a decision thereon;

D. Unanimously,

(1) Finds admissible the request submitted by the Republic of Tunisia for interpretation, under Article 60 of the Statute of the Court, of the Judgment of 24 February 1982 as far as it relates to the "most westerly point of the Gulf of Gabes";

(2) Declares, by way of interpretation of the Judgment of 24 February 1982,

(a) that the reference in paragraph 124 of that Judgment to "approximately 34° 10' 30" north" is a general indication of the latitude of the point which appeared to the Court to be the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes, it being left to the experts of the Parties to determine the precise CO-ordinates of that point; that the latitude of 34° 10' 30" was therefore not intended to be itself binding on the Parties but was employed for the purpose of clarifying what was decided with binding force in paragraph 133 C (3) of that Judgment;

(b) that the reference in paragraph 133 C (2) of that Judgment to "the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to Say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes", and the similar reference in paragraph 133 C (3) are to be understood as meaning the point on that shoreline which is furthest to the West on the low-water mark; and

(c) that it will be for the experts of the Parties, making use of all available cartographic documents and, if necessary, carrying out an ad hoc survey in loco, to determine the precise co-ordinates of that point, whether or not it lies within a channel or the mouth of a wadi, and regardless of whether or not such point might be regarded by the experts as marking a change in
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| No. | Case Title | Date of Order | Disposition | Related Case
|-----|------------|---------------|-------------|----------------
| 44. | Border and Transborder Armed Actions (Nicaragua v. Costa Rica) | 19 August 1987 | Discontinued by Nicaragua due to agreement signed between the parties. | NA |
| 46. | Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy) | 20 July 1989 | "(1) Unanimously, rejects the objection presented by the Italian Republic to the admissibility of the Application filed in this case by the United States of America on 6 February 1987; (2) By four votes to one, finds that the Italian Republic has not committed any of the breaches, alleged in the said Application, of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Rome on 2 February 1948, or of the Agreement Supplementing that Treaty signed by the Parties at Washington on 26 September 1951. (3) By four votes to one, rejects, accordingly, the claim for reparation made against the Republic of Italy by the United States of America." | Declaratory |
| 47. | Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) | 14 June 1993 | "By fourteen votes to one, decides that, within the limits defined (1) to the north by the intersection of the line of equidistance between the coasts of Eastern Greenland and the western coasts of Jan Mayen with the 200-mile limit calculated as from the said coasts of Greenland, indicated on sketch-map No. 2 as point A, and (2) to the south, by the 200-mile limit around Iceland, as claimed by Iceland, between the points of intersection of that limit with the two said lines, indicated on sketch-map No. 2 as..." | Declaratory |
| 48. | Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America) | Order (Discontinuance) 22 February 1996 | Discontinued by agreement of the parties due to settlement. | NA |
| 49. | Certain Phosphate Lands in Nauru (Nauru v. Australia) | Order (Discontinuance) 13 September 1993 | Discontinued by agreement of the parties due to settlement. | NA |
| 50. | Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) | 12 November 1991 | “(1) Unanimously, rejects the submission of the Republic of Guinea-Bissau that the Arbitral Award given on 31 July 1989 by the Arbitration Tribunal established pursuant to the Agreement of 12 March 1985 between the Republic of Guinea-Bissau and the Republic of Senegal, is inexistent; (2) By eleven votes to four, rejects the submission of the Republic of Guinea-Bissau that the Arbitral Award of 31 July 1989 is absolutely null and void; (3) By twelve votes to three, rejects the submission of the Republic of Guinea-Bissau that the Government of Senegal is not justified in seeking to require the Government of Guinea-Bissau to apply the Arbitral Award of 31 July 1989; and, on the submission to that effect of the Republic of Senegal, finds that the Arbitral Award of 31 July 1989 is valid and binding for the Republic of Senegal and the Republic of Guinea-Bissau, which have the obligation to apply it.” | o Declaratory |
| 51. | East Timor (Portugal v. Australia) | 30 June 1995 | “By fourteen votes to two, finds that it cannot in the present case exercise the jurisdiction conferred upon it by the declarations made by the Parties under Article 36, paragraph 2, of its Statute to adjudicate upon the dispute referred to it by the Application of the Portuguese Republic.” | NA |
| 52. | Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal) | Order (Discontinuance) 8 November 1995 | Discontinued at the request of Guinea-Bissau due to out-of-court agreement. | NA |
| 53. | Passage through the Great Belt (Finland v. Denmark) | Order (Discontinuance) 10 September 1992 | Discontinued at the request of Finland due to settlement. | NA |
| 54. | Maritime | 16 March 2001 | (1) Unanimously, | Declaratory |
| 55. | Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) | Order (Discontinuance) 10 September 2003 | Discontinued by the agreement of the parties. | NA |
| 56. | Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) | Order (Discontinuance) 10 September 2003 | Discontinued by the agreement of the parties. | NA |
| 57. | Oil Platforms (Islamic Republic of | (1) By fourteen votes to two, | Declaratory | 🇧🇭 |
| **Iran v. United States of America** | Finds that the actions of the United States of America against Iranian oil platforms on 19 October 1987 and 18 April 1988 cannot be justified as measures necessary to protect the essential security interests of the United States of America under Article XX, paragraph 1 (d), of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, as interpreted in the light of international law on the use of force; finds further that the Court cannot however uphold the submission of the Islamic Republic of Iran that those actions constitute a breach of the obligations of the United States of America under Article X, paragraph 1, of that Treaty, regarding freedom of commerce between the territories of the parties, and that, accordingly, the claim of the Islamic Republic of Iran for reparation also cannot be upheld;  
(2) By fifteen votes to one, | No compensation |
| **Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)** | (1) by ten votes to five,  
Rejects the objections contained in the final submissions made by the Respondent to the effect that the Court has no jurisdiction; and affirms that it has jurisdiction, on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, to adjudicate upon the dispute brought before it on 20 March 1993 by the Republic of Bosnia and Herzegovina;  
(2) by thirteen votes to two,  
Finds that Serbia has not committed genocide, through its organs or persons whose acts engage its responsibility under customary international law, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;  
(3) by thirteen votes to two,  
Finds that Serbia has not conspired to commit genocide, nor incited the commission of genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;  
(4) by eleven votes to four,  
Finds that Serbia has not been complicit in genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide; | Declaratory  
Specific performance  
Satisfaction: the judgment itself  
No compensation |
<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Decision</th>
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<tbody>
<tr>
<td>(5)</td>
<td>by twelve votes to three,</td>
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<tr>
<td></td>
<td>Finds that Serbia has violated the obligation to prevent genocide, under the Convention on the Prevention and Punishment of the Crime of Genocide, in respect of the genocide that occurred in Srebrenica in July 1995;</td>
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<tr>
<td>(6)</td>
<td>by fourteen votes to one,</td>
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<td></td>
<td>Finds that Serbia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed to transfer Ratko Mladic, indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus having failed fully to co-operate with that Tribunal;</td>
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<td>(7)</td>
<td>by thirteen votes to two,</td>
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<td></td>
<td>Finds that Serbia has violated its obligation to comply with the provisional measures ordered by the Court on 8 April and 13 September 1993 in this case, inasmuch as it failed to take all measures within its power to prevent genocide in Srebrenica in July 1995;</td>
</tr>
<tr>
<td>(8)</td>
<td>by fourteen votes to one,</td>
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<td></td>
<td>Decides that Serbia shall immediately take effective steps to ensure full compliance with its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide to punish acts of genocide as defined by Article II of the Convention, or any of the other acts proscribed by Article III of the Convention, and to transfer individuals accused of genocide or any of those other acts for trial by the International Criminal Tribunal for the former Yugoslavia, and to co-operate fully with that Tribunal;</td>
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<td>(9)</td>
<td>by thirteen votes to two,</td>
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<td></td>
<td>Finds that, as regards the breaches by Serbia of the obligations referred to in subparagraphs (5) and (7) above, the Court’s findings in those paragraphs constitute appropriate satisfaction, and that the case is not one in which an order for payment of compensation, or, in respect of the violation referred to in subparagraph (5), a direction to provide assurances and guarantees of non-repetition, would be appropriate.”</td>
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<tr>
<th>Date</th>
<th>Decision</th>
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<tbody>
<tr>
<td>10 October 2002</td>
<td>“I. (A) By fourteen votes to two,</td>
</tr>
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<td></td>
<td>Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;</td>
</tr>
<tr>
<td></td>
<td>(B) By fourteen votes to two,</td>
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</table>

Declaratory

Specific performance
Decides that the line of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is as follows:

From a tripoint in Lake Chad lying at 14°04'59"9999 longitude east and 13°05' latitude north, in a straight line to the mouth of the River Ebeji, lying at 14°12'12" longitude east and 12°32'17" latitude north; and from there in a straight line to the point where the River Ebeji bifurcates, located at: 14°12'03" longitude east and 12°30'14" latitude north;

II. (A) By fifteen votes to one,

Decides that the land boundary between the Republic of Cameroon and the Federal Republic of Nigeria is delimited, from Lake Chad to the Bakassi Peninsula, by the following instruments:

(i) from the point where the River Ebeji bifurcates as far as Tamnyar Peak, by paragraphs 2 to 60 of the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

(ii) from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;

(iii) from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913;

(B) Unanimously,

Decides that the aforesaid instruments are to be interpreted in the manner set out in paragraphs 91, 96, 102, 114, 119, 124, 129, 134, 139, 146, 152, 155, 160, 168, 179, 184 and 189 of the present Judgment;

III. (A) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913;

(B) By thirteen votes to three,

Decides that sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon;

(C) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi follows the thalweg of the Akpakorum (Akwayafe) Fkiver, dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as the straight line joining Bakassi Point and King Point;

IV. (A) By thirteen votes to three,
Finds, having addressed Nigeria's eighth preliminary objection, which it declared in its Judgment of 11 June 1998 not to have an exclusively preliminary character in the circumstances of the case, that it has jurisdiction over the claims submitted to it by the Republic of Cameroon regarding the delimitation of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria, and that those claims are admissible;

(B) By thirteen votes to three,

Decides that, up to point G below, the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

- starting from the point of intersection of the centre of the navigable channel of the Akwayafe River with the straight line joining Bakassi Point and King Point as referred to in point III (C) above, the boundary follows the "compromise line" drawn jointly at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 (Yaoundé II Declaration) and passing through 12 numbered points, whose CO-ordinates are as follows: (...) - from point 12, the boundary follows the line adopted in the Declaration signed by the Heads of State of Cameroon and Nigeria at Maroua on 1 June 1975 (Maroua Declaration), as corrected by the exchange of letters between the said Heads of State of 12 June and 17 July 1975; that line passes through points A to G, whose co-ordinates are as follows: (...) (C) Unanimously,

Decides that, from point G, the boundary line between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 270° as far as the equidistance line passing through the midpoint of the line joining West Point and East Point; the boundary meets this equidistance line at a point X, with co-ordinates 8°21'20" longitude east and 4°17'00" latitude north;

(D) Unanimously,

Decides that, from point X, the boundary between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 187°52'27";

V. (A) By fourteen votes to two,

Decides that the Federal Republic of Nigeria is under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the territories which fall within the sovereignty of the Republic
of Cameroon pursuant to points I and III of this operative paragraph;

(B) Unanimously,

Decides that the Republic of Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in the territories which fall within the sovereignty of the Federal Republic of Nigeria pursuant to point II of this operative paragraph. The Federal Republic of Nigeria has the same obligation in respect of the territories which fall within the sovereignty of the Republic of Cameroon pursuant to point II of this operative paragraph;

(C) By fifteen votes to one,

Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, "faithful to its traditional policy of hospitality and tolerance", it "will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area";

(D) Unanimously,

Rejects all other submissions of the Republic of Cameroon regarding the State responsibility of the Federal Republic of Nigeria;

(E) Unanimously,

Rejects the counter-claims of the Federal Republic of Nigeria.”

60. Fisheries Jurisdiction (Spain v. Canada) 4 December 1998

“By twelve votes to five,

Finds that it has no jurisdiction to adjudicate upon the dispute brought before it by the Application filed by the Kingdom of Spain on 28 March 1995.”


“(1) By twelve votes to three,

Finds that the "Request for an Examination of the Situation" in accordance with paragraph 63 of the Judgment of the Court of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case; submitted by New Zealand on 21 August 1995, does not fall within the provisions of the said paragraph 63 and must consequently be dismissed;

(2) By twelve votes to three,

Finds that the "Further Request for the Indication of Provisional Measures" submitted by New Zealand on the same date must be dismissed;

(3) By twelve votes to three,

Finds that the "Application for Permission to Intervene" submitted by Australia on 23 August 1995, and the "Applications for Permission to Intervene" and "Declarations of Intervention"
<table>
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<tr>
<th></th>
<th>Case Description</th>
<th>Date</th>
<th>Decision</th>
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<tr>
<td>64.</td>
<td>Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)</td>
<td>30 November 2010</td>
<td>NA</td>
</tr>
</tbody>
</table>
(6) By nine votes to five,
Finds that the Democratic Republic of the Congo
has not violated Mr. Diallo’s direct rights as associé in Africom-Zaire and AfricontainersZaire;

(7) Unanimously,
Finds that the Democratic Republic of the Congo
is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) above;

(8) Unanimously,
Decides that, failing agreement between the Parties on this matter within six months from the date of this Judgment, the question of compensation due to the Republic of Guinea shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case."

“(1) By fifteen votes to one,
Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the non-material injury suffered by Mr. Diallo at US$85,000;
(2) By fifteen votes to one,
Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US$10,000;

(3) By fourteen votes to two,
Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion;

(4) Unanimously,
Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings;

(5) Unanimously,
Decides that the total amount of compensation due under points 1 and 2 above shall be paid by 31 August 2012 and that, in case it has not been
paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to the Republic of Guinea will accrue as from 1 September 2012 at an annual rate of 6 per cent;

(6) By fifteen votes to one,
Rejects the claim of the Republic of Guinea concerning the costs incurred in the proceedings.”

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<th>65.</th>
<th>LaGrand (Germany v. United States of America)</th>
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<td>“(1) By fourteen votes to one,</td>
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</table>
Finds that it has jurisdiction, on the basis of Article 1 of the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations of 24 April 1963, to entertain the Application filed by the Federal Republic of Germany on 2 March 1999; |

(2) (a) By thirteen votes to two, |
Finds that the first submission of the Federal Republic of Germany is admissible ; |

(b) By fourteen votes to one, |
Finds that the second submission of the Federal Republic of Germany is admissible ; |

(c) By twelve votes to three, |
Finds that the third submission of the Federal Republic of Germany is admissible; |

(d) By fourteen votes to one, |
Finds that the fourth submission of the Federal Republic of Germany is admissible; |

(3) By fourteen votes to one, |
Finds that, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36, paragraph I (b), of the Convention, and by thereby depriving the Federal Republic of Germany of the possibility, in a timely fashion, to render the assistance provided for by the Convention to the individuals concerned, the United States of America breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under Article 36, paragraph 1; |

(4) By fourteen votes to one, |
Finds that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the convictions and sentences of the LaGrand brothers after the violations referred to in paragraph (3) above had been established, the United States of America breached its obligation to the Federal Republic of Germany and to the LaGrand brothers under Article 36, paragraph 2, of the Convention; |

(5) By thirteen votes to two, | Declaratory |
Guarantee of non-repetition: declaration made by USA |
Specific performance |
Finds that, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice in the case, the United States of America breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999;

(6) Unanimously,

Takes note of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Convention; and finds that this commitment must be regarded as meeting the Federal Republic of Germany's request for a general assurance of non-repetition;

(7) By fourteen votes to one,

Finds that should nationals of the Federal Republic of Germany nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention.”

<table>
<thead>
<tr>
<th>No.</th>
<th>Legality of Use of Force</th>
<th>Date</th>
<th>Decision</th>
<th>Jurisdiction</th>
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<tbody>
<tr>
<td>66.</td>
<td>Serbia and Montenegro v. Belgium</td>
<td>15 December 2004</td>
<td>“Unanimously, Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999.”</td>
<td>NA</td>
</tr>
<tr>
<td>67.</td>
<td>Serbia and Montenegro v. Canada</td>
<td>15 December 2004</td>
<td>“Unanimously, Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999.”</td>
<td>NA</td>
</tr>
<tr>
<td>68.</td>
<td>Serbia and Montenegro v. France</td>
<td>15 December 2004</td>
<td>“Unanimously, Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999.”</td>
<td>NA</td>
</tr>
<tr>
<td>69.</td>
<td>Serbia and Montenegro v. Germany</td>
<td>15 December 2004</td>
<td>“Unanimously, Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999.”</td>
<td>NA</td>
</tr>
<tr>
<td>70.</td>
<td>Serbia and Montenegro v. Italy</td>
<td>15 December 2004</td>
<td>“Unanimously, Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999.”</td>
<td>NA</td>
</tr>
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<td>71.</td>
<td>Serbia and Montenegro v.</td>
<td>15 December 2004</td>
<td>“Unanimously, Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia</td>
<td>NA</td>
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</tbody>
</table>
| **72.** | **Legality of Use of Force**  
(Serbia and Montenegro v. Portugal) | 15 December 2004 | "Unanimously,  
Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999." | NA |
| **73.** | **Legality of Use of Force**  
(Yugoslavia v. Spain) | Order 2 June 1999 | The Court concluded that in this case it manifestly lacked jurisdiction and, thus, removed the case from the List.  
"(2) By thirteen votes to three, Orders that the case be removed from the List." | NA |
| **74.** | **Legality of Use of Force**  
(Serbia and Montenegro v. United Kingdom) | 15 December 2004 | "Unanimously,  
Finds that it has no jurisdiction to entertain the claims made in the Application filed by Serbia and Montenegro on 29 April 1999." | NA |
| **75.** | **Legality of Use of Force**  
(Yugoslavia v. United States of America) | Order 2 June 1999 | The Court concluded that in this case it manifestly lacked jurisdiction and, thus, removed the case from the List.  
"(2) By twelve votes to three, Orders that the case be removed from the List." | NA |
| **76.** | **Armed Activities on the Territory of the Congo**  
(Democratic Republic of the Congo v. Burundi) | Order (Discontinuance) 30 January 2001 | Discontinued by the Democratic Republic of the Congo. | NA |
| **77.** | **Armed Activities on the Territory of the Congo**  
(Democratic Republic of the Congo v. Uganda) | 19 December 2005 | "(1) By sixteen votes to one,  
Finds that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter’s territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention;  
(2) Unanimously,  
Finds admissible the claim submitted by the Democratic Republic of the Congo relating to alleged violations by the Republic of Uganda of its obligations under international human rights law and international humanitarian law in the course of hostilities between Ugandan and Rwandan military forces in Kisangani;  
(3) By sixteen votes to one,  
Finds that the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, | Declaratory Reparation |
incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law;

(4) By sixteen votes to one,

Finds that the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law;

(5) Unanimously,

Finds that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused;

(6) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Democratic Republic of the Congo shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case;

(7) By fifteen votes to two,

Finds that the Republic of Uganda did not comply with the Order of the Court on provisional measures of 1 July 2000;

(8) Unanimously, Rejects the objections of the Democratic Republic of the Congo to the admissibility of the first counter-claim submitted by the Republic of Uganda;

(9) By fourteen votes to three,

Finds that the first counter-claim submitted by the Republic of Uganda cannot be upheld;

(10) Unanimously,

Rejects the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the breach of the Vienna Convention on Diplomatic Relations of 1961;

(11) By sixteen votes to one,

Upholds the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the maltreatment of
individuals other than Ugandan diplomats at Ndjili International Airport on 20 August 1998;

(12) Unanimously,

Finds that the Democratic Republic of the Congo, by the conduct of its armed forces, which attacked the Ugandan Embassy in Kinshasa, maltreated Ugandan diplomats and other individuals on the Embassy premises, maltreated Ugandan diplomats at Ndjili International Airport, as well as by its failure to provide the Ugandan Embassy and Ugandan diplomats with effective protection and by its failure to prevent archives and Ugandan property from being seized from the premises of the Ugandan Embassy, violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961;

(13) Unanimously,

Finds that the Democratic Republic of the Congo is under obligation to make reparation to the Republic of Uganda for the injury caused;

(14) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Republic of Uganda shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.”

Note: Judgment on reparation is pending.

| 78. | Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda) | Order (Discontinuance) 30 January 2001 | Discontinued by the Democratic Republic of the Congo. | NA |
| 79. | Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia) | 3 February 2015 | “(1) By eleven votes to six, Rejects the second jurisdictional objection raised by Serbia and finds that its jurisdiction to entertain Croatia’s claim extends to acts prior to 27 April 1992; (2) By fifteen votes to two, Rejects Croatia’s claim; (3) Unanimously, Rejects Serbia’s counter-claim.” | Claim rejected |
| 80. | Aerial Incident of 10 August 1999 (Pakistan v. India) | 21 June 2000 | “By fourteen votes to two, Finds that it has no jurisdiction to entertain the Application filed by the Islamic Republic of Pakistan on 21 September 1999.” | NA |
| 81. | Territorial and Maritime Dispute between Nicaragua | 8 October 2007 | “(1) Unanimously, Finds that the Republic of Honduras has | Declaratory Specific |
and Honduras in the Caribbean Sea (Nicaragua v. Honduras)

- **sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay:**

  (2) By fifteen votes to two,

  Decides that the starting-point of the single maritime boundary that divides the territorial sea, continental shelf and exclusive economic zones of the Republic of Nicaragua and the Republic of Honduras shall be located at a point with the co-ordinates 15° 00′ 52″ N and 83° 05′ 58″ W;

  (3) By fourteen votes to three,

  Decides that starting from the point with the co-ordinates 15° 00′ 52″ N and 83° 05′ 58″ W the line of the single maritime boundary shall follow the azimuth 70° 14′ 41.25″ until its intersection with the 12-nautical-mile arc of the territorial sea of Bobel Cay at point A (with co-ordinates 15° 05′ 25″ N and 82° 52′ 54″ W). From point A the boundary line shall follow the 12-nautical-mile arc of the territorial sea of Bobel Cay in a southerly direction until its intersection with the 12-nautical-mile arc of the territorial sea of Edinburgh Cay at point B (with co-ordinates 14° 57′ 13″ N and 82° 50′ 03″ W). From point B the boundary line shall continue along the median line which is formed by the points of equidistance between Bobel Cay, Port Royal Cay and South Cay (Honduras) and Edinburgh Cay (Nicaragua), through point C (with co-ordinates 14° 56′ 35″ N and 82° 33′ 56″ W) and D (with co-ordinates 14° 56′ 35″ N and 82° 33′ 20″ W), until it meets the point of intersection of the 12-nautical-mile arcs of the territorial seas of South Cay (Honduras) and Edinburgh Cay (Nicaragua) at point E (with co-ordinates 14° 53′ 15″ N and 82° 29′ 24″ W). From point E the boundary line shall follow the 12-nautical-mile arc of the territorial sea of South Cay in a northerly direction until it meets the line of the azimuth at point F (with co-ordinates 15° 16′ 08″ N and 82° 21′ 56″ W). From point F, it shall continue along the line having the azimuth of 70° 14′ 41.25″ until it reaches the area where the rights of third States may be affected;

  (4) By sixteen votes to one,

  Finds that the Parties must negotiate in good faith with a view to agreeing on the course of the delimitation line of that portion of the territorial sea located between the endpoint of the land boundary as established by the 1906 Arbitral Award and the starting-point of the single maritime boundary determined by the Court to be located at the point with the co-ordinates 15° 00′ 52″ N and 83° 05′ 58″ W.”

| 82. | Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) | 14 February 2002 | "(1) (A) By fifteen votes to one,

  Rejects the objections of the Kingdom of Belgium relating to jurisdiction, mootness and admissibility;" | Declaratory Specific performance |
(B) By fifteen votes to one,
Finds that it has jurisdiction to entertain the Application filed by the Democratic Republic of the Congo on 17 October 2000;

(C) By fifteen votes to one, F
inds that the Application of the Democratic Republic of the Congo is not without object and that accordingly the case is not moot;

(D) By fifteen votes to one,
Finds that the Application of the Democratic Republic of the Congo is admissible;

(2) By thirteen votes to three,
Finds that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law;

(3) By ten votes to six,
Finds that the Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated.”

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<td>84</td>
<td>Certain Property (Liechtenstein v. Germany)</td>
<td>10 February 2005</td>
<td>“(1) (a) by fifteen votes to one, Rejects the preliminary objection that there is no dispute between Liechtenstein and Germany; (b) by twelve votes to four, Upholds the preliminary objection that Liechtenstein’s Application should be rejected on</td>
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| 85. | Territorial and Maritime Dispute (Nicaragua v. Colombia) | 19 November 2012 | **(1) Unanimously,**<br>Finds that the Republic of Colombia has sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla;<br>(2) By fourteen votes to one,<br>Finds admissible the Republic of Nicaragua’s claim contained in its final submission I (3) requesting the Court to adjudge and declare that "[t]he appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties";<br>(3) **Unanimously,**<br>Finds that it cannot uphold the Republic of Nicaragua’s claim contained in its final submission I (3);<br>(4) **Unanimously,**<br>Decides that the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of the Republic of Nicaragua and the Republic of Colombia shall follow geodetic lines connecting the points with co-ordinates: (…)<br>(5) **Unanimously,**<br>Decides that the single maritime boundary around Quitasueño and Serrana shall follow, respectively, a 12-nautical-mile envelope of arcs measured from QS 32 and from low-tide elevations located within 12 nautical miles from QS 32, and a 12-nautical-mile envelope of arcs measured from Serrana Cay and the other cays in its vicinity;<br>(6) **Unanimously,**<br>Rejects the Republic of Nicaragua’s claim contained in its final submissions requesting the Court to declare that the Republic of Colombia is not acting in accordance with its obligations under international law by preventing the Republic of Nicaragua from having access to natural resources to the east of the 82nd meridian." | **Declaratory** |

<p>| 86. | Armed Activities on 3 February 2006 | &quot;By fifteen votes to two,&quot; | NA |</p>
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<tr>
<td>Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)</td>
<td>18 December 2003</td>
<td>“By four votes to one, Finds that the Application submitted by the Republic of El Salvador for revision, under Article 61 of the Statute of the Court, of the Judgment given on 11 September 1992, by the Chamber of the Court formed to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), is inadmissible.”</td>
<td>NA</td>
</tr>
<tr>
<td>Avena and Other Mexican Nationals (Mexico v. United States of America)</td>
<td>31 March 2004</td>
<td>“(1) By thirteen votes to two, Rejects the objection by the United Mexican States to the admissibility of the objections presented by the United States of America to the jurisdiction of the Court and the admissibility of the Mexican claims; (2) Unanimously, Rejects the four objections by the United States of America to the jurisdiction of the Court; (3) Unanimously, Rejects the five objections by the United States of America to the admissibility of the claims of the United Mexican States; (4) By fourteen votes to one, Finds that, by not informing, without delay upon their detention, the 51 Mexican nationals referred to in paragraph 106 (1) above of their rights under Article 36, paragraph 1 (h), of the Vienna Convention on Consular Relations of 24 April 1463, the United States of America breached the obligations incumbent upon it under that subparagraph; (5) By fourteen votes to one, Finds that, by not notifying the appropriate Mexican consular post without delay of the detention of the 49 Mexican nationals referred to in paragraph 106 (2) above and thereby depriving the United Mexican States of the right, in a timely fashion, to render the assistance provided for by the Vienna Convention to the individuals concerned, the United States of America breached the obligations incumbent upon it under Article 36, paragraph 1 (b); (6) By fourteen votes to one, Finds that, in relation to the 49 Mexican nationals referred to in paragraph 106 (3) above,</td>
<td>Declaratory Specific performance</td>
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</table>
the United States of America deprived the United Mexican States of the right, in a timely fashion, to communicate with and have access to those nationals and to visit them in detention, and thereby breached the obligations incumbent upon it under Article 36, paragraph 1 (a) and (c), of the Convention.

(7) By fourteen votes to one,

Finds that, in relation to the 34 Mexican nationals referred to in paragraph 106 (4) above, the United States of America deprived the United Mexican States of the right, in a timely fashion, to arrange for legal representation of those nationals, and thereby breached the obligations incumbent upon it under Article 36, paragraph 1 (c), of the Convention;

(8) By fourteen votes to one,

Finds that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the conviction and sentences of Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera, after the violations referred to in subparagraph (4) above had been established in respect of those individuals, the United States of America breached the obligations incumbent upon it under Article 36, paragraph 2, of the Convention;

(9) By fourteen votes to one,

Finds that the appropriate reparation in this case consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals referred to in subparagraphs (41, (51, (6) and (75 above, by taking account both of the violation of the rights set forth in Article 36 of the Convention and of paragraphs 138 to 141 of this Judgment;

(10) Unanimously,

Takes note of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), or the Vienna Convention; and finds that this commitment must be regarded as meeting the request by the United Mexican States for guarantees and assurances of non-repetition;

(11) Unanimously,

Finds that, should Mexican nationals nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (h) of the Convention having been respected, the United States of America shall provide, by means of its own choosing, review and reconsideration of the conviction and sentence, so as to allow full weight to be given to the violation of the rights set forth in the Convention.
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<td>89.</td>
<td>Certain Criminal Proceedings in France (Republic of the Congo v. France)</td>
<td>16 November 2010</td>
<td>Discontinued by the Republic of the Congo.</td>
<td>NA</td>
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<td>90.</td>
<td>Maritime Delimitation in the Black Sea (Romania v. Ukraine)</td>
<td>3 February 2009</td>
<td>“Unanimously, Decides that starting from Point 1, as agreed by the Parties in Article 1 of the 2003 State Border Régime Treaty, the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea shall follow the 12-nautical-mile arc of the territorial sea of Ukraine around Serpents’ Island until Point 2 (with coordinates 45° 03’ 18.5” N and 30° 09’ 24.6” E) where the arc intersects with the line equidistant from Romania’s and Ukraine’s adjacent coasts. From Point 2 the boundary line shall follow the equidistance line through Points 3 (with coordinates 44° 46’ 38.7” N and 30° 58’ 37.3” E) and 4 (with coordinates 44° 44’ 13.4” N and 31° 10’ 27.7” E) until it reaches Point 5 (with coordinates 44° 02’ 53.0” N and 31° 24’ 35.0” E). From Point 5 the maritime boundary line shall continue along the line equidistant from the opposite coasts of Romania and Ukraine in a southerly direction starting at a geodetic azimuth of 185° 23’ 54.5” until it reaches the area where the rights of third States may be affected.”</td>
<td>Declaratory</td>
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</table>
| 91. | Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) | 13 July 2009 | (1) As regards Costa Rica’s navigational rights on the San Juan River under the 1858 Treaty, in that part where navigation is common,  
(a) Unanimously, 
Finds that Costa Rica has the right of free navigation on the San Juan River for purposes of commerce;  
(b) Unanimously, 
Finds that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of passengers;  
(c) Unanimously, 
Finds that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of tourists;  
(d) By nine votes to five, 
Finds that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica’s right of free navigation are not required to obtain Nicaraguan visas;  
(e) Unanimously, 
Finds that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica’s right of free navigation are not required to obtain Nicaraguan visas; | Declaratory No reparation |
River on board Costa Rican vessels exercising Costa Rica’s right of free navigation are not required to purchase Nicaraguan tourist cards;

(f) By thirteen votes to one,

Finds that the inhabitants of the Costa Rican bank of the San Juan River have the right to navigate on the river between the riparian communities for the purposes of the essential needs of everyday life which require expeditious transportation;

(g) By twelve votes to two,

Finds that Costa Rica has the right of navigation on the San Juan River with official vessels used solely, in specific situations, to provide essential services for the inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants’ requirements;

(h) Unanimously,

Finds that Costa Rica does not have the right of navigation on the San Juan River with vessels carrying out police functions;

(i) Unanimously,

Finds that Costa Rica does not have the right of navigation on the San Juan River for the purposes of the exchange of personnel of the police border posts along the right bank of the river and of the re-supply of these posts, with official equipment, including service arms and ammunition;

(2) As regards Nicaragua’s right to regulate navigation on the San Juan River, in that part where navigation is common,

(a) Unanimously,

Finds that Nicaragua has the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan River;

(b) Unanimously,

Finds that Nicaragua has the right to require persons travelling on the San Juan River to carry a passport or an identity document;

(c) Unanimously,

Finds that Nicaragua has the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica’s right of free navigation but does not have the right to request the payment of a charge for the issuance of such certificates;

(d) Unanimously,

Finds that Nicaragua has the right to impose timetables for navigation on vessels navigating on
the San Juan River;
(c) Unanimously,
Finds that Nicaragua has the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag;
(3) As regards subsistence fishing,
By thirteen votes to one,
Finds that fishing by the inhabitants of the Costa Rican bank of the San Juan River for subsistence purposes from that bank is to be respected by Nicaragua as a customary right;
(4) As regards Nicaragua’s compliance with its international obligations under the 1858 Treaty,
(a) By nine votes to five,
Finds that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica’s right of free navigation to obtain Nicaraguan visas;
(b) Unanimously,
Finds that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica’s right of free navigation to purchase Nicaraguan tourist cards;
(c) Unanimously,
Finds that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires the operators of vessels exercising Costa Rica’s right of free navigation to pay charges for departure clearance certificates;
(5) Unanimously,
Rejects all other submissions presented by Costa Rica and Nicaragua.”


| 93. | Pulp Mills on the River Uruguay (Argentina v. Uruguay) | 20 April 2010 | “(1) By thirteen votes to one,
Finds that the Eastern Republic of Uruguay has breached its procedural obligations under Articles 7 to 12 of the 1975 Statute of the River Uruguay and that the declaration by the Court of this breach constitutes appropriate satisfaction;” | Declaratory Satisfaction: declaration of breach |
(2) By eleven votes to three,
Finds that the Eastern Republic of Uruguay has not breached its substantive obligations under Articles 35, 36 and 41 of the 1975 Statute of the River Uruguay;
(3) Unanimously,
Rejects all other submissions by the Parties.”

| 94. | Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France) | 4 June 2008 | **(1) As regards the jurisdiction of the Court,**
(a) Unanimously,
Finds that it has jurisdiction to adjudicate upon the dispute concerning the execution of the letter rogatory addressed by the Republic of Djibouti to the French Republic on 3 November 2004;
(b) By fifteen votes to one,
Finds that it has jurisdiction to adjudicate upon the dispute concerning the summons as witness addressed to the President of the Republic of Djibouti on 17 May 2005, and the summonses as “témoins assistés” (legally assisted witnesses) addressed to two senior Djiboutian officials on 3 and 4 November 2004 and 17 June 2005;
(c) By twelve votes to four,
Finds that it has jurisdiction to adjudicate upon the dispute concerning the summons as witness addressed to the President of the Republic of Djibouti on 14 February 2007;
(d) By thirteen votes to three,
Finds that it has no jurisdiction to adjudicate upon the dispute concerning the arrest warrants issued against two senior Djiboutian officials on 27 September 2006;
(2) As regards the final submissions of the Republic of Djibouti on the merits,
(a) Unanimously,
Finds that the French Republic, by not giving the Republic of Djibouti the reasons for its refusal to execute the letter rogatory presented by the latter on 3 November 2004, failed to comply with its international obligation under Article 17 of the Convention on Mutual Assistance in Criminal Matters between the two Parties, signed in Djibouti on 27 September 1986, and that its finding of this violation constitutes appropriate satisfaction;
(b) By fifteen votes to one,
Rejects all other final submissions presented by the Republic of Djibouti.”
| 95. | Maritime Dispute (Peru v. Chile) | 27 January 2014 | **(1) By fifteen votes to one,**
Decides that the starting-point of the single maritime boundary delimiting the respective maritime areas between the Republic of Peru and the Republic of Chile is the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line;

(2) By fifteen votes to one,

Decides that the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward;

(3) By ten votes to six,

Decides that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting-point of the single maritime boundary;

(4) By ten votes to six,

Decides that from Point A, the single maritime boundary shall continue south-westward along the line equidistant from the coasts of the Republic of Peru and the Republic of Chile, as measured from that point, until its intersection (at Point B) with the 200-nautical-mile limit measured from the baselines from which the territorial sea of the Republic of Chile is measured. From Point B, the single maritime boundary shall continue southward along that limit until it reaches the point of intersection (Point C) of the 200-nautical-mile limits measured from the baselines from which the territorial seas of the Republic of Peru and the Republic of Chile, respectively, are measured;

(5) By fifteen votes to one,

Decides that, for the reasons given in paragraph 189 above, it does not need to rule on the second final submission of the Republic of Peru.”

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<td>96. Aerial Herbicide Spraying (Ecuador v. Colombia)</td>
<td>Order (Discontinuance) 13 September 2013</td>
<td>Discontinued by Ecuador.</td>
<td>NA</td>
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| 97. Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) | 19 January 2009 | “(1) By eleven votes to one, 
Finds that the matters claimed by the United Mexican States to be in issue between the Parties, requiring an interpretation under Article 60 of the Statute, are not matters which have been decided by the Court in its Judgment of 31 March 2004 in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America), including paragraph 153 (9), and thus cannot give rise to the interpretation requested by the United Mexican States;

(2) Unanimously,
Finds that the United States of America has breached the obligation incumbent upon it under | Declaratory |
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<td>98.</td>
<td>Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)</td>
<td>1 April 2011</td>
<td>“(1) (a) By twelve votes to four, Rejects the first preliminary objection raised by the Russian Federation; (b) By ten votes to six, Upholds the second preliminary objection raised by the Russian Federation; (2) By ten votes to six, Finds that it has no jurisdiction to entertain the Application filed by Georgia on 12 August 2008.”</td>
<td>NA</td>
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<td>99.</td>
<td>Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)</td>
<td>5 December 2011</td>
<td>“(1) By fourteen votes to two, Finds that it has jurisdiction to entertain the Application filed by the former Yugoslav Republic of Macedonia on 17 November 2008 and that this Application is admissible; (2) By fifteen votes to one, Finds that the Hellenic Republic, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, has breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995; (3) By fifteen votes to one, Rejects all other submissions made by the former Yugoslav Republic of Macedonia.”</td>
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<td>100.</td>
<td>Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)</td>
<td>3 February 2012</td>
<td>“(1) By twelve votes to three, Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the</td>
<td>Declaratory Specific performance</td>
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(2) By fourteen votes to one,

Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by taking measures of constraint against Villa Vigoni;

(3) By fourteen votes to one,

Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich;

(4) By fourteen votes to one,

Finds that the Italian Republic must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which the Federal Republic of Germany enjoys under international law cease to have effect;

(5) Unanimously,

Rejects all other submissions made by the Federal Republic of Germany.”

101. Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) 20 July 2012

“(1) Unanimously,

Finds that it has jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which the Kingdom of Belgium submitted to the Court in its Application filed in the Registry on 19 February 2009;

(2) By fourteen votes to two,

Finds that it has no jurisdiction to entertain the claims of the Kingdom of Belgium relating to alleged breaches, by the Republic of Senegal, of obligations under customary international law;

(3) By fourteen votes to two,

Finds that the claims of the Kingdom of Belgium based on Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 are admissible;

(4) By fourteen votes to two,

Finds that the Republic of Senegal, by failing to
make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré, has breached its obligation under Article 6, paragraph 2, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

(5) By fourteen votes to two,

Finds that the Republic of Senegal, by failing to submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, has breached its obligation under Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

(6) Unanimously,

Finds that the Republic of Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it does not extradite him.”

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<td>102.</td>
<td>Certain Questions concerning Diplomatic Relations (Honduras v. Brazil)</td>
<td>Order (Discontinuance) 12 May 2010</td>
<td>Discontinued by Honduras.</td>
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<td>103.</td>
<td>Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)</td>
<td>Order (Discontinuance) 5 April 2011</td>
<td>Discontinued by Belgium.</td>
<td>NA</td>
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| 104.        | Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)    | 31 March 2014       | "(1) Unanimously,  
Finds that it has jurisdiction to entertain the Application filed by Australia on 31 May 2010;  
(2) By twelve votes to four,  
Finds that the special permits granted by Japan in connection with JARPA II do not fall within the provisions of Article VIII, paragraph 1, of the International Convention for the Regulation of Whaling;  
(3) By twelve votes to four,  
Finds that Japan, by granting special permits to kill, take and treat fin, humpback and Antarctic minke whales in pursuance of JARPA II, has not acted in conformity with its obligations under paragraph 10 (e) of the Schedule to the International Convention for the Regulation of Whaling;  
(4) By twelve votes to four,  
Finds that Japan has not acted in conformity with its obligations under paragraph 10 (d) of the Schedule to the International Convention for the | Declaratory Specific performance |
105. Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) joined with Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) 16 December 2015

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<th>Regulation of Whaling in relation to the killing, taking and treating of fin whales in pursuance of JARPA II;</th>
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<td>(5) By twelve votes to four, Finds that Japan has not acted in conformity with its obligations under paragraph 7 (b) of the Schedule to the International Convention for the Regulation of Whaling in relation to the killing, taking and treating of fin whales in the &quot;Southern Ocean Sanctuary&quot; in pursuance of JARPA II;</td>
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<tr>
<td>(6) By thirteen votes to three, Finds that Japan has complied with its obligations under paragraph 30 of the Schedule to the International Convention for the Regulation of Whaling with regard to JARPA II;</td>
</tr>
<tr>
<td>(7) By twelve votes to four, Decides that Japan shall revoke any extant authorization, permit or licence granted in relation to JARPA II, and refrain from granting any further permits in pursuance of that programme.”</td>
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<p>| (1) By fourteen votes to two, Finds that Costa Rica has sovereignty over the &quot;disputed territory&quot;, as defined by the Court in paragraphs 69-70 of the present Judgment; |
| (2) Unanimously, Finds that, by excavating three caños and establishing a military presence on Costa Rican territory, Nicaragua has violated the territorial sovereignty of Costa Rica; |
| (3) Unanimously, Finds that, by excavating two caños in 2013 and establishing a military presence in the disputed territory, Nicaragua has breached the obligations incumbent upon it under the Order indicating provisional measures issued by the Court on 8 March 2011; |
| (4) Unanimously, Finds that, for the reasons given in paragraphs 135-136 of the present Judgment, Nicaragua has breached Costa Rica’s rights of navigation on the San Juan River pursuant to the 1858 Treaty of Limits; |
| (5) (a) Unanimously, Finds that Nicaragua has the obligation to compensate Costa Rica for material damages caused by Nicaragua’s unlawful activities on Costa Rican territory; |
| (b) Unanimously, | Declaratory Compensation |</p>
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<td>106.  Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)</td>
<td>11 November 2013</td>
<td>&quot;(1) Unanimously, Finds that it has jurisdiction under Article 60 of the Statute to entertain the Request for interpretation of the 1962 Judgment presented by Cambodia, and that this Request is admissible; (2) Unanimously, Declares, by way of interpretation, that the Judgment of 15 June 1962 decided that Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment, and that, in consequence, Thailand was under an obligation to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there. &quot;</td>
<td>Declaratory</td>
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<td>107.  Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)</td>
<td></td>
<td>Note: Judgment on the merits is pending. By Judgment of 24 September 2015, the Court found that it had jurisdiction to entertain the Application.</td>
<td>NA</td>
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<tr>
<td>108.  Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)</td>
<td></td>
<td>Note: Judgment on the merits is pending. By Judgment of 17 March 2016, the Court found that it had jurisdiction to entertain the First Request put forward by Nicaragua.</td>
<td>NA</td>
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<td>109.  Alleged Violations of Sovereign Rights and</td>
<td></td>
<td>Note: Judgment on the merits is pending.</td>
<td>NA</td>
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<tr>
<td>Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)</td>
<td>By Judgment of 17 March 2016, the Court found that it had jurisdiction to entertain part of the request put forward by Nicaragua.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110. Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)</td>
<td>Order (Discontinuance) 11 June 2015 Discontinued by Timor-Leste.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>111. Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)</td>
<td>Note: Judgment is pending.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>112. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)</td>
<td>5 October 2016 “(1) By nine votes to seven, Upholds the objection to jurisdiction raised by India, based on the absence of a dispute between the Parties; (2) By ten votes to six, Finds that it cannot proceed to the merits of the case.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>113. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)</td>
<td>5 October 2016 “(1) By nine votes to seven, Upholds the objection to jurisdiction raised by Pakistan, based on the absence of a dispute between the Parties; (2) By ten votes to six, Finds that it cannot proceed to the merits of the case.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>114. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)</td>
<td>5 October 2016 (1) By eight votes to eight, by the President’s casting vote, Upholds the first preliminary objection to jurisdiction raised by the United Kingdom of Great Britain and Northern Ireland, based on the absence of a dispute between the Parties; (2) By nine votes to seven, Finds that it cannot proceed to the merits of the case.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>115. Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)</td>
<td>Note: judgment on merits is pending. By Judgment of 2 February 2017, the Court found that it has jurisdiction to entertain the Application, and that the Application is admissible.</td>
<td></td>
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</tr>
<tr>
<td>116. Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)</td>
<td>Note: judgment is pending.</td>
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<td></td>
</tr>
<tr>
<td>117. Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)</td>
<td>Note: Judgment is pending.</td>
<td></td>
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</tr>
<tr>
<td>118. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)</td>
<td>5 October 2016 “(1) By nine votes to seven, Upholds the objection to jurisdiction raised by Pakistan, based on the absence of a dispute between the Parties; (2) By ten votes to six, Finds that it cannot proceed to the merits of the case.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>119. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)</td>
<td>5 October 2016 (1) By eight votes to eight, by the President’s casting vote, Upholds the first preliminary objection to jurisdiction raised by the United Kingdom of Great Britain and Northern Ireland, based on the absence of a dispute between the Parties; (2) By nine votes to seven, Finds that it cannot proceed to the merits of the case.”</td>
<td></td>
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</tr>
<tr>
<td>120. Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)</td>
<td>Note: judgment on merits is pending. By Judgment of 2 February 2017, the Court found that it has jurisdiction to entertain the Application, and that the Application is admissible.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>121. Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)</td>
<td>Note: judgment is pending.</td>
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<tr>
<td>No.</td>
<td>Case Title</td>
<td>Status</td>
<td>Notes</td>
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<tr>
<td>117</td>
<td>Immunities and Criminal Proceedings (Equatorial Guinea v. France)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
<tr>
<td>118</td>
<td>Certain Iranian Assets (Islamic Republic of Iran v. United States of America)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
<tr>
<td>119</td>
<td>Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td>Proceedings joined with Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) on 2 February 2017</td>
<td></td>
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<tr>
<td>120</td>
<td>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. Russian Federation)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
<tr>
<td>121</td>
<td>Application for revision of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
<tr>
<td>122</td>
<td>Jadhav Case (India v. Pakistan)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
<tr>
<td>123</td>
<td>Request for Interpretation of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)</td>
<td>Note: judgment is pending.</td>
<td>NA</td>
</tr>
</tbody>
</table>
Statistics

**PCIJ Special Agreement Requests and Judgments**

- **PCIJ Special Agreement Requests**
  - Total: 11
  - Declaratory: 10
  - Compensation: 3
  - Specific Performance: 1

- **PCIJ Special Agreement Judgments**
  - Total: 9
  - Declaratory: 9
  - Other: 2
  - Discontinued: 2

Legend:
- Blue: Total
- Red: Declaratory
- Green: Compensation
- Purple: Specific Performance
- Teal: Unknown
- Orange: Discontinued
PCIJ Unilateral Application Requests and Judgments

PCIJ Unilateral Application Requests
- Total: 22
- Declaratory: 20
- Compensation: 8
- Reparation: 2
- Specific Performance: 3
- Cessation: 1
- Unknown: 1

PCIJ Unilateral Application Judgments
- Total: 15
- Declaratory: 10
- Compensation: 2
- Reparation: 0
- Specific Performance: 0
- Cessation: 0
- Unknown: 1
- Discontinued: 4
- Inadmissible/No jurisdiction/Claims entirely rejected: 6
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