CURRENT DEVELOPMENTS

THE 2012 JUDICIAL ACTIVITY OF THE INTERNATIONAL COURT OF JUSTICE

*By Jacob Katz Cogan**

The International Court of Justice rendered four judgments in 2012: on February 3, a ruling on the merits in *Jurisdictional Immunities of the State* (Germany v. Italy; Greece intervening), finding that Italy had violated its obligations under customary international law and requiring Italy to ensure that the decisions of its judicial authorities that infringed Germany's immunities would cease to have effect;[1] on June 19, a ruling on the compensation owed by the respondent in *Diallo* (Guinea v. Democratic Republic of the Congo), awarding Guinea $85,000 for non-material injury to Diallo and $10,000 for material injury to his personal property;[2] on July 20, a ruling on jurisdiction, admissibility, and the merits in *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), finding jurisdiction and admissibility, and holding that Senegal had breached its obligations under Articles 6 and 7 the UN Convention Against Torture (CAT);[3] and on November 19, a ruling on admissibility and the merits in *Territorial and Maritime Dispute* (Nicaragua v. Colombia), finding admissible one of Nicaragua's final submissions (which Colombia had challenged as a new claim), deciding that Colombia has sovereignty over a number of contested maritime features, and establishing a single maritime boundary delimiting the continental shelf and exclusive economic zones of the two countries.[4] The Court also gave an advisory opinion in *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed Against the International Fund for Agricultural Development* (IFAD Advisory Opinion), finding jurisdiction, deciding to comply with the fund's request for an opinion, and stating its opinion that the ILO Administrative Tribunal had competence to hear the complaint and that the Tribunal's decision was valid.[5]

The year 2012 was unique for the degree to which the Court engaged with other international judicial or quasi-judicial decision makers.[6] Previously, the Court had cited arbitral

* Judge Joseph P. Kinneary Professor of Law, University of Cincinnati College of Law.

[1] Jurisdictional Immunities of the State (Ger. v. It.; Greece intervening) (Int'l Ct. Justice Feb. 3, 2012). All the materials of the Court cited in this report are available on its website, http://www.icj-cij.org.

[2] Diallo (Guinea v. Dem. Rep. Congo), Compensation Owed by the Democratic Republic of the Congo to the Republic of Guinea (Int'l Ct. Justice June 19, 2012) [hereinafter Diallo, Compensation].

[3] Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.) (Int'l Ct. Justice July 20, 2012).

[4] Territorial and Maritime Dispute (Nicar. v. Colom.) (Int'l Ct. Justice Nov. 19, 2012).

[5] Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed Against the International Fund for Agricultural Development, Advisory Opinion (Int'l Ct. Justice Feb. 1, 2012). The Court also issued orders fixing the time limits in a number of other pending cases.

[6] The decisions of other tribunals may be discussed for a variety of reasons. I refer here to citations that indicate that the Court considers the decisions important enough (as a matter of status or persuasive reasoning) that they

https://doi.org/10.5305/amerjintelaw.107.3.0587 Published online by Cambridge University Press

tribunals,[7] the decisions of human rights courts and treaty bodies,[8] the International Criminal Tribunals for the Former Yugoslavia and Rwanda,[9] and the Court of Justice of the European Communities.[10] With the exception of arbitral decisions, which have been referred to in maritime delimitation cases for some time, these citations to other tribunals were recent (within the past decade) and sporadic.[11] This year the Court went well beyond its previous practice. In *Jurisdictional Immunities of the State*, the Court canvassed decisions of the European Court of Human Rights.[12] In *Diallo*, the Court relied on the decisions of a host of tribunals.[13] In *Questions Relating to the Obligation to Prosecute or Extradite*, the Court consulted a decision of the Committee Against Torture.[14] In *Territorial and Maritime Dispute*, the Court referred to a recent judgment of the International Tribunal for the Law of the Sea and the awards of several arbitral tribunals.[15] And in the *IFAD Advisory Opinion*, the Court found persuasive a General Comment of the Human Rights Committee.[16] At no point in the past had the Court so embraced the jurisprudence of other tribunals.[17]

merit reference or discussion. *See* Maurice Mendelson, *The International Court of Justice and the Sources of International Law*, *in* FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE: ESSAYS IN HONOUR OF SIR ROBERT JENNINGS 63, 81–82 (Vaughan Lowe & Malgosia Fitzmaurice eds., 1996).

[7] *See, e.g.*, Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can./U.S.), 1984 ICJ REP. 246, paras. 92, 123, 187 (Oct. 12) (citing Delimitation of the Continental Shelf (UK/Fr.), 18 R.I.A.A. 3 (1977)); Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay./Sing.), 2008 ICJ REP. 12, para. 222 (May 23) (citing Territorial Sovereignty and Scope of the Dispute (Eri./Yemen), 22 R.I.A.A. 209 (1998)); Maritime Delimitation in the Black Sea (Rom. v. Ukr.), 2009 ICJ REP. 61, paras. 149, 198 (Feb. 3) (citing Second Stage, Maritime Delimitation (Eri./Yemen), 22 R.I.A.A. 335 (1999) and Delimitation of Exclusive Economic Zone and Continental Shelf (Barb. v. Trin. & Tobago), 27 R.I.A.A. 147 (2006)).

[8] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ REP. 13, paras. 109, 112 (July 9) (citing Human Rights Committee and Committee on Economic, Social and Cultural Rights); Diallo (Guinea v. Dem. Rep. Congo), 2010 ICJ REP. 639, paras. 66–68, 77 (Nov. 30) (citing Human Rights Committee, African Commission on Human and Peoples' Rights, European Court of Human Rights, and Inter-American Court of Human Rights).

[9] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 2007 ICJ REP. 43 *passim* (Feb. 26).

[10] Application of the Interim Accord of 13 September 1995 (Former Yugo. Rep. Maced. v. Greece), para. 109 (Int'l Ct. Justice Dec. 5, 2011).

[11] The Court has not explained its limited citation practice, though it has given hints. *See*, *e.g.*, Barcelona Traction, Light and Power Co. (Belg. v. Spain), Second Phase, 1970 ICJ REP. 3, para. 63 (Feb. 5) ("The Parties have also relied on the general arbitral jurisprudence . . . . However, in most cases the decisions cited rested upon the terms of instruments establishing the jurisdiction of the tribunal . . . ; they cannot therefore give rise to generalization . . . . "). Only in 2010 did the Court explicitly recognize the importance of consulting and respecting the work of treaty bodies. *See* Diallo, *supra* note 8, para. 66.

[12] *See* Jurisdictional Immunities of the State, *supra* note 1, paras. 72, 73, 76, 78, 90, 96. As discussed below, the Court in this case also extensively considered the decisions of national courts as evidence of customary international law.

[13] *See* Diallo, Compensation, *supra* note 2, *passim*.

[14] *See* Questions Relating to the Obligation to Prosecute or Extradite, *supra* note 3, para. 101.

[15] *See* Territorial and Maritime Dispute, *supra* note 4, paras. 125, 178, 179, 198, 220, 223, 227, 231, 241, 244.

[16] *See* IFAD Advisory Opinion, *supra* note 5, para. 39.

[17] The Court provided no explanation for this apparent change in direction. Some case-specific explanations were given. In *Territorial and Maritime Dispute*, para. 114, the Court noted that the "Parties . . . agree[d] that the applicable law . . . [was] customary international law reflected in the case law of this Court, the International Tribunal for the Law of the Sea . . . and international arbitral courts and tribunals." And in *Diallo, Compensation*, para. 13, the Court referred to the absence of its own case law on compensation. Interestingly, President Tomka, in his speech to the Sixth Committee in November, quoted a 2007 speech of President Higgins, who said that the "so-called 'fragmentation of international law' is best avoided by regular dialogue between courts and exchanges of information." Rosalyn Higgins, ICJ President, Statement at the Meeting of Legal Advisers of the Ministries of Foreign Affairs 3

I. THE COURT'S JUDICIAL ACTIVITY

Jurisdictional Immunities of the State (Germany v. Italy; Greece Intervening)

In February, the Court decided *Jurisdictional Immunities of the State*, in which Germany claimed that Italy had violated its international obligations by not according Germany immunity in three categories of cases before Italian courts: civil claims brought by Italian nationals against Germany alleging violations of international humanitarian law between September 1943 and May 1945; measures of constraint brought by the holders of a Greek judgment against "Villa Vigoni," a "German State property used for government non-commercial purposes"; and proceedings declaring that Greek judgments against Germany concerning civil claims pertaining to the Distomo massacre were enforceable.[18] The Court decided in Germany's favor in all regards and found that Italy "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."[19] Within four months of the Court's judgment, three Italian courts, including the Court of Cassation, had given effect, with variant reasoning, to the Court's judgment in separate cases, and by year's end, the Italian Parliament had adopted a law that allowed Italian courts to review their prior decisions, including final judgments, that ran afoul of the Court's judgment.[20] In November, Italy also announced its intention to accept the Court's compulsory jurisdiction, joining four other states that have done so since December 2011 (the most concentrated acceptance of the Court's jurisdiction in some time).[21] As the *Journal* has already published a case report on the Court's judgment,[22] and as the decision has been (and will continue to be) the subject of much commentary, only one point concerning the Court's practice will be mentioned here.

(Oct. 29, 2007), *quoted in* Peter Tomka, ICJ President, Speech to the Sixth Committee of the General Assembly 12 (Nov. 2, 2012). Judge Greenwood was more explicit in his justification. He wrote, in a declaration attached to the *Diallo* compensation judgment:

> International law is not a series of fragmented specialist and self-contained bodies of law, each of which functions in isolation from the others; it is a single, unified system of law and each international court can, and should, draw on the jurisprudence of other international courts and tribunals, even though it is not bound necessarily to come to the same conclusions.

Diallo, Compensation, Decl. Greenwood, J., para. 8.

[18] Jurisdictional Immunities of the State, *supra* note 1, para. 17. For the Court's decision declaring Italy's counterclaim inadmissible, see Jacob Katz Cogan, *The 2010 Judicial Activity of the International Court of Justice*, 105 AJIL 477, 486 (2011). For the Court's decision allowing Greece to intervene as a nonparty, see Jacob Katz Cogan, *The 2011 Judicial Activity of the International Court of Justice*, 106 AJIL 586, 601 (2012) [hereinafter *2011 Judicial Activity of the ICJ*].

[19] Jurisdictional Immunities of the State, para. 139(4).

[20] *See* 95 RIVISTA DI DIRITTO INTERNAZIONALE 583 (reporting the decision of the Tribunal of Florence), 916 (reporting the decision of the Court of Appeals of Turin), 1196 (reporting the decision of the Court of Cassation) (2012); Annalisa Ciampi, *L'Italia attua la sentenza della Corte internazionale di giustizia nel caso* Germania c. Italia, 96 RIVISTA DI DIRITTO INTERNAZIONALE 146 (2013); Giuseppe Nesi, *The Quest for a 'Full' Execution of the ICJ Judgment in* Germany v. Italy, 11 J. INT'L CRIM. JUST. 185 (2013).

[21] UN Docs. A/67/PV.29 (Nov. 1, 2012), at 13 (statement of Cesare Maria Ragaglini, permanent representative of Italy to the United Nations), C.N.800.2011.TREATIES-1 (Dec. 15, 2011) (Ireland), C.N.582.2012.TREATIES-I.4 (Sept. 26, 2012) (Lithuania), C.N.594.2012.TREATIES-I.4 (Oct. 4, 2012) (Timor-Leste) & C.N.261.2013.TREATIES-I.4 (Apr. 24, 2013) (Marshall Islands). As of this writing, the secretary-general has yet to communicate that Italy has deposited a declaration.

[22] Alexander Orakhelashvili, Case Report: Jurisdictional Immunities of the State (Germany v. Italy; Greece Intervening), 106 AJIL 609 (2012).

In the absence of any treaty that bound both parties in the case, the Court based its decision on customary international law. It cited the familiar definition of custom as the combination of state practice and *opinio juris*,[23] went on to explain where to find evidence of each component of custom in the context of state immunity,[24] and then proceeded accordingly, issue by issue. Seldom, if ever, has the Court engaged, as it did here, in such an extensive canvassing of the evidence for or against the existence of a purported rule of customary international law, looking at national judicial decisions, national legislation, and statements made by states before international forums. The Court's discussion of national court decisions was especially remarkable. Conventionally, the Court has looked to the acts of executive branches as evidence of state practice. On the rare occasion, it had made general references to national court decisions, but it had not previously cited particular rulings as positive evidence.[25] Here, the Court treated national court decisions as evidence of state practice and provided extensive citations to specific cases from many jurisdictions.[26] The Court's approach to determining the customary international law of state immunity contrasted with the method for examining foreign minister immunity in its 2002 *Arrest Warrant* judgment, where it took a more functional approach.[27] Here, the depth of the Court's investigation into state practice allowed it to issue a ruling on an inherently sensitive subject with confidence that it would be accepted as reflective of current law.

Diallo (Guinea v. Democratic Republic of the Congo)

In June, the Court fixed the amount of compensation due to Guinea in *Diallo*, awarding $85,000 for nonmaterial injury to Ahmadou Sadio Diallo and an additional $10,000 for material injury to his personal property.[28] The Court declined to award Guinea compensation for the alleged loss of his professional remuneration,[29] and it also declined to award Guinea compensation for the alleged deprivation of his potential earnings.[30] One of the Court's longest running cases—at nearly fourteen years—thus came to an end. Just a few points of general interest need be made here, as the *Journal* has published a case report on the judgment.[31]

[23] *See* Jurisdictional Immunities of the State, paras. 54–55.

[24] *See id.*, para. 55.

[25] *See, e.g.*, Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 ICJ REP. 3, para. 58 (Feb. 14) ("The Court has carefully examined State practice, including national legislation and those few decisions of national higher courts, such as the House of Lords [*Pinochet*] or the French Court of Cassation [*Qaddafi*]. It has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity . . . ."); Nottebohm (Liech. v. Guat.), Second Phase, 1955 ICJ REP. 4, 22 (Apr. 6) (referring to the decisions of national courts but not to a specific court or decision). *See generally* André Nollkaemper, *The Role of Domestic Courts in the Case Law of the International Court of Justice*, 5 CHINESE J. INT'L L. 301 (2006); Anthea Roberts, *Comparative International Law? The Role of National Courts in Creating and Enforcing International Law*, 60 INT'L & COMP. L.Q. 57 (2011). Individual judges have more frequently made reference to national court decisions.

[26] *See, e.g.*, Jurisdictional Immunities of the State, paras. 64, 68, 72–76, 85–87, 96, 118, 130; *see also* Ingrid Wuerth, *International Law in Domestic Courts and the* Jurisdictional Immunities of the State *Case*, 13 MELB. J. INT'L L. 819 (2012).

[27] *See* Arrest Warrant of 11 April 2000, para. 54.

[28] Diallo, Compensation, *supra* note 2, paras. 61(1), (2).

[29] *Id.*, para. 61(3).

[30] *Id.*, para. 61(4).

[31] *See* Mads Andenas, Case Report: Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo), 107 AJIL 178 (2013).

This case was only the second in which the Court was called upon to fix the amount of compensation, and it was the first in which it had to do so based on the competing contentions of the parties. In *Corfu Channel*, the lone previous case in which the amount of compensation was at issue, the Court's analysis was limited—restricted to determining whether the amounts submitted by the United Kingdom were "well-founded in law and fact," in accordance with Article 53, paragraph 2, of the Statute—as Albania did not appear during the compensation phase of the proceedings. In *Diallo*, the parties presented competing amounts: Guinea claimed $11,590,148, not including its request for $500,000 in costs, and the Democratic Republic of the Congo set the total at $30,000, all for nonmaterial damage.[32] The Court therefore had to evaluate the evidence presented, though it noted that the initial burden, as a general matter, was on Guinea since "it [was] for the party which allege[d] a particular fact in support of its claims to prove the existence of that fact."[33] The burden was Guinea's, yet the Court noted repeatedly that Guinea failed to submit the evidence necessary to substantiate its claims and that Guinea made claims that were beyond the scope of the proceedings. Given Guinea's failure to provide the requisite evidence, the Court decided to assume that nonmaterial injury was "an inevitable consequence of [the Democratic Republic of the Congo's] wrongful acts" and reasoned that "[q]uantification of compensation for non-material injury necessarily rests on equitable considerations." On that basis, the Court awarded Guinea $85,000 for the "wrongful conduct [that] caused [Diallo] significant psychological suffering and loss of reputation,"[34] and $10,000 for the loss of personal property.[35] The total amount was less than 1 percent of what Guinea had requested, but given the scope of the wrongful acts and the paucity of the evidence presented, this amount was unsurprising. What was awarded was based on equity and not evidence, but equity has its limits. As Judge Greenwood noted in his declaration, "equity is not alchemy."[36] Indeed, a fair argument can be made that, compared to the decisions of other tribunals, the amount awarded ($1180.56 per day for nonmaterial damages) was too much, even when taking into account factors beyond Diallo's wrongful detention, such as the effects of, and the apparent motivation for, his expulsion.[37]

Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)

In July, the Court upheld Belgium's claim that Senegal had breached its obligations under the UN Convention Against Torture.[38] The case stemmed from the presence in Senegal of Hissène Habré, the former president of Chad who was granted political asylum subsequent to his ouster from power in December 1990. In 2000, seven Chadian nationals and a victims' association filed a complaint against Habré in Dakar, which resulted in the issuance of an

[32] Diallo, Compensation, para. 10.
[33] *Id.*, para 15.
[34] *Id.*, paras. 21, 24.
[35] *See id.*, para. 33.
[36] *See id.*, Decl. Greenwood, J., para. 5.
[37] *See id.*, Judgment, paras. 21–23 (aggravating factors according to the Court); *id.*, Decl. Greenwood, J., paras. 9–11; *see also id.*, Sep. Op. Mampuya, J. *ad hoc*.
[38] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20 (1988), 1465 UNTS 113. For the Court's earlier decision on Belgium's request for the indication of provisional measures, see Jacob Katz Cogan, *The 2009 Judicial Activity of the International Court of Justice*, 104 AJIL 605, 613 (2010).

indictment. That indictment was quickly challenged by Habré and quashed for lack of jurisdiction, a decision affirmed by the Senegal Court of Cassation in 2001. Separately, in 2000 and 2001, more than twenty persons, mostly Chadian nationals but also several Belgian nationals of Chadian original or with dual Belgian-Chadian nationality, filed complaints against Habré in Belgium.[39] In September 2005, following years of investigation, a Belgian judge issued an arrest warrant for Habré based on an indictment for, among other things, torture, crimes against humanity, war crimes, and genocide. Shortly thereafter, Belgium requested Habré's extradition from Senegal. This request was effectively rejected, as were two others issued in 2011; a fourth request, from January 2012, was pending on the day of the Court's judgment. Belgium brought this case to the Court in 2009. In its application, Belgium alleged claims under the CAT and customary international law, both of which, it asserted, obligated Senegal either to prosecute Habré or extradite him to Belgium. Belgium founded the Court's jurisdiction to hear the CAT claims on Article 30, paragraph 1, of the treaty and also on the declarations made by both states under Article 36, paragraph 2, of the Court's Statute; its customary international law claims, however, could be heard only if the terms of the parties' Article 36 declarations were satisfied.

In its judgment, the Court found unanimously that it had jurisdiction under Article 30 to entertain the dispute concerning the interpretation and application the CAT.[40] Jurisdiction existed, though, only insofar as Belgium's claims pertained to Articles 6 and 7 of the Convention. The Court found that it did not have jurisdiction concerning Belgium's additional claim under CAT Article 5, paragraph 2, since there was no dispute between the parties on that matter when the application was filed; by that time, as Belgium acknowledged, Senegal had complied with its Article 5 obligations.[41] The Court also decided that it did not have jurisdiction to entertain the allegations relating to violations of customary international law, because no dispute existed between the parties on that issue, as was required by Senegal's Article 36 declaration.[42] The Court found that Belgium's CAT claims were admissible; like all parties to the treaty, Belgium was entitled to bring the claims because it had a "common interest in compliance with [the Convention's] obligations" at issue in this case, which are *erga omnes partes*.[43]

On the merits, the Court decided that Senegal had breached its obligations under Article 6, paragraph 2, of the CAT by "failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré."[44] The Court decided that

[39] None of the Belgian nationals had Belgian nationality when the alleged crimes were committed.

[40] Questions Relating to the Obligation to Prosecute or Extradite, *supra* note 3, para. 122(1). Because the Court found jurisdiction under the CAT, it decided not to consider whether it also had jurisdiction to entertain the CAT claims under Article 36, paragraph 2, of the Statute. *See id.*, para. 63.

[41] *See* Questions Relating to the Obligation to Prosecute or Extradite, paras. 47–48. The Court was less formalistic in finding the existence of a dispute and the inability of the parties to settle the dispute through negotiation than it had been a year earlier in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Geor. v. Russ.), Preliminary Objections (Int'l Ct. Justice Apr. 1, 2011). It, too, was lenient concerning Article 30's requirement that resort can be made to the Court only if "the Parties are unable to agree on the organization of the arbitration" within six months of the request. Questions Relating to the Obligation to Prosecute or Extradite, para. 61.

[42] Questions Relating to the Obligation to Prosecute or Extradite, paras. 54–55, 122(2). In contrast to its finding on the CAT, the Court was formalistic when it came to jurisdiction to hear the customary international law claim, as Judge Abraham noted, dissenting on this point. *See id.*, Sep. Op. Abraham, J., paras. 11–22.

[43] *Id.*, Judgment, paras. 68, 122(3).

[44] *Id.*, para. 122(4).

Senegal had also breached its obligations under Article 7, paragraph 1, by "failing to submit the case [of Mr. Habré] to its competent authorities for the purpose of prosecution."[45] Having so decided, the Court found unanimously that Senegal "must, without further delay, submit the case [of Mr. Habré] to its competent authorities for the purpose of prosecution, if it does not extradite him."[46]

The Court's decisions on jurisdiction and admissibility had the effect of limiting the scope of its inquiry into the Convention's obligations and restricting the range of the remedy that it would impose. Because Belgium's claims concerning customary international law were out of bounds, the Court did not decide "whether there exists an obligation for a State to prosecute crimes under customary international law that were allegedly committed by a foreign national abroad."[47] And because the Court decided that Belgium had standing as a state party to the Convention to bring a claim concerning Senegal's alleged breach of its obligations *erga omnes partes*, it did not need "to pronounce on whether Belgium also has a special interest with respect to Senegal's compliance with the [CAT]."[48] Consequently, the Court did not decide whether Belgium was a state to which Senegal was required to extradite Habré if it did not prosecute him itself.[49] For the same reason, though having found that Senegal breached its obligations, the Court did not require Senegal to extradite Habré *to Belgium* should it not submit the case for prosecution itself.[50] The Court did not specify the states to which Habré might be extradited if that eventuality transpired.[51]

Though the Court's inquiry was thus limited, its judgment still helpfully articulated the obligations of state parties under Articles 6 and 7 of the Convention. Concerning Article 6, paragraph 2, the Court explained that "the preliminary inquiry provided for . . . is intended, like any inquiry carried out by the competent authorities, to corroborate or not the suspicions

[45] *Id.*, para. 122(5).

[46] *Id.*, para. 122(6).

[47] *Id.*, paras. 54–55. From the separate opinions, it is evident that a number of judges (though how many is unclear) would have decided that there is no such customary rule. *See*, *e.g.*, *id.*, Sep. Op. Abraham, J., paras. 21–40; *id.*, Diss. Op. Sur, J. *ad hoc*, para. 21. This issue is currently under discussion at the International Law Commission. *See* Sean D. Murphy, *The Expulsion of Aliens and Other Topics: The Sixty-Fourth Session of the International Law Commission*, 107 AJIL 164, 175–76 (2013).

[48] Questions Relating to the Obligation to Prosecute or Extradite, para. 70. The implications of the Court's granting standing to Belgium on the basis of alleged breaches of obligations *erga omnes partes* are potentially wide reaching. Writing separately, Judge Skotnikov was critical of the Court's approach, noting that Belgium clearly brought the case as an injured state. *See id.,* Sep. Op. Skotnikov, J. Judge Skotnikov also explained that allowing a state party to invoke another state's responsibility on the basis of its *erga omnes partes* obligations not only went beyond the treaty's text, the Court's precedent, and authoritative commentary but also was illogical: the CAT itself allowed a state to enter a reservation to the Court's jurisdiction and also did not obligate states to accede to the competence of the Committee Against Torture to hear communications of one state party claiming a breach by another. *See id.* Judge Xue and Judge *ad hoc* Sur made similar and related points in their dissenting opinions.

[49] Belgium's qualification as such a state would depend on the interpretation of Article 5, paragraph 1(c), which allows for passive personality jurisdiction but does not make clear whether such jurisdiction extends to cases in which the victim acquires the nationality of the state requesting extradition subsequent to the alleged acts of torture.

[50] *See* Questions Relating to the Obligation to Prosecute or Extradite, para. 118.

[51] *See id.*, para. 121; *see also id.*, para. 83 (not specifying that Senegal should have sought Belgium's cooperation in the course of the preliminary inquiry required by Article 6, paragraph 2). The Court's approach contrasted with that of the Committee Against Torture, which, in a case brought against Senegal, concluded that Senegal must "submit the present case to its competent authorities for the purpose of prosecution or, failing that, since Belgium has made an extradition request, to comply with that request, or, should the case arise, with any other extradition request made by another State." Guengueng v. Senegal, Communication No. 181/2001, UN Doc. CAT/C/36/D/181/2001, para. 10 (May 17, 2006).

regarding the person in question."[52] While states have "the choice of means for conducting the inquiry," the treaty "requires that steps must be taken as soon as the suspect is identified in the territory of the State, in order to conduct an investigation of that case."[53] Here, that investigation should have been initiated in 2000.[54] Concerning Article 7, paragraph 1, the Court emphasized that the obligation of states to "submit the case to [their] competent authorities for the purpose of prosecution" was "formulated in such a way as to leave it to those authorities to decide whether or not to initiate proceedings, thus respecting the independence of States parties' judicial systems."[55] The Court thus recognized the possibility that, as a result of a decision by those authorities, proceedings might not be instituted.[56] Importantly, the Court stressed the Convention's requirement that a case be submitted to the competent authorities regardless of any extradition request.[57] "Extradition," the Court explained, "is an option offered to the State by the Convention, whereas prosecution is an international obligation under the Convention, the violation of which is a wrongful act engaging the responsibility of the state."[58] The obligation to prosecute or, in the alternative, to extradite "must be implemented within a reasonable time, in a manner compatible with the object and purpose of the Convention."[59] Given the treaty's object and purpose, the Court concluded that "proceedings should be undertaken without delay."[60]

The effect of the Court's remedy was to endorse the approach "mandate[d]" by the Assembly of the Heads of State and Government of the African Union in 2006 (and subsequently reiterated) for "Habré [to be] tried, on behalf of Africa, by a competent Senegalese court."[61] Senegal had previously stated that the only hurdle to its prosecution of Habré was financial,[62] and following the Court's judgment, Senegal, which had elected a president in March who was more inclined than his predecessor to prosecute Habré, quickly indicated its intention to comply.[63] Within days of the decision, Senegal and the African Union agreed on a plan to establish the Extraordinary African Chambers in Dakar, and to that end, an agreement was entered into in August. Following the receipt of pledges of financial support by a number of states and organizations (including Belgium and Chad), and approval by the Senegalese legislature, the court was inaugurated on February 8, 2013.[64] Habré was arrested on June 30, 2013.[65] The Court,

[52] Questions Relating to the Obligation to Prosecute or Extradite, para. 83.

[53] *Id.*, para. 86.

[54] *See id.*, paras. 85–86.

[55] *Id.*, para. 90.

[56] *See id.*, para. 94.

[57] *See id.*

[58] *Id.*, para. 95.

[59] *Id.*, para. 114.

[60] *Id.*, para. 115.

[61] African Union, *Decision on the Hissène Habré Case and the African Union*, AU Doc. Assembly/AU/ Dec.127 (VII) (July 1–2, 2006), *quoted in* Questions Relating to the Obligation to Prosecute or Extradite, para. 23. The Court's remedy also was in line with the judgment of the Court of Justice of the Economic Community of West African States in *Habré v. Senegal*, Habré v. Senegal, Case No. ECW/CCJ/APP/07/08, Judgment (Nov. 18, 2010), *at* http://www.courtecowas.org/.

[62] *See* Questions Relating to the Obligation to Prosecute or Extradite, para. 33.

[63] *See* Marlise Simons, *Senegal Told to Prosecute Ex-president of Chad*, N.Y. TIMES, July 21, 2012, at A8.

[64] *See* Marlise Simons, *Senegal: Trial for Chad's Ex-ruler*, N.Y. TIMES, Feb. 9, 2013, at A6.

[65] *See* Adam Nossiter, *Senegal Detains Ex-president of Chad, Accused in the Deaths of Opponents*, N.Y. TIMES, July 1, 2013, at A10.

sensitive as ever to the roles of other international organizations, had crafted a decision that facilitated a process for resolving the dispute.

Territorial and Maritime Dispute (Nicaragua v. Colombia)

In November, nearly eleven years after Nicaragua's application was filed, the Court set out a single maritime boundary delimiting the continental shelf and the exclusive economic zones of Colombia and Nicaragua. Displeased with the result, eight days after the Court's ruling Colombia denounced the American Treaty on Pacific Settlement (the Pact of Bogotá), which had provided the basis for the Court's jurisdiction.[66] Since the Court's judgment is considered in detail in a case report published in the *Journal*, only a couple of remarks will be made here.[67]

In rejecting Nicaragua's request to delimit its claim to an extended continental shelf, the Court made a point to stress the function of the Commission on the Limits of the Continental Shelf (Commission). Previously, in *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea*, the Court observed that "any claim of continental shelf rights beyond 200 miles [by a state party to UNCLOS] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder."[68] This language was quoted at the very outset of the Court's substantive legal analysis in the present case.[69] That the Court began its analysis with this point is notable because, for two reasons, it need not have. First, in the earlier case, between Nicaragua and Honduras, both parties to the dispute were state parties to UNCLOS. Here, though, only Nicaragua was a state party; Colombia was not. Nevertheless, the Court decided (not self-evidently) that Nicaragua's obligations under the Convention as they related to this case "[were] not relieve[d]" despite this asymmetry.[70] Second, Nicaragua had submitted only "preliminary information" to the Commission, which information it provided to the Court as evidence of an extended continental shelf. As several judges writing separately pointed out, the Court could have dismissed Nicaragua's claim solely on the ground of factual insufficiency, but it did not. That the Court chose not to follow either of these alternative paths suggests that it wished to highlight the Commission's role within the structure of the Convention and the proper relationship between the Commission's authority and that of the Court. Nonetheless, since the Court did not specify the precise basis for rejecting Nicaragua's claim, it remains unclear whether the Court was suggesting that the Article 76 procedure must be followed before the Court will delimit entitlements to continental shelves beyond 200 nautical miles. In a separate opinion, Judge Donoghue took issue with the Court's possible deference to the Commission. She argued that there is a distinction, recognized by UNCLOS article 76(10), between

[66] American Treaty on Pacific Settlement, Apr. 30, 1948, 30 UNTS 84; *see* Notification GACIJ No. 79357 from the Minister of Foreign Affairs of Colombia to the Secretary General of the Organization of American States (Nov. 27, 2012), *at* http://www.oas.org/dil/Notification_Colombia_Pact_Bogota_11-27-12.pdf.

[67] *See* Nienke Grossman, Case Report: Territorial and Maritime Dispute (Nicaragua v. Colombia), 107 AJIL 396 (2013). For the Court's earlier judgment on preliminary objections, see D. Stephen Mathias, *The 2007 Judicial Activity of the International Court of Justice*, 102 AJIL 588, 602 (2008). For the Court's earlier judgments on the applications of Costa Rica and Honduras to intervene, see *2011 Judicial Activity of the ICJ*, *supra* note 18, at 591.

[68] Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.), 2007 ICJ REP. 659, para. 319 (Oct. 8).

[69] Territorial and Maritime Dispute, *supra* note 4, para. 126.

[70] *Id.*

delimiting the maritime boundary (which is within the Court's competence, when it has jurisdiction) and delineating the outer limits of the continental shelf (which is within the Commission's competence, at least as to making recommendations).[71] Whether it is appropriate for the Court to delimit the continental shelf beyond 200 nautical miles will depend, she argued, on the facts of each case;[72] abstaining from delimitations categorically is unnecessary and potentially problematic.[73]

Though all cases before the Court pertain to sensitive matters, delimitations are especially delicate, as they decide which state has control over disputed land and maritime areas, along with the persons and natural resources located therein. For this reason, unanimous decisions are especially important. They send a clear signal to the parties (and their populations) that the sovereignty allocated and the boundary lines drawn by the Court should be considered uncontroversial and settled. Here, as in *Maritime Delimitation in the Black Sea*, the Court's most recent prior case, the delimitation was unanimous, including the votes of the two judges *ad hoc*.[74] Though many of the Court's decisions over the past years have been decided with few dissenters, unanimous judgments on inherently divisive issues are rare. Two unanimous maritime delimitations in succession is an impressive accomplishment. With them (and with its efforts to maintain a doctrinal approach that will lead to legal predictability in its application), the Court has made a considered statement about how it conceptualizes and distinguishes its role as a forum, among the possible available forums, in this area of dispute settlement. This statement is, it would seem, directed as much to potential litigants as to the parties in the cases before it.

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed Against the International Fund for Agricultural Development

In February, the Court gave an advisory opinion, requested by the Executive Board of the International Fund for Agricultural Development (IFAD), on nine questions pertaining to whether a judgment made by the ILO Administrative Tribunal (ILOAT) in an employment case brought by Ana Teresa Saez García was invalid because the Tribunal acted outside its jurisdiction or because its statements and decisions "constitute[d] a fundamental fault in the procedure followed."[75] The Tribunal had awarded damages and costs to Saez García.[76] The Court found that it had jurisdiction to give the requested opinion and, in its discretion, decided to do so.[77]

[71] *See id.*, Decl. Donoghue, J., paras. 17–30.

[72] Thus, the International Tribunal for the Law of the Sea delimited the continental shelf beyond 200 nautical miles in *Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal* (Bangladesh/Myanmar), ITLOS Case No. 16 (Mar. 14, 2012), even though the Commission had yet to establish the outer limits.

[73] *See* Territorial and Maritime Dispute, Decl. Donoghue, J., para. 30.

[74] The unanimity in *Maritime Delimitation in the Black Sea* was even stronger, as no judge attached a separate opinion to the Court's judgment. *See* Cogan, *supra* note 38, at 609.

[75] IFAD Advisory Opinion, *supra* note 5, para. 2(II). As a specialized agency of the United Nations, IFAD has been authorized by the General Assembly, pursuant to Article 96 of the Charter, to submit requests for advisory opinions to the Court. *See* Agreement Between the United Nations and the International Fund for Agricultural Development, Art. XIII(2), UN Doc. GA/RES/32/107, annex (Dec. 15, 1977).

[76] In December 2005, Saez García had challenged the decision not to review her contract. In December 2007, IFAD's Joint Appeals Board recommended her reinstatement and the award of damages for lost pay, but in April 2008, IFAD's president decided not to follow the recommendations. Saez García subsequently filed a complaint with ILOAT, which then set aside the president's decision and ordered the payment of damages.

[77] *See* IFAD Advisory Opinion, para. 100(1), (2).

Responding to the nine questions put to it, the Court was of the opinion that the Administrative Tribunal "was competent, under Article II of its Statute, to hear the complaint" (Question I) and that the Administrative Tribunal's decision was "valid" (Question IX).[78] In the Court's view, all other questions (Questions II to VIII) did "not require further answers."[79] In all respects, the Court's opinion was unanimous. The advisory opinion was only the fifth reviewing the validity of an administrative tribunal's decision and only the second reviewing an ILOAT decision.[80]

It had been more than fifty-five years since that lone prior opinion concerning ILOAT. Then, the Court expressed its concern that two types of inequality inhering in the Tribunal's advisory proceedings put staff members at an unfair disadvantage: inequality of access to the Court's procedure under the provisions of ILOAT's statute,[81] which gives international organizations, but not employees, the capacity to request advisory opinions; and inequality of arms before the Court itself under the terms of its own Statute, which provides for statements to be submitted by states and international organizations but not by affected individuals.[82] Both sets of concerns also troubled the current Court, though more in view of the developments in human rights in the intervening years. Referring to, and partly quoting from, the Human Rights Committee's General Comment No. 32,[83] the Court concluded that the principle of equality of the parties "must now be understood as including access on an equal basis to available appellate or similar remedies unless an exception can be justified on objective and reasonable grounds."[84] In a remarkable statement, the Court went on to criticize the procedure established by ILOAT's statute, commenting that "questions may now properly be asked whether the system established in 1946 meets the present-day principle of equality of access to courts and tribunals."[85] This raises the possibility that the Court might decline to give an advisory opinion in the future,

[78] *Id.*, para. 100(3)(a), (c).

[79] *Id.*, para. 100(3)(b).

[80] The previous opinions were *Judgments of the Administrative Tribunal of the International Labour Organisation upon Complaints Made Against the United Nations Educational, Scientific and Cultural Organization*, Advisory Opinion, 1956 ICJ REP. 77 (Oct. 23), *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, Advisory Opinion, 1973 ICJ REP. 166 (July 12), *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, 1982 ICJ REP. 325 (July 20), and *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*, Advisory Opinion, 1987 ICJ REP. 18 (May 27). On the Court's review of administrative tribunal decisions, see generally KAIYAN HOMI KAIDOBAD, THE INTERNATIONAL COURT OF JUSTICE AND JUDICIAL REVIEW (2000), and Joanna Gomula, *The Review of Decision of International Administrative Tribunals by the International Court of Justice*, *in* THE DEVELOPMENT AND EFFECTIVENESS OF INTERNATIONAL ADMINISTRATIVE LAW 349 (Olufemi Elias ed., 2012).

[81] Statute of the Administrative Tribunal of the International Labour Organization, *at* http://www.ilo.org/public/english/tribunal/about/statute.htm.

[82] Statute of the International Court of Justice, Art. 66.

[83] UN Human Rights Comm., General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007).

[84] IFAD Advisory Opinion, para. 44.

[85] *Id.* The process under the ILOAT statute contrasts with the review procedure that had been in place for the United Nations Administrative Tribunal (UNAT) between 1955 and 1995, in which a staff member could originate the process by which a request for an advisory opinion was made. Indeed, of the three advisory opinions given by the Court on requests for the review of judgments of the UNAT, two originated from the applications of staff members. *See* Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, para. 22; Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, para. 10. Subsequent to the amendment of the UNAT Statute in 1995, and under the two-tier review system of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal that began in 2009, there is no procedure for the Court's oversight.

at least until the ILOAT statute is amended.[86] Regarding the second concern (equality of arms), the Court, as it has done previously, sought to meliorate the inequality—one established by its own Statute—by requiring the international organization that had requested the advisory opinion (here, IFAD) to transmit statements and communications to and from the staff member involved and by dispensing with oral proceedings. This procedure, whereby the Court refuses to communicate directly with the staff member and instead relies upon the organization to act as an intermediary,[87] is inefficient and can lead, as it did in this case, to "difficulties"[88] in gathering the information necessary to decide the questions presented, in accordance with "the principle of equality in the proceedings before the Court."[89]

Having decided to comply with the request to give an opinion, the Court proceeded to evaluate ILOAT's competence. The Tribunal's jurisdiction to hear Saez García's complaint was founded on Article II, paragraph 5, of its statute, which sets forth two conditions: (1) that "the complainant was an official of an organization [in this case, IFAD] that has recognized the jurisdiction of the Tribunal," and (2) that "the complaint related to the non-observance of the terms of appointment of such an official or the provisions of the staff regulations of the organization."[90] The first issue was complicated because Saez García worked at the Global Mechanism, which was created by the UN Convention to Combat Desertification,[91] was housed at IFAD, but did not, according to the Court, have legal personality.[92] Here, upon review of the evidence, the Court decided that Saez García was a staff member of IFAD.[93] The Court was equally satisfied that the second condition was met.[94] Having done so, it concluded that ILOAT had competence to hear Saez García's complaint. This aspect of the Court's opinion will be of great interest to the legal advisers of international organizations, as it is not uncommon for an organization to house an entity established by a separate legal regime.

II. Composition of the Court and Relations with Other UN Organs

Composition of the Court

The two new members of the Court elected by the General Assembly and the Security Council in the triennial elections that took place in November and December 2011 joined the Court on February 6.[95] They are Giorgio Gaja (Italy) and Julia Sebutinde (Uganda), who replaced

[86] Judge Greenwood, in his declaration, hinted at this when he wrote that he

> agreed that the Court should give an Opinion in the present case only because I believed that the Court should not, without warning, withdraw its participation in a procedure for challenging Tribunal decisions which has been in place for many years and has therefore formed part of the assumptions made by all concerned—employees as well as employers—in proceedings before the Tribunal.

IFAD Advisory Opinion, Decl. Greenwood, J., para. 3.

[87] *See, e.g.*, IFAD Advisory Opinion, para. 10 ("[T]he registrar informed counsel for Ms Saez García that . . . it was not possible for [her] . . . to address directly to the Court communications for its consideration, and that any communication . . . should be transmitted to the Court through IFAD.").

[88] The Court had to resort to Article 49 to ensure that the relevant documents were submitted by IFAD.

[89] IFAD Advisory Opinion, paras. 46, 47.

[90] *Id.*, para. 68.

[91] UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Oct. 14, 1994, 1954 UNTS 3.

[92] IFAD Advisory Opinion, para. 61.

[93] *See id.*, paras. 71–82.

[94] *See id.*, paras. 83–95.

[95] On the election, see *2011 Judicial Activity of the ICJ*, *supra* note 18, at 606.

https://doi.org/10.5305/amerjintelaw.107.3.0587 Published online by Cambridge University Press

Abdul Koroma (Sierra Leone) and Bruno Simma (Germany). After the judges took office, the Court elected Peter Tomka (Slovakia) as its president for the next three years and Bernardo Sepúlveda-Amor (Mexico) as vice-president.[96] Judge Tomka succeeded President Owada, and Judge Sepúlveda-Amor succeeded Vice-President Tomka.[97]

On April 27, the General Assembly and the Security Council met concurrently to fill the vacancy created on December 31, 2011, by the resignation of Judge Awn Shawkat Al-Khasawneh.[98] There were two candidates: Dalveer Bhandari (India) and Florentino Feliciano (Philippines).[99] Following a single ballot, Bhandari, who was a judge on the Supreme Court of India at the time of his nomination, was elected.[100] He will serve for the remainder of Judge Al-Khasawneh's term, until February 5, 2018.[101]

Addresses of the President

For his first time as president of the Court, President Tomka delivered two addresses at UN headquarters in New York concurrently with the General Assembly's consideration of the Court's annual report. These addresses included statements to the General Assembly and Sixth Committee.[102] In his speech to the General Assembly, President Tomka reported on the cases during the period covered by the Court's report. He described the Court as "the international community of States' forum of choice for the peaceful settlement of every kind of international dispute over which it has jurisdiction."[103] Addressing states that are "thinking of submitting cases to" the Court, President Tomka remarked that they "can be confident that, as soon as they have finished their written exchanges, the Court will be able to move to the hearings without delay," as there was no longer any backlog of cases.[104] President Tomka's speech to the Sixth

[96] *See* ICJ Press Release 2012/8 (Feb. 6, 2012).

[97] As is the practice, with the seating of the Court's new members, the judges elected the members of the Chamber of Summary Procedure and three committees. *See* ICJ Press Release 2012/9 (Feb. 6, 2012).

[98] On Judge Al-Khasawneh's resignation, see *2011 Judicial Activity of the ICJ*, *supra* note 18, at 607.

[99] Pursuant to Article 5(1) of the Statute, on January 19 the secretary-general invited national groups of state parties to the Statute to nominate individuals to fill the vacancy. *See* Election of a Member of the International Court of Justice: Memorandum by the Secretary-General, UN Doc. A/66/766–S/2012/211 (Apr. 11, 2012). Three nominations were received. *See* Election of a Member of the International Court of Justice: Note by the Secretary-General, UN Doc. A/66/768–S/2012/213 (Apr. 11, 2012); Submission of Nominations by National Groups: Note by the Secretary-General, UN Doc. A/66/767–S/2012/212 (Apr. 11, 2012). The candidacy of one of the nominees—Ghaleb Ghanem (Lebanon)—was withdrawn prior to the election. *See* Submission of Nominations by National Groups: Note by the Secretary-General, UN Doc. A/66/767/Add.1–S/2012/212/Add.1 (Apr. 20, 2012).

[100] ICJ Press Release 2012/16 (Apr. 27, 2012); UN Docs. GA/11230 (Apr. 27, 2012) & SC/10629 (Apr. 27, 2012). Judge Bhandari received 13 of the 15 ballots cast in the Security Council, and 122 of the 180 ballots cast in the General Assembly. *See* UN Docs. S/PV.6763 (Apr. 27, 2012) & A/66/PV.107 (Apr. 27, 2012).

[101] In accordance with Article 15 of the Court's Statute.

[102] The addresses are available at http://www.icj-cij.org/court/index.php?p1=1&p2=3&p3=1. For the debate in the General Assembly on the Court's Annual Report, see UN GAOR, 67th Sess., 29th plen. mtg., UN Docs. A/67/PV.29 (Nov. 1, 2012), A/67/PV.31 (Nov. 6, 2012), GA/11305 (Nov. 1, 2012) & GA/11307 (Nov. 6, 2012). President Tomka shortened his prepared remarks to the Sixth Committee on account of Hurricane Sandy. *See* Press Release, Natural Disaster Relief Draft Articles Need Clearer Parameters, Argue Delegates as Legal Committee Continues Review of International Law Commission Report, UN Press Release GA/L/3447 (Nov. 2, 2012). There is no record that he had a private meeting with members of the Security Council, as has been the recent practice. President Tomka also gave speeches this year during the sixth-fourth session of the International Law Commission and at the September high-level meeting on the rule of law at UN headquarters.

[103] Speech to General Assembly 13.

[104] *Id.*

Committee focused on maritime delimitation. Reviewing the Court's extensive jurisprudence encompassing fourteen cases (of which two were pending at the time of his speech), President Tomka noted that "the Court's contribution to the advancement of the law governing maritime delimitation cannot be overemphasized, as evidenced by the wide reach and scope of the precedential value of its judgments and their influence in other decisional fora."[105] The Court's decisions, he pointed out, "undoubtedly solidified the unity and coherence of the resulting normative scheme."[106]

III. THE COURT'S DOCKET AND FUTURE WORK

In addition to the four judgments and one advisory opinion discussed above, the Court held four hearings in 2012.[107] For the first time since 2007, no new contentious cases were submitted.[108] There were also no requests for provisional measures, and no case was removed from the Court's list at the request of the applicant. One declaration of intervention was filed.[109] Having concluded five cases and introduced none, the Court entered 2013 with ten cases on its docket.[110]

[105] Speech to the Sixth Committee 1.

[106] *Id.* at 2.

[107] These were in *Questions Relating to the Obligation to Prosecute or Extradite* (Belg. v. Sen.) (on jurisdiction, admissibility, and the merits), *Territorial and Maritime Dispute* (Nicar. v. Colom.) (on admissibility and the merits), *Frontier Dispute* (Burkina Faso/Niger) (on the merits), and *Maritime Dispute* (Peru v. Chile) (on the merits). In the hearings in *Questions Relating to the Obligation to Prosecute or Extradite*, the first conducted under the presidency of Judge Tomka, the Court altered its practice on the posing of questions to the parties. Typically, individual judges who had questions for the parties posed them only at the conclusion of the entire public sitting, and the parties would respond to them in writing subsequently. *See*, *e.g.*, Verbatim Record, Jurisdictional Immunities of the State, ICJ Doc. CR 2011/21, at 52–54. At this hearing, though, President Tomka had the judges pose questions at the end of the first round of oral argument, therefore allowing the parties to respond to the inquiries during the second round. *See* Verbatim Record, Questions Relating to the Obligation to Prosecute or Extradite, ICJ Doc. CR 2012/5, at 41–44. The Court continued this practice at successive hearings during the year. *See* Verbatim Record, Territorial and Maritime Dispute, ICJ Doc. CR 2012/13, at 65–66; Verbatim Record, Frontier Dispute, ICJ Doc. CR 2012/24, at 39; Verbatim Record, Maritime Dispute, ICJ Doc. CR 2012/32, at 62–63. Of course, the judges, as necessary, still asked questions at the conclusion of the sitting. *See*, *e.g.*, Verbatim Record, Frontier Dispute, ICJ Doc. CR 2012/26, at 59–60.

[108] On September 25, in accordance with Article 38(5) of the Statute, Equatorial Guinea filed an "Application Instituting Proceedings Including a Request for Provisional Measures," in which it sought to annul the French criminal investigation and proceedings, including an arrest warrant, brought against the president and vice-president of Equatorial Guinea. *See* ICJ Press Release 2012/26 (Sept. 26, 2012). As of the end of the year, France had yet to "consent[] to the Court's jurisdiction for the purposes of the case."

[109] On November 20, New Zealand submitted its request invoking Article 63 of the Statute to intervene in *Whaling in the Antarctic* (Austl. v. Japan).

[110] All of the remaining cases were active, save for two—Gabčíkovo-Nagymaros Project (Hungary/Slovakia) and Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)—which "technically remain[ed] pending" following decisions on the merits and pending negotiations between the parties concerning the implementation of the Court's judgments. Report of the International Court of Justice, Aug. 1, 2011–July 31, 2012, UN GAOR, 67th Sess., Supp. No. 4, at 2 n.1, 24 & 28–29, UN Doc. A/67/4 (2012).