

# Oxford Public International Law



## **International Court of Justice, Rules and Practice Directions**

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## A. Introduction

**1** The power of the → *International Court of Justice (ICJ)* to formulate and define the procedural rules applicable to the Court and to the parties to a dispute before it, derives from Art. 30 (1) Statute of the ICJ ('ICJ Statute') which provides: 'The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure'.

**2** The ICJ adopted its Rules of Court ('ICJ Rules') for the first time in 1946. The ICJ Rules were based on the Rules of Court of the → *Permanent Court of International Justice (PCIJ)* (initially adopted by the PCIJ in 1922 and revised in 1926, 1931, and 1936). The ICJ Rules adopted in 1946 were amended in 1972 and were subject to an overall revision in 1978. The purpose of these amendments and revisions was to make the Court more efficient and to ensure that its procedure meets the specific needs of judicial settlement of disputes (→ *Judicial Settlement of International Disputes*). In 2000, Art. 79 ICJ Rules relating to → *preliminary objections* and Art. 80 ICJ Rules concerning counter-claims were amended. These amendments came into force on 1 February 2001 and were part of an ongoing effort by the Court to adapt to the significant increase in its activity. In 2005, Art. 43 ICJ Rules regarding the notification of public international organizations which are parties to conventions in question in a case and Art. 52 ICJ Rules concerning the procedure for the filing of pleadings were amended and the amendments entered into force on 29 September 2005 and 14 April 2005 respectively.

## B. Rules of Procedure

**3** The ICJ Rules consist of four parts under the following headings: The Court, The Registry, Proceedings in Contentious Cases, and Advisory Proceedings.

### 1. Organizational Structure of the Court

**4** The first part, Arts 1-21 ICJ Rules on 'The Court', deals with the Court's organizational structure and includes provisions concerning members of the Court, judges ad hoc, assessors, the presidency of the Court, chambers, and the internal functioning of the Court. (See also → *International Courts and Tribunals*; → *International Courts and Tribunals, Chambers*; → *International Courts and Tribunals, Judges and Arbitrators*.)

**5** With regard to members of the Court, it is stipulated that, in the exercise of their function, they are of equal status, irrespective of age, priority of election, or length of service. The same principle is applicable to judges ad hoc whenever they are chosen by the parties in the circumstances envisaged by Art. 31 ICJ Statute to sit in a particular case. Upon taking up their duties, members of the Court and judges ad hoc are required to make a solemn declaration in open court, the text of which is set out in Art. 4 ICJ Rules. The ICJ Rules, elaborating on Art. 30 (2) ICJ Statute, provide for the appointment of assessors to sit without the right to vote. However, to date, the Court has not appointed assessors in any contentious or advisory proceedings.

**6** Articles governing the presidency of the Court contain provisions regarding the election of the president and vice-president and their functions. In particular, the president presides at all meetings, directs the work, and supervises the administration of the Court. The ICJ Rules set out the procedure applicable in the event of vacancy in the presidency or vice-presidency.

7 The ICJ Rules further specify the procedures applicable to the constitution of the chamber of summary procedure which is formed annually by the Court under Art. 29 ICJ Statute and composed of five members of the Court, including the president and vice-president acting *ex officio*. It also establishes rules for the formation of chambers dealing with a particular category of cases (Art. 26 (1) ICJ Statute) and chambers dealing with a particular case (*ibid* Art. 26 (2)). Each chamber elects its own president unless it includes the president and/or vice-president of the Court, in which case, the president or vice-president, as the case may be, presides over that chamber.

8 Rules dealing with the Court's organizational structure also include provisions on the internal functioning of the Court. The quorum of nine judges which is sufficient to constitute the Court (*ibid* Art. 25 (3)) likewise applies to all meetings of the Court. With regard to attendance at meetings, both members of the Court and judges *ad hoc* are bound to hold themselves at the disposal of the Court and to attend all meetings held in the case in which they are participating. The court's deliberations on judicial and other matters take place in private and remain secret. Only judges take part in judicial deliberations while the registrar or his deputy and other members of the staff of the registry may be present. No other person is admitted to judicial meetings except by permission of the Court. The minutes of the Court's judicial deliberations record neither any details of the discussion nor the views expressed. The procedure for the Court's judicial deliberations and preparation of its decisions is established by the Resolution concerning the Internal Judicial Practice of the Court, the current version of which was adopted on 12 April 1976. However, the Court may depart from the procedure stipulated by the resolution in a given case if it considers that the circumstances justify such a course.

## 2. The Registry

9 The second part, Arts 22-29 ICJ Rules on 'The Registry', contains provisions concerning the organization and functioning of the registry of the Court, which comprises the registrar, the deputy-registrar, and the staff appointed for the efficient discharge of the registrar's functions. Both the registrar and the deputy-registrar are elected by secret ballot from amongst candidates proposed by members of the Court for a renewable term of seven years. Staff members of the registry are appointed by the Court on proposals submitted by the registrar. The staff of the registry are subject to staff regulations drawn up by the registrar, so far as possible, in conformity with the United Nations Staff Regulations and Rules, and approved by the Court. The registrar of the Court is the 'regular channel of communications to and from the Court' and, in this capacity, effects all communications, notifications, and transmission of documents as required by the ICJ Statute and the ICJ Rules (Art. 26 (1) (a) ICJ Rules). Furthermore, *inter alia*, he keeps, under the supervision of the president, a general list of all cases; transmits to the parties copies of all pleadings upon receipt thereof in the registry; communicates with the government of the host State on matters of privileges, → *immunities* (→ *Immunity, Diplomatic*; → *International Organizations or Institutions, Privileges and Immunities*), or facilities; attends meetings of the Court; signs all judgments (→ *Judgments of International Courts and Tribunals*), → *advisory opinions*, and orders of the Court; is responsible for all administrative work and in particular, for the accounts and financial administration; and assists in maintaining relations between the Court and external bodies (→ *International Organizations or Institutions, External Relations and Co-operation*; → *Co-operation, International Law of*). The registrar has custody of the → *archives* of the Court. He also keeps the archives of the PCIJ and the archives of the Trial of the Major War Criminals before the International Military Tribunal at Nuremberg (1945-46) entrusted to the Court by decision of that tribunal of 1 October 1946 (→ *International Military Tribunals*). The Court authorized the

registrar to accept the latter archives by decision of 19 November 1949. In the discharge of his functions, the registrar is responsible to the Court.

### **3. Proceedings**

**10** The two other parts of the ICJ Rules focus on the procedure applicable to contentious and advisory proceedings.

**11** The third part of the ICJ Rules, 'Proceedings in Contentious Cases', covers various elements of the procedure applicable to the Court itself and to the parties to a dispute. It contains provisions concerning the composition of the Court for particular cases, the conduct of proceedings before the Court, incidental proceedings, proceedings before chambers, as well as provisions regarding judgments and their interpretation and revision (→ *International Courts and Tribunals, Procedure*; → *Judgments of International Courts and Tribunals, Interpretation of*; → *Judgments of International Courts and Tribunals, Revision of*).

#### **(a) Composition of the Court for Particular Cases**

**12** With regard to the composition of the Court for particular cases (Arts 32-37 ICJ Rules), the ICJ Rules stipulate that the president of the Court cannot exercise the presidency if he is a national of one of the parties in a case. The same rule applies to the vice-president or to the senior judge when called on to act as president. The ICJ Rules, supplementing Arts 17 (2) and 24 ICJ Statute on incompatibility of functions of members of the Court, provide that a party may bring to the attention of the Court through a confidential communication addressed to the president, facts which it considers relevant to the question of incompatibility.

**13** The articles of the ICJ Rules concerning the composition of the Court for particular cases also contain provisions relating to the implementation of Art. 31 ICJ Statute on the choice of judges ad hoc. In particular, they set out time limits and procedure for the designation of judges ad hoc; actions to be taken if the Court finds that two or more parties are in the same interest for the purposes of appointing a judge ad hoc and therefore, are to be reckoned as one party only; and the procedure to be followed if a member of the Court having the → *nationality* of one of the parties becomes unable to sit in a case, and thus, this party becomes entitled to choose a judge ad hoc.

#### **(b) Institution of Proceedings**

**14** As regards the provisions governing proceedings before the Court, three main areas are covered by the ICJ Rules: institution of proceedings (Arts 38-43), written proceedings (Arts 44-53), and oral proceedings (Arts 54-72).

**15** Proceedings before the Court are instituted by means of an application or by the notification of a special agreement (→ *Compromis*). In either case, the subject of the dispute and the parties must be indicated. The application must, in addition, specify as far as possible the legal grounds upon which the jurisdiction of the Court is to be based and the precise nature of the claim (→ *International Courts and Tribunals, Jurisdiction and Admissibility of InterState Applications*; → *Claims, International*) together with a succinct statement of the facts and grounds on which the claim is based. After proceedings have been instituted, all steps on behalf of the parties are taken by agents specifically appointed for this purpose (→ *International Courts and Tribunals, Agents, Counsel and Advocates*).

### **(c) Written and Oral Proceedings**

**16** Under Art. 43 (1) ICJ Statute, proceedings before the Court consist of two parts: written and oral.

**17** The written pleadings in a case begin by means of an application consisting of a memorial by the applicant and a counter-memorial by the respondent. The court may authorize or direct a reply by the applicant and a rejoinder by the respondent if the parties so agree or if the Court decides that such pleadings are necessary. In a case begun by notification of a special agreement, the number and order of the pleadings is governed by the provisions of the agreement unless the Court, after ascertaining the views of the parties, decides otherwise. If the special agreement contains no such provision and if the parties have not subsequently agreed on the number and order of pleadings, they each file a memorial and counter-memorial, within the same time limits. The court does not authorize the presentation of replies unless it finds them to be necessary. The ICJ Rules determine in a general way the content and form of the above-mentioned written pleadings, which become accessible to the public only on or after the opening of the oral proceedings in accordance with the Court's decision after consultation with the parties.

**18** The case is ready for hearing upon the closure of the written proceedings. Thereafter, no further documents may be submitted to the Court by a party except with the → *consent* of the other party or in accordance with the Court's decision. During the oral proceedings, the parties cannot refer to the content of documents which were not produced in conformity with the ICJ Statute or ICJ Rules unless the documents are from publications generally available. The subsection of the ICJ Rules concerning the conduct of the oral proceedings likewise includes a set of provisions dealing with questions of evidence in general, and presentation and examination of witnesses and experts. The court itself may call witnesses or experts or make arrangements for an inquiry or an expert opinion. The statements of the parties during the hearings, minutes of which are prepared by the registry, must be as succinct as possible and directed to the issues that still divide the parties. Accordingly, they should not go over the whole ground covered by the written pleadings or merely repeat the facts and arguments contained therein. The court and individual judges may, during the hearing, put questions to the parties and ask them for explanations (→ *International Courts and Tribunals, Evidence*).

**19** Only States may be parties to cases before the Court. However, Art. 34 (2) and (3) ICJ Statute make provision for international organizations to submit to the Court information relevant to a case. Such information may be furnished by an international organization either at the request of the Court or on its own initiative. Art. 69 ICJ Rules specifies the procedure for implementing these provisions of the statute (→ *International Courts and Tribunals, Standing*; → *International Courts and Tribunals, Amicus Curiae*).

## **4. Incidental Proceedings**

**20** A special section of the ICJ Rules covers incidental proceedings, such as interim protection (Arts 73–78 ICJ Rules; → *Interim [Provisional] Measures of Protection*), preliminary objections (Art. 79 ICJ Statute), counter-claims (ibid Art. 80), intervention (ibid Arts 81–86; → *International Courts and Tribunals, Intervention in Proceedings*), special reference to the Court (ibid Art. 87), and discontinuance (ibid Arts 88–89; → *International Courts and Tribunals, Discontinuance of Cases*).

### **(a) Provisional Measures**

**21** Under Art. 41 ICJ Statute, the Court has the power, if it considers that circumstances so require, to indicate any provisional measures which ought to be taken to preserve the respective rights of either party. A party to a dispute may make a written request for the indication of provisional measures at any time during the course of the proceedings. The request must specify the reasons therefor, the possible consequences if it is not granted, and the measures requested. A request for the indication of provisional measures is given priority over all other cases. Hearings are normally held as a matter of urgency, at which the parties are given the opportunity to present their views. The court may also, at any time, decide to examine *proprio motu* whether the rights of either party need protection. The court's orders on provisional measures have binding effect and create legal obligations for the parties to a dispute (see *LaGrand Case [Germany v United States of America] [Judgment]* [2001] ICJ Rep 501, paras 99-109). Provisional measures indicated by the Court are communicated to the → *United Nations Secretary-General* for transmission to the → *United Nations Security Council*.

### **(b) Preliminary Objections**

**22** Any objections by the respondent to the jurisdiction of the Court or to the admissibility of the application (preliminary objections) have to be made not later than three months after the filing of the memorial by the applicant. Upon receipt by the registry of a preliminary objection, the proceedings on the merits are suspended and the Court fixes the time limit within which the other party may present a written statement of its observations and submissions. After hearing the parties, the Court gives its decision in the form of a judgment by which it upholds the objection, rejects it, or declares that in the circumstances of the case, the objection does not possess an exclusively preliminary character. If the Court upholds the objection, the proceedings are terminated. If the Court rejects the objection or declares that it does not possess an exclusively preliminary character, it fixes time limits for the further proceedings. In certain circumstances, whenever the existence of preliminary issues of jurisdiction and admissibility in a case becomes apparent following the submission of the application, the Court, having ascertained the views of the parties, may decide to address any questions of jurisdiction and admissibility separately before any proceedings on the merits.

### **(c) Counter-Claims**

**23** Further incidental proceedings deal with counter-claims. The court may entertain a counter-claim only if it comes within the jurisdiction of the Court and is directly connected with the subject-matter of the claim of the other party. A counter-claim is made by the respondent in the counter-memorial and appears as part of the submissions contained therein. The applicant has the right to present its views in writing on the counter-claim in an additional pleading after the filing of the last pleading by the respondent.

### **(d) Intervention**

**24** The ICJ Statute stipulates that a State may intervene in a case before the Court if the State considers that it has an interest of a legal nature which may be affected by the decision in the case (Art. 62 ICJ Statute) or whenever the construction of a convention to which it is a party is in question in a case before the Court (*ibid* Art. 63). The ICJ Rules provide for the procedure to be followed in each type of intervention. Whether an application for permission to intervene under Art. 62 ICJ Statute should be granted or

whether an intervention under Art. 63 ICJ Statute is admissible are questions to be decided by the Court as a matter of priority.

### ***(e) Special Reference to the Court***

**25** The next category of incidental proceedings under the ICJ Rules relates to the situation where a contentious case is brought before the Court under a treaty in respect of a matter which has been the subject of proceedings before another international body. In the event of such a special reference, the general provisions governing contentious cases apply.

### ***(f) Discontinuance of Proceedings***

**26** Discontinuance of proceedings may be effected by an agreement of the parties notified to the Court jointly or separately. In proceedings instituted by means of an application, discontinuance may also result from a unilateral act by the applicant. In such a situation, if, at the date on which the notice of discontinuance is received, the respondent has not yet taken any step in the proceedings, the Court simply puts on record the discontinuance and orders the removal of the case from the list. However, if procedural steps have already been taken by the respondent, the latter's views as to whether it opposes the discontinuance are sought. If no objection is raised by the respondent, the case is removed from the list. If objection is made, the proceedings continue.

## **5. Proceedings before Chambers**

**27** Proceedings before chambers are governed by the provisions of the ICJ Rules applicable in contentious cases before the Court. In addition, the section relating to the proceedings before chambers specifies that written proceedings in a case before a chamber shall consist of a single pleading by each side. In proceedings begun by means of an application, pleadings are filed successively. In proceedings begun by the notification of a special agreement, pleadings are filed simultaneously unless the parties have agreed on successive filing. The chamber may authorize or direct that further pleadings be filed if the parties so agree or if the chamber decides that such pleadings are necessary. Oral proceedings shall take place unless the parties agree to dispense with them, and the chamber consents.

## **6. Judgments**

**28** The last section of the ICJ Rules regarding contentious proceedings deals with judgments (Arts 94–97 ICJ Rules) and their interpretation and revision (ibid Arts 98–100).

**29** Judgments are adopted once the Court has completed its deliberations. They are read at a public sitting of the Court and become binding on the parties on the day of the reading. The ICJ Rules also specify the general structure of the judgment. Judges may attach their individual opinion to the judgment, whether they dissent from the majority or not.

**30** A request for the interpretation of a judgment may be made in the event of dispute as to the meaning or scope of a judgment either by an application or by the notification of a special agreement to that effect between the parties. If the request for interpretation is made by an application, the other party is entitled to file written observations thereon. The ICJ Rules likewise lay down procedural frameworks in relation to Art. 61 ICJ Statute governing requests for the revision of a judgment.

## 7. Advisory Opinions

**31** Finally, Arts 102–109 ICJ Rules relate to the exercise by the Court of its advisory function under Art. 65 ICJ Statute, pursuant to which the Court may give an advisory opinion on any legal question at the request of a body authorized by or in accordance with the → *United Nations Charter* to make such a request (Art. 65 (1) ICJ Statute).

## C. Practice Directions

**32** Practice directions for use by States appearing before the Court were adopted by the Court for the first time in October 2001 in order to provide additional guidance to States on certain matters of procedure. The aim of these directions, which supplement the ICJ Rules, is to enable the Court to fulfil its role as efficiently and effectively as possible.

**33** There are currently 14 practice directions, which may be divided into two categories: practice directions relating to the rationalization and efficiency of the contentious and advisory proceedings (Practice Directions I–VI, IX–XII) and practice directions relating to the sound administration of justice (Practice Directions VII, VIII).

### 1. Rationalization and Efficiency of Proceedings

**34** Practice Direction I is intended to discourage the practice of simultaneous filing of pleadings in cases brought by special agreement. Practice Direction II requires a party filing its pleadings to present clearly its submissions and arguments and not merely reply to the submissions and arguments of the other party. Further, given the excessive tendency towards the proliferation and protraction of annexes to written pleadings, Practice Direction III strongly urges parties to append to their pleadings only strictly selected documents. Practice Direction IV encourages parties who dispose of a full or partial translation of their own pleadings or of those of the other party in the other official language of the Court to transmit those translations to the registry. Practice Direction V, which sets the time limit for the presentation by a party of its observations and submissions on preliminary objections under Art. 79 (5) ICJ Rules, makes it clear that this time limit runs from the date of the filing of the preliminary objections and should generally not exceed four months. In Practice Direction VI, the Court requires full compliance with the provision of the ICJ Rules under which the oral statements of the parties shall be as succinct as possible, be directed to the issues that still divide the parties, and not repeat the written pleadings (Art. 60 (1) ICJ Rules). In particular, where objections relating to lack of jurisdiction or of inadmissibility are being considered, oral proceedings are to be limited to statements on those objections. Practice Direction IX emphasizes the obligation to refrain from submitting new documents after the closure of the written proceedings provided for in Art. 56 ICJ Rules. A party nevertheless desiring to submit a new document after the closure of the written proceedings, including during the oral proceedings, must explain why it considers it necessary to include the document in the case file and must indicate the reasons that prevented the production of the document at an earlier stage. In the absence of the consent of the other party, the Court authorizes the production of the new document only in exceptional circumstances, if it considers it necessary and if the production of the document at this stage of the proceedings appears justified. Furthermore, if a new document has been added to the case file, the other party, when commenting upon it, shall confine the introduction of any further documents to what is strictly necessary and relevant to its comments on what is contained in the new document. Practice Direction IX*bis* sets down criteria and a procedure for determining whether a document may be considered ‘part of a publication readily available’ in accordance with Art. 56 (4) ICJ Rules which allows parties to refer to such documents during the oral proceedings without having previously filed them pursuant to Art. 43 ICJ Statute or Art. 56 (1) or (2) ICJ Rules. Practice Direction IX*ter* requests parties to exercise restraint in the submission of folders of

documents for the convenience of judges during the oral proceedings and notes that the only documents which may be included therein are those produced in accordance with Art. 43 ICJ Statute or Art. 56 (1) or (2) ICJ Rules or those which are part of a publication readily available in conformity with Practice Direction IXbis. Practice Direction X requests the agents of the parties to attend without delay any meeting called by the president of the Court pursuant to Art. 31 ICJ Rules to ascertain the views of the parties with regard to questions of procedure. Practice Direction XI states that, in oral pleadings on provisional measures, parties should limit themselves to what is relevant to the criteria for the indication of such measures. The court requests the parties not to enter into the merits of the case beyond what is strictly necessary for that purpose. Practice Direction XII establishes the procedure to be followed with regard to written statements and/or documents submitted by international → *non-governmental organizations* in connection with advisory proceedings.

## 2. Sound Administration of Justice

**35** In addition to practice directions relating to the rationalization and the efficiency of contentious and advisory proceedings, two practice directions relating to the sound administration of justice have also been adopted by the Court. Practice Direction VII relates to the choice of judges ad hoc and stipulates that, in the interests of the sound administration of justice, parties to a dispute, when choosing a judge ad hoc, should refrain from nominating persons who are acting as agent, counsel, or advocate in another case before the Court or have acted in that capacity in the three years preceding the date of the nomination. Practice Direction VIII relates to the appointment of agents, counsel, or advocates and emphasizes that, likewise in the interests of the sound administration of justice, parties should refrain from designating as agent, counsel, or advocate in a case before the Court a person who, in the three years preceding the date of the designation, was a member of the Court, judge ad hoc, registrar, deputy-registrar, or higher official of the Court (principal legal secretary, first secretary, or secretary).

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