RE COURSE TO INTERNATIONAL DISPUTE SETTLEMENT MECHANISMS, INCLUDING RECENT INTERNATIONAL COURT OF JUSTICE DECISIONS

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I. INTRODUCTION

Many dispute settlements can only be properly understood within the wider international political context. The role of politics is a vital one, although international relations are not outside the domain of law. In fact, international law has become increasingly embedded into domestic law and institutions, and international politics have become substantially legalized in various areas such as international trade, investment, regional integration, protection of human rights, and the environment.

Under international law, states are afforded an ample margin of choice in selecting settlement mechanisms to resolve disputes. So what makes international disputes so difficult to deal with? The truth is that there is often a considerable gap between what is possible in theory and what states are prepared to do in practice. This means that even when a particular method of settlement is available and utilized, there is no guarantee that it will be effective in a given case.

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1. United Nations Charter Article 33(1) spells out the mechanisms available to settle any dispute: negotiation, conciliation, mediation, arbitration, judicial settlement, and other peaceful means of their own choice. It should be noted that this article is limited in context stating that the “continuance of such disputes which are likely to endanger international peace and security...” For a comprehensive introduction to international dispute settlement mechanisms, see J.C. MESTRAK, INTERNATIONAL DISPUTE SETTLEMENT 2 (Cambridge Univ. Press, 2011).
II. POLITICAL AND LEGAL PERSPECTIVES TO INTERNATIONAL DISPUTE SETTLEMENT

The political significance of a dispute within a state is conditioned by what is at stake and whether the dispute is perceived to be one affecting vital interests. Factors such as timing, location, the style and traditions of the state’s political leadership, and the interests of private businesses play a key role in determining the course that an international dispute will follow, including the response and any miscalculations.

States are normally inclined to resolve most disputes through negotiations. Moreover, government leaders want flexibility in handling a dispute because they have to deal with each other across a whole spectrum of international relations—trade, aid, immigration, defense, technical cooperation, et cetera. However, in some situations, leaders and politicians will opt for adjudication to resolve a dispute. This is either because a government is anxious to settle but is under pressure not to make concessions, or as an expedient way of breaking a negotiating impasse in situations where a government’s freedom to negotiate is constrained by domestic concerns.

Adjudication is part of a much broader strategy for resolving a dispute, serving as a signaling device to show resolve, create leverage, and balance power. One of the most striking features of adjudication is that it is dispositive, that is, it allows governments to dispose of a troublesome issue. In these cases, rulings by courts and tribunals will be viewed as a form of “political cover” that allow government leaders to counter domestic political opposition and mitigate political costs. Under the “political cover” notion, the resolution of a dispute is more important than the result.

Whether a dispute is settled peacefully or whether a disagreement becomes a dispute in the first place may well depend on its location. The majority of international disputes involve states which are neighbors. Issues of territorial sovereignty are characterized by historic animosity because the disputed territory is normally identified as a fundamental part of a nation’s history and heritage. In making territorial claims leaders are likely to portray the other state as an adversary who has a competing claim that is somehow flawed or illegitimate. As disputes evolve over time, the public on each side is likely to believe in the inherent correctness of its position in the dispute.

This also means that the nature of the regional environment of a dispute is very significant and the existence of regional mechanisms acquires political significance. For one, states in a given region share considerable culture and history. The resolution of territorial disputes provides an opportunity for economic integration, which is a cornerstone of most regions allowing governments to expand trade and investment relationships. Less successful, are examples of judicial integration, such as with the Central American Court of Justice, which is part of the Central American Integration System. The mission of this regional court is to help integrate its members and establish a more democratic and peaceful region. However, its limited jurisdiction has diminished its authority in disputes involving Central American states.

Not all disputes are suitable for adjudication; however, adjudication by its nature is well suited for dealing with the legal aspects of disputes. From the legal perspective, the main advantage is that adjudication offers the possibility of a binding and enforceable decision. The effectiveness of all binding methods of settlements is increased by the added willingness to carry out a decision.

Binding decisions should be rendered by judges who are impartial. Having a court or tribunal that the parties are prepared to trust is a prerequisite. Impartiality is not only a definitive feature of adjudication, but also assumes a crucial importance owing to the consequences of the decision. Referring a dispute to a court or tribunal which is demonstrably impartial can be very useful when a government is anxious to settle a dispute, but is under pressure not to make concessions. Since the decision is not the government’s

2. In this article, adjudication is referred to in the broadest sense, meaning both arbitration and judicial settlement.


4. See generally id. In the article, the authors develop and test a general argument about the conditions under which government leaders are most likely to choose a legal dispute resolution over bilateral negotiations as a means to settle international disputes. Their central claim is that leaders who anticipate significant domestic audience costs for the making of voluntary, negotiated concessions are likely to seek the “political cover” of an international legal ruling. In such cases, it will be easier for leaders to justify the making of concessions if they are mandated as part of a ruling by an international court or arbitration body.


7. Granger, supra note 5, at 1310.

8. Id. at 1311. The Central American Court of Justice has jurisdiction, inter alia, to resolve: legal disputes on any issue arising between States, actions challenging the legitimacy or compliance of State law or actions with SICA agreements, disputes between government organs, and actions by individuals affected by a SICA agreement or actor. The Court also issues opinions on the interpretation of SICA instruments, when requested by a national court in a pending case or by a State. Statute of the Central American Court of Justice, Dec. 10, 1992, 34 I.L.M. 921, 932 arts. 22(1) & 23.

9. Certainly for disputes which raise other issues, different methods are needed. This does not preclude resorting concurrently to other mechanisms or that a particular one may perform more than one function.
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States are normally inclined to resolve most disputes through negotiations. Moreover, government leaders want flexibility in handling disputes because they have to deal with each other across a whole spectrum of international relations—trade, aid, immigration, defense, technical cooperation, et cetera. However, in some situations, leaders and politicians will opt for adjudication to resolve a dispute. This is either because a government is anxious to settle but is under pressure not to make concessions, or as an expedient way of breaking a negotiating impasse in situations where a government’s freedom to negotiate is constrained by domestic concerns.

Adjudication is part of a much broader strategy for resolving a dispute, serving as a signaling device to show resolve, create leverage, and balance power. One of the most striking features of adjudication is that it is discretionary; that is, it allows governments to dispose of a troublesome issue. In these cases, rulings by courts and tribunals will be viewed as a form of “political cover” that allow government leaders to counter domestic political opposition and mitigate political costs. Under the “political cover” notion, the resolution of a dispute is more important than the result.

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3. See supra note 3, at 1149.
4. Id. at supra note 3, at 1310.
5. Granger, supra note 5, at 1310.
responsibility, provided it has been arrived at fairly, a strong case can be made out for accepting it even if it is unfavorable.

In fact, most international rulings by courts and tribunals are not controversial, and those that raise objections are controversial mostly for those whose argument lost. Regardless, states are always self-conscious about the risks involved in a commitment to adjudicate disputes which cannot be foreseen. For this reason, the attitude of states towards compulsory jurisdiction is evidently ambivalent. 10

Adjudication is also authoritative because the decision is reasoned and the jurisdiction of the court or tribunal has been accepted by the parties. It is not the fact of obtaining a ruling from the court or tribunal which vindicates a claim; rather, it is the reasoning by which the decision is supported. From a legal perspective, this suggests the importance of enhancing the precision of international law.

Another point of major importance is the constitution and composition of the court or tribunal. States normally want to exercise control over this matter to ensure that as a whole the court or tribunal represents a range of views. This desire is evidenced by the provision requiring the representation of the “main forms of civilization” and the “principal legal systems of the world” on the International Court of Justice (ICJ). 11

Unfortunately, decisions by courts and tribunals are not always complied with voluntarily, nor enforced in their entirety. 12 Therefore, adjudication often requires some form of continuing mechanism to ensure the implementation of the agreed settlement. 13 Post-adjudicative bargaining is

10. At the time of writing, the number of cases that have made a declaration recognizing the jurisdiction of the ICJ as compulsory under Art. 36.2 of its Statute is at 71 out of 193 United Nations Member States. Declarations Recognizing the Jurisdiction of the Court as Compulsory, 2071, COURT OF JUSTICE, SC/2071, date: 22 Jan 2015 [hereinafter Declaration Recognition]. The jurisdictional statement of the ICJ states that States parties to the Statute of the Court may “at any time declare that they recognize compulsory jurisdiction and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court.” States of the International Court of Justice art. 36.2, June 26, 1945, 59 Stat. 1001 [hereinafter ICJ Statute].

11. ICJ Statute, supra note 10, at art. 9.

12. Sadly, what also occurs is that conflicts survive even when disputes are settled. To this effect it is worth recalling United Nations Charter Art. 37, which states, “should the parties to a dispute fail to settle the dispute referred to in article 33 and thus they refer it to the Security Council.” U.N. Charter art. 37, § 1.

13. Third parties often facilitate post-adjudicative bargaining, such as the United Nations Secretary General’s involvement in settling the Biafra dispute after a judgment by the ICJ in the Case Concerning the Land and Maritime Boundaries between Cameroon and Nigeria, Judgment of 15 October, 2002. The Cameroon-Nigeria Mixed Commission (CMC) was established in November 2002 by the United Nations Secretary-General at the request of the Presidents of Cameroon and Nigeria. The goal of

III. RECENT ICJ DECISIONS

Certainly, more than any other region in the world, Latin America has a strong tradition of resorting to the ICJ to resolve disputes, namely on disputes relating to the delimitation of land and maritime boundaries, 14 and concerning the use and exploitation of shared natural resources. 15 Only in the last fifteen years, fourteen cases have been brought before the ICJ by states from the region. 16 It seems like this trend will persist as several new cases involving Latin American states continue to be brought before the ICJ.


14. See id.


16. Id. at § 3.

17. Id. at § 7.


19. Id. (notes the decision dated 1960 on the Arzobispo Award Made by the King of Spain on Jan. 12, 1960 (Hand, v. Nicar.), the ICJ, also known as the main judicial organ of the United Nations, has been called upon to decide on various territorial and border claims among Latin American States).

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12. Sadly, what also occurs is that conflicts survive even when disputes are resolved. To this effect it is worth recalling United Nations Charter Art. 37, which states, "should the parties to a dispute fail to agree on the means referred to in article 35 then they may refer it to the Security Council." U.N. Charter art. 37, ¶ 5.

13. Third parties often facilitate post-adjudicative bargaining, such as the United Nations Secretary General’s involvement in settling the Sokoto dispute after a judgment by the ICJ in the Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria, Judgment of 19 October, 2002. The Cameroon-Nigeria Mixed Commission (CMC) was established in November 2002 by the United Nations Secretary-General at the request of the Presidents of Cameroon and Nigeria. The goal of

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not only the norm, but is also actively encouraged in international instruments and by institutional actors as a method of settling disputes. ICJ judgments regularly contain explicit provisions urging litigants to return to negotiations and reach a new settlement in accordance with the principles established by the Court. 15

A brief comment must be made on the costs involved with resorting to a body like the ICJ, which also factors in on its selection as an option available to states. In 1989, the Secretary-General of the United Nations set up a trust fund to assist states in settling their disputes through the ICJ. 16 The fund assists states which are prevented from using the Court by either lack of legal expertise or lack of money. 17 The fund is financed by voluntary contributions. 18

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15. See id.


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20. See id. at supra note 5, at 1313-15.

In 2014, one of the major cases handled by the ICI was the Maritime Dispute between Peru and Chile. The case presented a novel and peculiar factual scenario with respect to the diametrically opposed arguments advocated by the parties. Peru argued that no maritime boundary had been agreed earlier between the parties, advocating in favor of a demarcation de novo to be carried out by the Court. For its part, Chile took the view that the entire maritime boundary had already been agreed by the parties, particularly in the 1952 Santiago Declaration.

Eventually, the ICI looked to another source, that is, the 1954 Special Maritime Frontier Zone Agreement. The Court concluded that while the 1954 Agreement did not indicate when and by what means their boundary had been agreed upon, the parties' express acknowledgment of its existence could only reflect a tacit agreement which they had reached earlier. This is quite interesting, bearing in mind the ICI had stated previously it was not prepared to easily declare the existence of tacit boundary agreements and that evidence of a tacit and permanent maritime boundary had to be compelling.

It is also relevant to point out that within two months of the judgment the parties proceeded to agree on the precise geographic coordinates of their maritime boundary on the basis of the description in the ICI's judgment. This post-trial performance has been welcomed by the ICI. In contrast, the Court regretted the rejection of the judgment by Colombia and the decision to withdraw from the Pact of Bogotá one week after the 2012 judgment in the Territorial and Maritime Dispute with Nicaragua.

This case had two main components, namely, the determination of sovereignty over certain maritime features, (including Quitasueño, Roscador and Serreno) and a maritime delimitation based on the findings on sovereignty. Nicaragua claimed sovereignty over all maritime features off its Caribbean coast not proven to be part of the San Andres Archipelago. Colombia, for its part, claimed sovereignty over all the maritime features in dispute between the parties, which it described as forming part of the San Andres Archipelago. The Court found that Colombia continously and consistently acted a titre de souverain with regard to the maritime features in dispute, over a period of several decades. However, even when Colombia had the right to a twelve nautical mile territorial sea around these islands, it had no prospect of relying on them to generate either a continental shelf or an Exclusive Economic Zone (EEZ). The islands were effectively left as Colombian territorial enclaves within the Nicaraguan continental shelf and EEZ.

Subsequently in the month of September 2013, Nicaragua introduced new proceedings against Colombia, seeking an extended continental shelf. The following month, Nicaragua instituted another set of proceedings against Colombia, alleging Colombia had violated several international legal

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22. Id. at 2, ¶ 1.
23. Id.
24. Id.
25. Id. at 2, ¶ 4 stating, "[i]f this case, the Court has before it an Agreement which makes clear that the maritime boundary along a parallel already existed between the Parties. The 1954 Agreement is decisive in this respect. That Agreement contains the tacit agreement.
27. Id.
29. The Pact of Bogotá formally known as the American Treaty on Pacific Settlement of 1948, sets out procedures in detail, ranging from good offices, mediation and conciliation to arbitration and judicial settlement by the ICI. This treaty however, has not been successful. This is the second withdrawn after El Salvador in 1973 and at the time of writing only has fourteen State Parties.
31. Id.
32. Id. at ¶ 15.
33. Id. at ¶ 60.
34. Id. at ¶ 83.
35. Territorial and Maritime Dispute, supra note 30, ¶ 173.
36. See generally id. at ¶ 73-90.
37. Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colom.), Application Instituting Proceedings, ¶ 12 (Sep. 16, 2013), available at http://www.osce.org/doc/54217792.pdf (last visited Feb. 4, 2015). The Court was asked to determine "the precise course of the maritime boundary between Nicaragua and Colombia in the area of the continental shelf which corresponds to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012." Id. It was also asked to indicate "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, including the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast." Id.
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Subsequently in the month of September 2013, Nicaragua introduced new proceedings against Colombia, seeking an extended continental shelf.37 The following month, Nicaragua instituted another set of proceedings against Colombia, alleging Colombia had violated several international legal

22. Id. at 2, ¶ 31.
23. Id.
24. Id.
25. Id. at 2, ¶ 4 (stating, “In this case, the Court has held that an agreement which makes it clear that the maritime boundary along a parallel already existed between the Parties. The 1954 Agreement in dispute is declarative in this respect. That Agreement contains the tacit agreement.”).
27. Id.
28. See generally American Treaty on Pacific Settlement “Pact of Bogotá,” Signature and Ratifications, Apr. 30, 1948, 466, U.N. doc. 82. The withdrawal instrument was deposited by Colombia with the Secretary-General of the Organization of American States on November 27, 2012. This withdrawal only became effective after twelve months.
29. Id. The Pact of Bogotá formally known as the American Treaty on Pacific Settlement of 1948, sets out procedures in detail, ranging from good offices, mediation and conciliation to arbitration and judicial settlement by the ICJ. This treaty however, has not been successful. This is the second withdrawal after El Salvador in 1973 and at the time of writing only has fourteen State Parties.
31. Id.
32. Id. ¶ 55.
33. Id. ¶ 60.
34. Id. ¶ 83.
35. Territorial and Maritime Dispute, supra note 30, ¶ 173.
36. See generally id. ¶¶ 73–80.
37. Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colom.), Application Instituting Proceedings, ¶ 2 (Sept. 16, 2013), available at http://www.icj-cij.org/eng/cases/154/154330.pdf (last visited Feb. 4, 2015). The Court was asked to determine the "precise course of the maritime boundary between Nicaragua and Colombia in the area of the continental shelf which separates 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." Id.
obligations regarding Nicaragua's sovereign rights and maritime zones declared by the 2012 judgment.\footnote{Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicar. v. Colom.), Application Instituting Proceedings, ¶ 2 (Nov. 26, 2013), available at http://www.icj-cij.org/docket/files/155/17978.pdf (last visited Feb. 4, 2015). Nicaragua requested the Court to adjudge and declare Colombia's breach of obligations under the United Nations Charter and international customary law; and it is, consequently, bound to comply with the Judgment of November 19, 2012, which paved the way for the resolution of its internationally wrongful acts, and make full reparation for the harm caused by those acts. Id. at ¶ 22.}

In view of the fact that the Parties' coasts generate overlapping entitlements to maritime areas in both the Caribbean Sea and the Pacific Ocean, Costa Rica instituted proceedings before the Court against Nicaragua, in February of 2014.\footnote{Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicar.), Application Instituting Proceedings, ¶ 15 (Feb. 25, 2014), available at http://www.icj-cij.org/docket/files/157/18344.pdf (last visited Feb. 4, 2015). Costa Rica asked the Court to determine the course of the single maritime boundary between all the maritime areas appurtenant, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean, on the basis of international law. Id. at ¶ 11.} These new proceedings instituted by Costa Rica against Nicaragua are historically significant. They constitute the first time a state has requested the ICJ carry out a maritime delimitation in areas lying seaward of both extremities of the shared land frontier between the relevant states (in this case in maritime areas lying in the Caribbean Sea and in the Pacific Ocean).\footnote{See generally id.}

Noticeably, Central American states have been active before the Court. On April 17, 2013, the Court joined the proceedings of Costa Rica and Nicaragua by way of two separate orders.\footnote{See generally Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Provisional Measures, 2013 I.C.J. 354 (Nov. 22), available at http://www.icj-cij.org/docket/files/150/16279.pdf (last visited Feb. 4, 2015). Provisional measures were granted on November 22, 2013, in which the Court indicated a number of provisional measures enjoining Nicaragua to carry out certain actions. Id.}

Convention by building a road along the southern bank of the San Juan.\footnote{See generally Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, 996 U.N.T.S. 245; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Application Instituting Proceedings, ¶ 1 (Nov. 16, 2010), available at http://www.icj-cij.org/docket/files/150/16279.pdf (last visited Feb. 4, 2015).} Public hearings will be held in the spring of 2015 to hear both parties on the merits in the joined proceedings. It is worth following how this dispute plays out as, with the Ramsar Convention providing a potential treaty-based framework for shared responsibility, it offers the possibility of some interesting jurisprudence and practice.

Recent cases also show the ICJ is increasingly turned to by states as a favorable forum to address disputes relating to the conservation of the environment and natural resources. In this sense, another major judgment on the merits rendered in 2014 was the case concerning whaling in the Antarctic.\footnote{Construction of a Road in Costa Rica along the San Juan River (Nicol v. Costa Rica), Application Instituting Proceedings, ¶ 4-5 (Dec. 22, 2011), available at http://www.icj-cij.org/docket/files/152/16917.pdf (last visited Feb. 5, 2015).} This case is relevant because the judgment demonstrated the Court's ability to address extremely complex facts and handle highly scientific evidence.\footnote{See also Case Concerning Pulp Mills on the River Uruguay (Arg. v. Urugu), Joint Dissenting Opinion of Judges Al-Khasawneh and Simma, 2010 I.C.J. 108 (Apr. 20), available at http://www.icj-cij.org/docket/files/135/15879.pdf (last visited Feb. 5, 2015).} Undeniably, this judgment has been seen as a response to criticism voiced in the wake of the 2010 Pulp Mills decision,\footnote{Case Concerning Pulp Mills on the River Uruguay, supra note 46, at 83 ¶ 204 (the ICJ declared for the first time that "it may now be considered a requirement under general international law to undertake an environmental impact assessment where the risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.").} which even elicited critiques by two dissenting members of the ICJ\footnote{See generally Obligation to Negotiate Access to the Pacific Ocean (Bol. v. Chile), Application Instituting Proceedings, (Apr. 24, 2013), available at http://www.icj-cij.org/docket/files/153/17338.pdf (last visited Feb. 4, 2015).} that the Court is ill-equipped to handle fact-intensive, science-heavy cases.\footnote{Id.; see also Case Concerning Pulp Mills on the River Uruguay (Arg. v. Urugu), Judgment, 2010 I.C.J. 14 (Apr. 20), available at http://www.icj-cij.org/docket/files/135/15877.pdf (last visited Feb. 5, 2015).}
obligations regarding Nicaragua’s sovereign rights and maritime zones declared by the 2012 judgment.38

In view of the fact that the Parties’ coasts generate overlapping entitlements to maritime areas in both the Caribbean Sea and the Pacific Ocean, Costa Rica instituted proceedings before the Court against Nicaragua, in February of 2014.39 These new proceedings instituted by Costa Rica against Nicaragua are historically significant. They constitute the first time a state has requested the ICJ carry out a maritime delimitation in areas lying seaward of both extremities of the shared land frontier between the relevant states (in this case in maritime areas lying in the Caribbean Sea and in the Pacific Ocean).40

Noticably, Central American states have been active before the Court. On April 17, 2013, the Court joined the proceedings of Costa Rica and Nicaragua by way of two separate orders.41 In its application initiating proceedings, Costa Rica accused Nicaragua of, among numerous other international law violations, causing damage to protected wetlands, in breach of its Ramsar Convention obligations through its dredging of the San Juan River and construction of an artificial channel across Costa Rica’s northeast Caribbean wetland.42 Nicaragua brought a separate claim against its neighbor, alleging that it was instead Costa Rica that breached the Ramsar


40. See generally id.


Convention by building a road along the southern bank of the San Juan.43 Public hearings will be held in the spring of 2015 to hear both parties on the merits in the joined proceedings. It is worth following how this dispute plays out as, with the Ramsar Convention providing a potential treaty-based framework for shared responsibility, it offers the possibility of some interesting jurisprudence and practice.

Recent cases also show the ICJ is increasingly turned to by states as a favorable forum to address disputes relating to the conservation of the environment and natural resources. In this sense, another major judgment on the merits rendered in 2014 was the case concerning whaling in the Antarctic.44 This case is relevant because the judgment demonstrated the Court’s ability to address extremely complex facts and handle highly scientific evidence.45 Undeniably, this judgment has been seen as a response to criticism voiced in the wake of the 2010 Pulp Mills decision,46 which even elicited critiques by two dissenting members of the ICJ47 that the Court is ill-equipped to handle fact-intensive, science-heavy cases.48

Finally, in April 2013, Bolivia instituted proceedings against Chile in the case concerning the Obligation to Negotiate Access to the Pacific Ocean.49 In that pending case, Bolivia invokes Article XXXI of the Pact of


45. See generally id.


48. Case Concerning Pulp Mills on the River Uruguay, supra note 46, at 83 ¶ 204 (the ICJ declared for the first time that “it may now be considered a requirement under general international law to undertake an environmental impact assessment where the risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.”).

Bogotá as a basis for jurisdiction of the Court. Bolivia asks the Court to adjudge and declare that:

(i) Chile has the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean;
(ii) Chile has not been complying with that obligation; and
(iii) Chile must fulfill that duty in good faith, promptly, formally, within a reasonable time and effectively, to grant Bolivia a fully sovereign access to the Pacific Ocean. 50

IV. CONCLUSION

Generally, the ICJ is seen as an authoritative organ that contributes to mitigating political risks and recriminations that sometimes follow when a state loses a case. 51 In Latin America, there is a clear tendency to opt for the ICJ as a means to settle disputes. Several reasons can explain this preference for adjudicating disputes, and in particular, resorting to the ICJ even more than to international arbitration, which used to be the practice in the region. Many boundary disputes have been ongoing in the aftermath of independence of Latin American countries in the nineteenth century, most of them embedded both in colonial practice and characteristics of the decolonization process. Predictability and expertise are factors states may take into account when deciding to submit these kinds of disputes to the ICJ, bearing in mind the Court has created jurisprudence particularly in the fields of territorial and maritime boundary delimitation.

Some disputes have also originated in the inability of the parties to establish mechanisms that might contribute to promote direct negotiations conducive to reaching satisfactory arrangements. This problem is another aspect of the lack of negotiating capacity that may serve to explain the numerous Latin American cases before the Court. Thus, Latin American states seem to be using the ICJ as a replacement for other, more cost effective mechanisms for the peaceful settlement of disputes. 52 In addition, the region suffers from weak domestic institutional capacity and, in general, there is no tradition to adjudicate international disputes before domestic courts and tribunals.

That said, one may question if the ICJ will continue to supply Latin America with all that will ever be needed. Even when Latin American states constitute the most frequent clients of the ICJ, today it is safe to say that the World Court has competition. The wide array of courts and tribunals make it unavoidable for more than one court or tribunal to have jurisdiction over a dispute. 53 Questions become more complicated when different tribunals are asked to deal with similar questions, leading to the possibility of conflicting decisions. This evolution supports the need to increase the effectiveness of the ICJ.

50. ibid at 52.
51. See generally Case Concerning Aerial Intrusion Spraying (Ecuador v. Colombia), Order 2008 ICJ, 174 (May 30). The Court has also played an important role in assisting parties in possibly 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. This was the situation in the aforementioned case, with the parties having reached an agreement to settle their dispute. Both parties acknowledged the settlement of the dispute would have been difficult if not impossible but for the involvement of the Court during a period of over five years.
52. See Xiema Pumias, Latin American States and the ICJ in LITIGATING INTERNATIONAL LAW DISPUTES: WEAKENING THE OPTIONS 51 (Nicolas Kort et al., 2014).
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50. Id at ¶ 32.
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