The World Court's Enforcement Dilemma — And How to Solve It

CINDY GARAY*, OONA A. HATHAWAY**, AND KEVIN ZHANG***†

The United Nations (UN) was established "to save succeeding generations from the scourge of war." Its judicial organ, the International Court of Justice (ICJ), sometimes called the "World Court," is integral to achieving this purpose, providing a forum for peacefully adjudicating disputes between States. As conflicts continue in places such as Gaza and Ukraine, States are increasingly turning to the Court to affirm their legal rights. The Court has responded, issuing decisions in these high-profile cases. Yet this success has generated a new problem for the Court: compliance with its judgments is under growing pressure. The UN Charter designates the Security Council as the body empowered to enforce ICJ judgments when States fail to comply, but it has never taken such action and most likely never will. While compliance with the Court's judgments remains strong, there are signs of a growing enforcement challenge. This places the legitimacy of the Court—and, with it, the legitimacy of international law—at risk.

This Article proposes a solution to this problem. It argues that ICJ judgments involve obligations erga omnes (owed to all) and erga omnes partes (owed to all parties). First, we argue that the ICJ may authoritatively recognize erga omnes and erga omnes partes obligations. Second, going a step further, we argue that the obligation to comply with decisions of the ICJ is itself an erga omnes obligation. This more ambitious claim rests on the observation that the modern legal order prohibits States from using force. That prohibition implies the necessity of a peaceful mechanism for resolving disputes—a role the ICJ is uniquely suited to play in the current international legal system. Even though only the parties to a case are bound to comply with the Court's decisions under the ICJ Statute, the obligation to comply is owed not only to one another but also to the broader international community. After all, the obligation is, at least in part, to uphold the functioning and efficacy of a principal alternative to the use of force. Both arguments conclude that where an ICJ judgment entails an erga omnes or erga omnes partes obligation, all States (or, in the case of an erga omnes partes obligation, all States parties) may act to enforce it, including through the use of countermeasures. This argument promises to

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* Yale Law School, J.D. expected 2026.

** Gerard C. and Bernice Latrobe Smith Professor of Law, Yale Law School.

*** Yale Law School, J.D. 2025, and University of Oxford, D.Phil. 2022.

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address the World Court's enforcement dilemma by expanding the actors empowered to enforce its decisions.

TABLE OF CONTENTS

INTRODUCTION

In 2019, The Gambia made history by instituting proceedings against Myanmar for the "genocidal acts" its military undertook to "destroy the Rohingya."[1] The Gambia persuasively and successfully secured standing before the International Court of Justice (ICJ)—sometimes called the "World Court"—by invoking Myanmar's obligation under the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention") to refrain from committing genocide—a duty owed to The Gambia and all other States parties to the Convention.[2] The Court concluded that The Gambia had standing to enforce obligations owed to all parties—sometimes referred to as *erga omnes partes* obligations—and it ordered Myanmar to take "all measures within its power" to prevent violations of the Genocide Convention.[3] In doing so, the Court signaled its willingness to consider a range of new cases brought by States to protect common legal rights, including human rights, that have often been underenforced.

In 2022, Ukraine appealed to the ICJ just two days after Russia's illegal invasion,[4] requesting that the Court adjudge and declare that Russia "cannot lawfully take any action under the Genocide Convention" based on false allegations of genocide in the "Luhansk and Donetsk oblasts of Ukraine."[5] Ukraine asked the Court to issue provisional measures to halt Russia's military operations in Ukraine, citing the "extraordinary urgency of the situation."[6] The Court agreed, issuing provisional measures (temporary orders to preserve the rights of parties pending a final judgment) based on "a real and imminent risk that irreparable prejudice will be caused to this right before the Court gives its final decision."[7]

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1. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gam. v. Myan.), Application Instituting Proceedings and Request for Provisional Measures, ¶ 6 (Nov. 11, 2019), https://www.icj-cij.org/sites/default/files/case-related/178/178-20191111-APP-01-00-EN.pdf.

2. *Id.* ¶ 15 (noting that the duty discussed is known as an *erga omnes partes* obligation—i.e., an obligation owed by each State party to all other States parties to a treaty).

3. Application of Convention on Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Provisional Measures, 2020 I.C.J. 3, ¶¶ 35, 42 (Jan. 23) (noting that in previous cases involving the Genocide Convention, such as *Bosnia and Herzegovina v. Serbia and Montenegro*, the Court recognized standing based solely on a State's status as a party to the Genocide Convention, rather than on specific obligations owed to it as a treaty party). The first case in the Court's history to identify and uphold *erga omnes partes* standing was in *Belgium v. Senegal*. Questions Relating to Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶¶ 68–69 (July 20).

4. *See* Allegations of Genocide Under the Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. 211, ¶¶ 1, 17 (Mar. 16).

5. *Id.* ¶ 2.

6. Allegations of Genocide Under the Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Application Instituting Proceedings, at 2 (Feb. 26, 2022), https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-APP-01-00-EN.pdf.

7. Allegations of Genocide Under the Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. 211, ¶ 73 (Mar. 16).

Affirming the binding nature of its provisional measures, the Court called on Russia to suspend its military operations in Ukraine and any action pursuant to Russia's claim of genocide in the Luhansk and Donetsk regions.[8]

In December 2023, South Africa followed The Gambia's example from 2019 by turning to the Court to allege violations of the Genocide Convention by Israel.[9] Though located six thousand miles away and a continent apart from the Gaza Strip, South Africa argued that Israel's failure to prevent genocide in Gaza, along with its failure to punish those inciting violence, violated the obligations it owed to South Africa and all other States parties to the Genocide Convention.[10] The Court not only allowed the case to proceed but also ordered provisional measures, including calling on Israel to halt its "military offensive, and any other action in the Rafah Governorate."[11]

As these recent examples show, States are increasingly calling on the ICJ to weigh in on some of the most challenging geopolitical conflicts of our time. The Court's caseload has grown dramatically—while it typically handled just one or two cases annually in the 1970s, it now manages twenty to thirty cases a year.[12] Today, thirty-nine States—nearly one-fifth of States in the world—are involved in a contentious case before the Court in one way or another.[13] More than half of the States in the world have recently participated in advisory opinion proceedings.[14]

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8. *See id.* ¶ 81; Statute of the International Court of Justice art. 41 [hereinafter ICJ Statute].

9. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Application Instituting Proceedings Containing a Request for the Indication of Provisional Measures, ¶ 1 (Dec. 29, 2023), https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf.

10. *Id.*; *see* Convention on the Prevention and Punishment of the Crime of Genocide art. 1, *opened for signature* Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951) [hereinafter Genocide Convention].

11. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Request for the Modification of the Order of 28 March 2024, ¶ 50 (May 24, 2024), https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf.

12. *See* Int'l Ct. of Just., Rep. of the Int'l Ct. of Just., ¶ 9, U.N. Doc. A/59/4 (2004); Int'l Ct. of Just., Rep. of the Int'l Ct. of Just., ¶ 5, 7, U.N. Doc. A/79/4 (2024).

13. Involvement in a contentious case means that a State is participating in proceedings before the Court either as party to a contentious case or as a State admitted to intervene in a case under Article 63 of the ICJ Statute. Many States have participated in cases in this way. Int'l Ct. of Just., Rep. of the Int'l Ct. of Just., ¶ 7, U.N. Doc. A/79/4 (2024) ("40 States had filed requests for permission to intervene or declarations of intervention in contentious cases pending before the Court as at 31 July 2024, including 22 from the Group of Western European and other States, 10 from the Group of Eastern European States, 4 from the Group of Latin American and Caribbean States, 3 from the Group of Asia-Pacific States and 1 from the Group of African States."). Illustrating the growing frequency with which States are turning to the ICJ, from August 2023 to July 2024, the Court issued eight provisional measures at the request of States in just one year—a stark contrast to the ten provisional measures issued over the first fifty years of its existence (1945 to 1995). *See id.* ¶ 11; Matei Alexianu, *Provisional, but Not (Always) Pointless: Compliance with ICJ Provisional Measures*, EJIL: TALK! (Nov. 3, 2023), https://www.ejiltalk.org/provisional-but-not-always-pointless-compliance-with-icj-provisional-measur es [https://perma.cc/7PHW-QHN8].

14. States have increasingly—and in an unprecedented fashion—participated in advisory proceedings by submitting written statements, written comments, or written replies. For instance, 117 member states provided at least one written statement, written comment, or written reply in at least one of the following cases: (i) *Legal Consequences arising from the Policies and Practices of Israel in the*

But as the Court has taken on more cases, including more challenging ones, it has exposed itself to greater risk. In each of the three cases mentioned above, the Court has issued provisional measures orders that have largely been ignored.[15] The growing promise of the Court as a source of justice and rule of law thus threatens to be undermined by rising challenges to compliance with its decisions.[16]

There is a formal answer to what States can do when a party to a case before the ICJ fails to comply: States can appeal to the Security Council, which has the authority under the UN Charter to "make recommendations or decide upon measures to be taken to give effect to the [Court's] judgment."[17] Yet the Security Council has not *once* in its history taken such action.[18] The prospect of a veto by the permanent five members of the Security Council (China, France, Russia, the United Kingdom, and the United States—a group commonly referred to as the "P5") is likely an important reason for this inaction, and there is little reason to believe that this will change.[19]

The current situation thus presents a real problem for the Court. It has the potential to play a critical role in some of the most important conflicts of the

Occupied Palestinian Territory, including East Jerusalem; (ii) *Obligations of States in respect of Climate Change*; or (iii) *Chagos Archipelago from Mauritius in 1965*. *See Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem: Written Proceedings*, INT'L CT. OF JUST., https://www.icj-cij.org/case/186/written-proceedings [https://perma.cc/NN79-XRWE] (last visited Sep. 8, 2025); *Obligations of States in respect of Climate Change: Written Proceedings*, INT'L CT. OF JUST., https://www.icj-cij.org/case/187/written-proceedings [https://perma.cc/SY9J-FAQG] (last visited Sep. 8, 2025); *Obligations of States in respect of Climate Change: Latest Developments*, INT'L CT. OF JUST., https://www.icj-cij.org/case/187 [https://perma.cc/8VQ7-4TU7] (last visited Sep. 8, 2025); *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965: Written Proceedings*, INT'L CT. OF JUST., https://www.icj-cij.org/case/169/written-proceedings [https://perma.cc/GK86-25MY] (last visited Sep. 8, 2025).

15. In addition to the three cases noted above, there are other recent instances in which States have failed to comply with the Court's provisional measures. For example, in 2021, Armenia instituted proceedings against Azerbaijan that included a request for the indication of provisional measures to address Azerbaijan's ongoing violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), "as well as the ongoing, severe and irreparable harm being suffered by Armenians." Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Arm. v. Azer.), Application Instituting Proceedings Containing a Request for Provisional Measures, ¶¶ 98–100 (Sep. 16, 2021), https://www.icj-cij.org/sites/default/files/case-related/180/180-20210916-APP-01-00-EN.pdf. Since Armenia's first filing, the Court has issued five separate provisional measures. Melanie O'Brien, *Armenia and Azerbaijan in the International Court of Justice Over Nagorno-Karabakh*, JUST SEC. (May 31, 2024), https://www.justsecurity.org/96265/nagorno-karabakh-icj-cases [https://perma.cc/Q45L-FHK6]. Azerbaijan has failed to comply with several, if not all, of the provisional measures. *Id*.

16. For the purposes of this article, we define "decisions" as encompassing both the judgments and provisional measures the Court issues in contentious cases.

17. U.N. Charter art. 94, ¶ 2.

18. *See In Hindsight: The Security Council and the International Court of Justice*, SEC. COUNCIL REP. (Dec. 28, 2016), https://www.securitycouncilreport.org/monthly-forecast/2017-01/in_hindsight_the_security_council_and_the_international_court_of_justice.php [https://perma.cc/TY6V-QS5U] (explaining that the Security Council "has yet to use its powers under Article 94(2) to enforce a judgment").

19. Oona A. Hathaway, Maggie M. Mills & Heather Zimmerman, *How to Reform the UN Without Amending Its Charter*, CARNEGIE ENDOWMENT FOR INT'L PEACE (July 15, 2024), https://carnegieendowment.org/posts/2024/07/un-reform-security-council-charter-nonamendment-veto?lang=en [https://perma.cc/3X26-RYCS].

moment, but its own credibility and legitimacy are at risk. Will the Court be able to fulfill the hope that States have placed in it? If not, what does that mean for the future of international law and the international legal order? If the Court declares that a State's legal rights have been violated but the responsible State refuses to comply with the Court's decision without facing consequences, will States lose faith in the power of international law to peacefully settle their disputes? And if so, what does that mean for the future of international peace and security?

This Article aims to confront these challenges and offer a new answer to them. It offers a key theoretical innovation that grounds a path for States that wish to maintain the Court as a critical institution for the peaceful resolution of disputes and thus the maintenance of international peace and security. First, we argue that the Court can operate as an epistemic authority—recognizing in an authoritative way obligations *erga omnes* (owed to all) and *erga omnes partes* (owed to all parties). Second, going a step further, we argue that, given the critical role of the Court in the international legal order, compliance with the judgments of the Court is *itself* an *erga omnes* or *erga omnes partes* obligation, not just identifying the existence of an obligation but giving rise to it.

This argument unlocks the potential for a new kind of enforcement of ICJ decisions. If compliance with ICJ decisions is indeed an *erga omnes* obligation, then States are empowered to act to enforce those decisions—even if they are not directly involved in the dispute. States have the intrinsic legal authority to act to enforce any ICJ decision on the grounds that failure to comply with such decisions harms all States by eroding the legitimacy of the Court, and with it the prospect of peaceful resolution of disputes that is so critical to the modern legal order. These arguments support broader and more decentralized enforcement of ICJ decisions, an approach that will underscore and support both the strength and promise of international law. After all, as the General Assembly has recently declared, "a stable and peaceful multilateral order cannot be built on the outdated notion that 'might makes right.'"[20] Creating an effective and pacific alternative to the use of force is critical to that vision.

While this Article aims to make a theoretical contribution, it is one with real-world importance. The Court, we argue, is critical to resolving major international disputes and to maintaining international peace at a moment of growing discord. Many States believe in the principle of peaceful resolution of disputes and are seeking ways to support international courts. This Article offers a roadmap to do just that.

Part I begins by outlining the problem of ICJ enforcement, highlighting both the importance of an effective Court and the threat posed by growing noncompliance. Part II then introduces the core theoretical interventions of this Article, centering around the idea that ICJ decisions both identify and create *erga omnes*

20. Press Release, General Assembly, Emphasizing Contribution of International Court of Justice to International Peace, General Assembly Underscores Heavy Caseload, Need for Increased Funding, U.N. Press Release GA/12647 (Oct. 24, 2024).

obligations. Part III discusses how that conclusion offers States a novel legal justification to enforce ICJ decisions—individually, collectively, and institutionally. Part IV pulls back the lens to examine the implications of the argument for the international legal system and address several possible objections. The Article concludes by explaining that this approach offers a way to improve compliance with ICJ decisions and thus strengthen the international legal order as a whole.

I. THE ENFORCEMENT DILEMMA

The drafters of the UN Charter envisioned that the Security Council would play a critical role in enforcing compliance with judgments of the World Court. Yet the Security Council has not lived up to this expectation. The Security Council is often paralyzed as a result of the veto power of its five permanent members.[21] Its enforcement of ICJ judgments is no exception, and, indeed, the Security Council has "never explicitly" acted to enforce such a decision.[22]

This Part begins by introducing the ICJ and its place in the current international legal order. It then discusses the failure of the Security Council to exercise its authority to enforce the Court's judgments when States fail to comply. Finally, it documents that this often leaves ICJ decisions unenforced. This illustrates the problem that the rest of the Article seeks to address.

A. THE ICJ AND THE PACIFIC SETTLEMENT OF DISPUTES

> "Without a court of law to which disputes can be referred for peaceful resolution, the existence of a rule of law at the international level may be doubted."[23]

The UN was founded with the aim of securing world peace—"to save succeeding generations from the scourge of war."[24] It prohibited the use of force as a foundational cornerstone of this project for peace,[25] and it established the ICJ as the "principal judicial organ" of the UN, one which is "integral" to the new order.[26] The ICJ, located in the Dutch city of The Hague,[27] sits as one of six principal organs of the UN, alongside the Security Council and the General Assembly.[28] All 193 States that are party to the UN Charter are, *ipso facto*, party

21. *See In Hindsight: Challenging the Power of the Veto*, SEC. COUNCIL REP. (Apr. 29, 2022), https://www.securitycouncilreport.org/monthly-forecast/2022-05/in-hindsight-challenging-the-power-of-the-veto.php [https://perma.cc/BJN4-G77P].

22. *See* U.N. Charter art. 94, ¶ 2; CONSTANZE SCHULTE, COMPLIANCE WITH DECISIONS OF THE INTERNATIONAL COURT OF JUSTICE 38 (2004).

23. Press Release, Security Council, Using Advisory Opinions Would Bolster Links Between Security Council, World Court, Strengthen Rule of Law, Chief Justice Says in Open Debate, U.N. Press Release SC/14392 (Dec. 18, 2020) (quoting statement by ICJ Judge Abdulqawi Ahmed Yusuf).

24. U.N. Charter preamble.

25. *See* U.N. Charter art. 2, ¶ 4.

26. U.N. Charter art. 92.

27. ICJ Statute art. 22, ¶ 1.

28. U.N. Charter art. 7, ¶ 1.

to the ICJ Statute, as well.[29] The ICJ is charged with resolving legal disputes between States.[30] Cases may only be brought by and against States.[31]

The ICJ gains jurisdiction over a dispute only when all parties consent. That consent may be given in advance.[32] For instance, seventy-four States have agreed to the compulsory jurisdiction of the Court, meaning that they accept the Court's jurisdiction over any international legal dispute, provided the other parties to the dispute have also accepted the compulsory jurisdiction of the Court.[33] In addition, hundreds of treaties include provisions granting jurisdiction to the Court over disputes arising out of those treaties—including the Genocide Convention, which is the basis for all three cases described above.[34] States may also agree to submit a case on an ad hoc basis to the Court.[35] Finally, organs of the UN and specialized agencies are permitted to seek advisory opinions from the Court when authorized by the General Assembly, but those decisions are not binding.[36]

In April 1945, "a committee of jurists representing 44 States" met in Washington, D.C. and drafted the ICJ's statute, drawing from the Statute of the (unfortunately named) Permanent Court of International Justice (PCIJ), which had been provided for in the Covenant of the League of Nations and collapsed along with the League.[37] The delegates envisioned the Court as an essential element of their broader vision for world peace. The UN Charter begins with the declaration that, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."[38] That lofty promise was not intended as mere empty words; it was designed as an aspiration for genuine and practical achievement. As the UN Charter prohibits the use of force as a foundation for the

29. U.N. Charter art. 93, ¶ 1. *Ipso facto* is Latin for "by the fact itself"; thus, putting it all together, this Article makes clear that all member states recognize the court's role and functions and can participate in proceedings before the Court.

30. *How the Court Works*, INT'L CT. OF JUST., https://www.icj-cij.org/how-the-court-works [https://perma.cc/V3KL-5KLE] (last visited Sep. 8, 2025).

31. *Id.*

32. *See* ICJ Statute art. 36, ¶ 2.

33. *Declarations Recognizing the Jurisdiction of the Court as Compulsory*, INT'L CT. OF JUST., https://www.icj-cij.org/declarations [https://perma.cc/4TPJ-MMZ6] (last visited Sep. 8, 2025).

34. *See supra* notes 1–11 and accompanying text; *Treaties*, INT'L CT. OF JUST., https://www.icj-cij.org/treaties [https://perma.cc/F97G-JPLR] (last visited Sep. 8, 2025).

35. *See* ICJ Statute art. 36, ¶ 1.

36. U.N. Charter art. 96. *See infra* text accompanying notes 100–05. Notably, advisory opinions may become binding through provisions in other agreements. For instance, advisory opinions requested by the International Labor Organization (ILO) are binding according to the ILO's Constitution. *Office Note: The Binding Legal Effect of ICJ Advisory Opinions*, INT'L LAB. ORG. (Oct. 20, 2023), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meetingdocument/wcms_899567.pdf.

37. THE INTERNATIONAL COURT OF JUSTICE: HANDBOOK 16 (2013) [hereinafter ICJ HANDBOOK] ("Participants at the San Francisco Conference nevertheless emphasized that all continuity with the past should not be broken, particularly since the Statute of the PCIJ had itself been drawn up on the basis of past experience, and it was considered better not to change something that in general had worked well.").

38. U.N. Charter preamble.

international legal order it established,[39] it at the same time promises "collective measures for the prevention and removal of threats to the peace."[40] The ICJ "forms an integral part" of this vision.[41] As the UN Charter states, "judicial settlement" is one of the "first" options parties are expected to take to peacefully settle their disputes.[42] Legal theorist Hans Kelsen, who contemplated the essentials for peace in a postwar legal order, envisioned that a court should play such an integral role: "[T]he next step on which our efforts must be concentrated is to bring about an international treaty concluded by as many States as possible, victors as well as vanquished, establishing an international court with compulsory jurisdiction."[43] For Kelsen, this was tied with an obligation "to renounce war and reprisals as means of settling conflicts."[44]

The ICJ contributes to the UN's mandate by judicially settling disputes between States and providing advisory opinions on legal questions raised by the Security Council, the General Assembly, or "[o]ther organs of the United Nations and specialized agencies."[45] Disputes between States are known as "contentious cases," and advisory opinions on legal questions are known as "advisory proceedings."[46] The Court's judgments in contentious cases are binding on "the parties and in respect of that particular case."[47] Advisory opinions are not legally binding, but "the Court's advisory opinions nevertheless carry great legal weight and moral authority."[48] Indeed, a recent report of the European Union Special Representative for Human Rights observed that, even though advisory opinions are *not* binding, "they *do* constitute an authoritative determination and clarification

39. *See* U.N. Charter art. 2, ¶ 4.

40. U.N. Charter art. 1, ¶ 1.

41. U.N. Charter art. 92; *see also* ICJ Statute art. 1 ("The International Court of Justice [was] established . . . as the principal judicial organ of the United Nations . . . .").

42. U.N. Charter art. 33, ¶ 1.

43. HANS KELSEN, PEACE THROUGH LAW 14 (Garland Publ'g Inc. 1973) (1944).

44. *Id*.

45. U.N. Charter art. 96 (denoting that the General Assembly may authorize other UN organs and specialized agencies to seek advisory opinions). *See* U.N. Charter art. 94 and ICJ Statute art. 59 on the ICJ's authority to render binding decisions in cases that involve disputes between parties. A dispute is a "disagreement on a question of law or fact, a conflict, a clash of legal views or interests." ICJ HANDBOOK, *supra* note 37, at 33. *See also* ICJ Statute art. 65 (describing the Court's ability to offer advisory opinions when requested to do so).

46. *How the Court Works*, *supra* note 30. In contentious cases, the ICJ can issue orders or judgments. In advisory proceedings, the Court can issue orders or advisory opinions.

47. ICJ Statute art. 59. The *LaGrand* judgment also clarified that the ICJ's decisions have a binding effect. LaGrand (Ger. v. U.S.), Judgment, 2001 I.C.J. 466, ¶ 102 (June 27) ("It follows from the object and purpose of the Statute, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court.").

48. *Advisory Jurisdiction*, INT'L CT. OF JUST., https://www.icj-cij.org/advisory-jurisdiction [https://perma.cc/WY3X-6R5N] (last visited Sep. 12, 2025) ("[E]xcept in rare cases where it is expressly provided that they shall have binding force . . . the Court's advisory opinions are not binding. . . . Despite having no binding force, the Court's advisory opinions nevertheless carry great legal weight and moral authority.").

of international law."[49] It continued, "the Court's conclusions and the obligations it identifies for States and international organisations are based on existing treaties, customary international law and general principles of international law, and the legally binding obligations they enshrine."[50]

When the ICJ offers a legally binding judgment, the parties to the case are obligated to comply, and this compliance "ought to be integral, rather than partial or selective."[51] As the UN Charter states, "[e]ach Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party."[52]

The drafters of the UN Charter and ICJ Statute envisioned the possibility that States might not comply. They provided that where a State fails to comply with a judgment of the Court, "the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."[53] The drafters included this provision out of the concern that noncompliance could spark "new political tensions" requiring "immediate political action."[54] The drafters wrote the provision so that the "other party" (i.e., the injured party) may approach the Security Council to seek enforcement, while ensuring that the Security Council retains the ultimate discretion to act—or not—in response.[55] The UN Charter and the ICJ Statute do not provide an equivalent enforcement mechanism for advisory opinions.

The Security Council's formal role in the enforcement of ICJ decisions is consistent with the Security Council's broader role within the UN. At the San Francisco Conference of 1945, the Great Powers insisted on a "privileged status"

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49. European Union Special Representative for Human Rights, *Note to the HRVP - Situation in the Middle East*, ¶ 125 (Nov. 11, 2024), https://static.blast-info.fr/attachments/stories/2025/LIdPURgnRrO9kPwKvLLJ2Q/attachment-Y2RwSL6RtWLaARzGNI87g.pdf [https://perma.cc/5N8F-22QT] (emphasis added).

50. *Id.*

51. Antônio Augusto Cançado Trindade, *Statute of the International Court of Justice*, U.N. OFF. LEGAL AFF.: AUDIOVISUAL LIBR. OF INT'L L., https://legal.un.org/avl/ha/sicj/sicj.html [https://perma.cc/T7JA-VBWW] (last visited Sep. 12, 2025). There is some debate over whether the decisions of the Court or related international bodies give rise to a "settled jurisprudence"—that is, whether decisions in one case properly guide, or even bind, the Court in the next. *Contrast* Application of Convention on Prevention and Punishment of Crime of Genocide (Croat. v. Serb.), Preliminary Objections, 2008 I.C.J. 412, ¶ 53 (Nov. 18) ("To the extent that the decisions contain findings of law, the Court will treat them as it treats all previous decisions: that is to say that, while those decisions are in no way binding on the Court, it will not depart from its settled jurisprudence unless it finds very particular reasons to do so."), *with* OFF. OF THE U.S. TRADE REPRESENTATIVE, REPORT ON THE APPELLATE BODY OF THE WORLD TRADE ORGANIZATION 56 (2020) (stating that "[t]o proclaim that an Appellate Body interpretation in one dispute is precedent or controlling for later disputes effectively converts that interpretation into an authoritative interpretation of the covered agreement" and arguing this usurps WTO members' exclusive authority to adopt interpretations of the Agreement). Whatever one thinks about that debate, there is no dispute that decisions of the Court are binding on the parties to the case in which that decision is rendered.

52. U.N. Charter art. 94, ¶ 1.

53. *Id.* ¶ 2.

54. SCHULTE, *supra* note 22, at 19.

55. *See id.* at 23.

within the organization they were helping create.[56] Other States advocated for the "equality of States and the realization of the ideal in democracy in international relations."[57] The result was the creation of two bodies—a Security Council and a General Assembly. The Security Council serves as the primary body responsible "for the maintenance of international peace and security."[58] The General Assembly, in which every State has an equal vote, shares with the Security Council the responsibility for the maintenance of international peace and security, but it lacks the Security Council's enforcement powers. It may "discuss any questions or any matters within the scope of the . . . Charter" and "may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."[59]

B. THE GROWING ENFORCEMENT CHALLENGE

Given that the Security Council has essentially abdicated its enforcement role, it is natural to ask: what has the record been regarding State compliance with ICJ decisions? An important body of literature, dating back to the first decade of the 2000s, has argued that compliance levels have generally remained high—a fact that may be surprising to international law skeptics. For instance, in a comprehensive study published in 2004, Constanze Schulte concluded:

> The overall record with ICJ judgments should be viewed as a positive one. Only on a few occasions have states openly and willfully chosen to disregard the Court's judgments: in the Corfu Channel, Fisheries jurisdiction, Tehran hostages, and Nicaragua cases. Even in these cases, the effects of non-compliance were mitigated to a certain extent, given eventual or partial compliance by the losing party, or changes in the law, or political scene that diminished the relevance of the original decision.[60]

Other literature analyzing a similar period has generally supported this conclusion. For instance, Colter Paulson wrote in 2004 that "[c]ommentators on the International Court of Justice note that cases of noncompliance with final judgements are very

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56. *See* Anne Peters, *Article 24*, *in* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1031 (Bruno Simma et al. eds., 4th ed. 2024). The term "Great Powers" refers to the United States, the United Kingdom, the Union of Soviet Socialist Republics ("USSR"), China, and France.

57. *Id.*

58. *Id.*; *see also* Andrew J. Carswell, *Unblocking the UN Security Council: The* Uniting for Peace *Resolution*, 18 J. CONFLICT & SEC. L. 453, 453 (2013) ("This situation can be attributed to an unequal—but politically necessary—compromise that took place between the great Allied victors of the Second World War and the remainder of the UN membership."); U.S. DEP'T OF STATE, POSTWAR FOREIGN POLICY PREPARATION 1939–1945, at 527 (1949) (reproducing the August 14, 1943, Draft of The Charter of the United Nations art. 4, ¶ 3).

59. U.N. Charter art. 10. For more, see generally Oona A. Hathaway, Maggie M. Mills & Heather Zimmerman, *Crisis and Change at the United Nations: Non-Amendment Reform and Institutional Evolution*, 46 MICH. J. INT'L L. 1 (2025).

60. SCHULTE, *supra* note 22, at 271–72 (footnotes omitted).

rare."[61] In a similar vein, Aloysius Llamzon, writing in 2007, concluded that "almost all of the Court's decisions have achieved substantial, albeit imperfect, compliance."[62]

Yet this narrative is complicated by two countervailing trends. First, compliance is not as consistent with *provisional* measures, even though provisional measures also generate compliance obligations.[63] For instance, even in the period leading up to 2004, Schulte found that "practice with regard to provisional measures leads to a balance altogether different from the experience in the case of judgments."[64] Indeed, "the record of compliance and efficiency of provisional measures is far from satisfactory and offers a stark contrast *vis-à-vis* the overall positive picture of compliance with judgments."[65] This creates the same enforcement problem as with the Court's final judgments because provisional measures are still binding and generate compliance obligations for States. As the ICJ clarified in *LaGrand*, "orders on provisional measures . . . have binding effect."[66]

Second, taken in general, there is also reason to think that compliance has become *worse* over time, which only heightens the need for deeper thinking about enforcement in cases of noncompliance. Even within the earlier period of cases surveyed, Paulson noted a general trend downwards: while there appeared to be full compliance with 80 percent of decisions between 1946 to 1987, that "appears to have decreased since 1987, to 60 percent from 1987 to 2004."[67] In the most recent two decades, the situation looks even more problematic, at least for provisional measures. As Matei Alexianu noted in 2023, compliance with provisional measures has been "hovering around 50% but decreasing in recent years as the Court has weighed in on more high-stakes, controversial cases."[68]

Further, there are reasons to think compliance with the Court's decisions will be a growing concern. The recent rise of *erga omnes partes* standing has created a new tool for States to enforce human rights obligations against recalcitrant States.[69] The resulting cases give rise to decisions that losing States are more

61. Colter Paulson, *Compliance with Final Judgments of the International Court of Justice Since 1987*, 98 AM. J. INT'L L. 434, 434 (2004).

62. Aloysius P. Llamzon, *Jurisdiction and Compliance in Recent Decisions of the International Court of Justice*, 18 EUR. J. INT'L. L. 815, 815 (2007). Another piece from a few years later echoed a similar line: "Since *Nicaragua*, the International Court of Justice ("ICJ") has witnessed substantial compliance with its judgments." Heather L. Jones, *Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice Since* Nicaragua, 12 CHI.-KENT J. INT'L & COMP. L. 57, 58 (2012) (footnote omitted). Judge Donoghue on the ICJ, writing in 2014, noted that "there has been compliance with perhaps three-fourths of the Court's judgments, depending on how one categorizes various situations." Joan E. Donoghue, *The Effectiveness of the International Court of Justice*, 108 PROC. ASIL ANN. MEETING, 114, 114 (2014).

63. *See* LaGrand (Ger. v. U.S.), Judgment, 2001 I.C.J. 466, ¶ 109 (June 27).

64. SCHULTE, *supra* note 22, at 399.

65. *Id.* at 402.

66. LaGrand (Ger. v. U.S.), Judgment, 2001 I.C.J. 466, ¶ 109 (June 27).

67. Paulson, *supra* note 61, at 460.

68. Alexianu, *supra* note 13.

69. *See generally* Alaa Hachem, Oona A. Hathaway & Justin Cole, *A New Tool for Enforcing Human Rights:* Erga Omnes Partes *Standing*, 62 COLUM. J. TRANSNAT'L L. 259 (2024).

likely to reject.[70] Recent empirical research also shows that weaker States are increasingly appealing to the Court and are slightly more likely to gain relief from it.[71] But such States often possess little leverage to press the losing States to comply with the Court's judgments. In short, the Court may be at risk of becoming a victim of its own success: States increasingly see it as a critical tool for enforcing international law obligations, yet the Court risks being ignored when rendering decisions in politically salient cases.

We see evidence of increased noncompliance in a series of recent cases, which illustrate the Court's role in many of today's major geopolitical disputes.[72] Let us return to the cases with which this Article opened:

- *The Gambia v. Myanmar* (2020). In 2020, the ICJ issued provisional measures in *The Gambia v. Myanmar*, as requested by The Gambia, to prevent "irreparable harm being suffered by members of the Rohingya group."[73] The Court ordered Myanmar to "take all measures within its power to prevent the commission of all acts within the scope of Article II of the [Genocide] Convention."[74] And, exercising its power further, the Court also requested Myanmar to submit periodic reports "on all measures taken to give effect" to the Court's order.[75] Despite issuing "presidential directives" to purportedly comply with the Court's provisional measures,[76] Myanmar's government has continued to wage attacks against the Rohingya—actions that, in some

70. *See id.* at 318–22.

71. *See generally* Jill I. Goldenziel, Sean Michael Blochberger & Tyler Granholm, *Weapon of the Weak: International Law and State Power in the International Court of Justice*, 66 HARV. J. INT'L L. 563 (2025) ("[A]rgu[ing] that weaker states are increasingly using international law to challenge more powerful states.").

72. *See, e.g.*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Request for the Modification of the Order of 28 March 2024, ¶ 50 (May 24, 2024), https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf; Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. 211, ¶ 73 (Mar. 16); Application of Convention on the Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Provisional Measures, 2020 I.C.J. 3, ¶ 79 (Jan. 23); Request for Interpretation of Judgment of 31 March 2004 in Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, 2009 I.C.J. 3, ¶ 61 (Jan. 19); LaGrand (Ger. v. U.S.), Judgment, 2001 I.C.J. 466, ¶ 102 (June 27); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 292 (June 27); Corfu Channel, Judgment, 1949 I.C.J. 171 (Apr. 9).

73. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gam. v. Myan.), Application Instituting Proceedings and Request for Provisional Measures, ¶ 113 (Nov. 11, 2019), https://www.icj-cij.org/sites/default/files/case-related/178/178-20191111-APP-01-00-EN.pdf.

74. Application of Convention on the Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Provisional Measures, 2020 I.C.J. 3, ¶ 79 (Jan. 23)

75. *Id.* ¶ 82; *see also* Rules of Court (1978), 2024 I.C.J. Acts & Docs. 89, 137 (describing the Court's power to request information from parties "on any matter connected with the implementation of any provisional measure").

76. *See, e.g.*, *Myanmar to Report to World Court on Compliance with Order to Prevent Genocide*, GLOB. CTR. FOR RESP. TO PROTECT (May 21, 2020), https://www.globalr2p.org/publications/myanmar-to-report-to-world-court-on-compliance-with-order-to-prevent-genocide [https://perma.cc/8T3S-8KRJ] (describing "presidential directives" issued to all government officials in response to the ICJ's order).

instances, resemble the atrocities that first brought the conflict to the attention of the ICJ.[77]

- *Ukraine v. Russia* (2022). In 2022, Ukraine responded to Russia's invasion by instituting proceedings against it at the ICJ and submitting a request for the indication of provisional measures. The Court issued such measures, ordering Russia to "immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine."[78] Russia refused to comply,[79] claiming it was acting in self-defense by denazifying Ukraine.[80] Russia continues to pursue its military operation in Ukraine as of this writing.[81]

- *South Africa v. Israel* (2024). In 2024, South Africa, taking a page from The Gambia's playbook, instituted proceedings against Israel at the ICJ, alleging genocidal acts against Palestinians in the Gaza Strip.[82] Included in these proceedings were requests for the indication of provisional measures, revised several times due to the urgency and escalating crisis on the ground in Gaza.[83] The Court issued three separate provisional measures orders over the course of five months. [84] The first provisional measures requested Israel to "take all measures within its power" to prevent genocide in Gaza, language strikingly similar to the Court's provisional measures in *The Gambia v. Myanmar*.[85] The Court's subsequent provisional measures called on Israel to take

77. *See Myanmar: New Attacks Against Rohingya a Disturbing Echo of 2017 Mass Violence*, AMNESTY INT'L (Aug. 21, 2024), https://www.amnesty.org/en/latest/news/2024/08/myanmar-new-attacks-against-rohingya-a-disturbing-echo-of-2017-mass-violence [https://perma.cc/94W3-YXRF].

78. Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. 211, ¶ 86 (Mar. 16).

79. *See* Marc Santora, *Civilian Terror: Russia Hits Ukrainian Cities with Waves of Drones*, N.Y. TIMES (Nov. 7, 2024), https://www.nytimes.com/2024/11/07/world/europe/ukraine-russia-drones.html.

80. *Two Years of Russia's War on Ukraine; South Carolina GOP Primary*, NPR (Feb. 24, 2024, at 10:03 ET), https://www.npr.org/transcripts/1198910859 [https://perma.cc/3G4V-HANK].

81. Dominic Bailey et al., *Ukraine in Maps: Tracking the War with Russia*, BBC (Sep. 24, 2025), https://www.bbc.com/news/articles/c0l0k4389g2o [https://perma.cc/L8UY-DQ6V].

82. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Application Instituting Proceedings Containing a Request for the Indication of Provisional Measures, ¶ 1 (Dec. 29, 2023), https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf.

83. *See id.* ¶¶ 112–16; Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Urgent Request and Application for the Indication of Additional Provisional Measures and the Modification of the Court's Prior Provisional Measures Decisions, ¶¶ 1–5 (Mar. 6, 2024), https://www.icj-cij.org/sites/default/files/case-related/192/192-20240306-wri-01-00-en.pdf; Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Urgent Request for the Modification and Indication of Provisional Measures, ¶¶ 1–5 (May 10, 2024), https://www.icj-cij.org/sites/default/files/case-related/192/192-20240510-wri-01-00-en.pdf.

84. *See* Application of Convention on Prevention and Punishment of Crime of Genocide in Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 3, ¶ 86 (Jan. 26); Application of Convention on Prevention and Punishment of Crime of Genocide in Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 513, ¶ 51 (Mar. 28, 2024); Application of Convention on Prevention and Punishment of Crime of Genocide in Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 649, ¶ 57 (May 24, 2024).

85. *See* Application of Convention on Prevention and Punishment of Crime of Genocide in Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 3, ¶ 86 (Jan. 26).

> "immediate and effective" actions to implement the Court's prior orders, among other measures.[86] Despite not one but three provisional measures orders, Israel has not complied.[87]

These cases highlight the especially important role that the ICJ has played in recent years—and the evidence of rising noncompliance that has accompanied that role.[88]

While the goal of this Section has not been to provide an exhaustive catalog of noncompliance, it has sought to complicate a narrative in the earlier literature—dating back to the early 2000s—that generally emphasizes that there has been overall compliance with the Court's decisions. Taking into account provisional measures and longer-term trends, it is clear that compliance with the Court's decisions has declined. For those concerned with the legitimacy and effectiveness of the Court, this should be a source of concern.

To ensure the relevance of both the ICJ and international law more generally, the next Part advocates a bolder approach to enforcing ICJ decisions.

II. THE ICJ AND OBLIGATIONS OWED TO ALL

The Security Council's failure to enforce the ICJ's decisions threatens to render it an inefficacious venue for the resolution of international disputes. This Part now begins to lay the theoretical groundwork for the idea that States, acting individually and collectively, can fill that lacuna of enforcement. It does so by first observing that ICJ decisions often involve obligations that are owed to all—often referred to as "*erga omnes*" obligations—and obligations owed to all States parties to a treaty—often referred to as "*erga omnes partes*" obligations. There are two ways in which ICJ decisions can involve such obligations. First, the ICJ can simply identify in an authoritative way the existence of an *erga omnes* or *erga omnes partes* obligation. In doing so, the ICJ serves as an epistemic authority. Second, compliance with ICJ decisions may *itself* constitute an *erga omnes* (or *erga omnes partes*) obligation. Here, the ICJ is not just identifying the existence of an obligation but also grounding it. The latter of these claims is the more ambitious one, though these claims hold an independent force, and so it is possible to accept one without the other. But both maintain that ICJ decisions can involve obligations that are owed to all or to all States parties. This forms the foundation for the claim that States and the General Assembly are justified in taking enforcement measures, an argument developed in Part III.

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86. *See, e.g.*, Application of Convention on Prevention and Punishment of Crime of Genocide in Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 513, ¶ 51 (Mar. 28, 2024).

87. *Israel Not Complying with World Court Order in Genocide Case*, HUM. RTS. WATCH (Feb. 26, 2024, at 01:00 ET), https://www.hrw.org/news/2024/02/26/israel-not-complying-world-court-order-genocide-case [https://perma.cc/W2M3-R2KD].

88. And they offer an argument that explains why States that are dedicated to supporting the Court and its role in the international legal order are justified in taking concrete action to support it.

A. THE ICJ AS IDENTIFYING ERGA OMNES AND ERGA OMNES PARTES OBLIGATIONS

Erga omnes obligations are ones that are owed to all States. The phrase, which in Latin means "towards all," refers to an obligation that is owed to the international community as a whole, rather than to a specific State. The concept of an *erga omnes* obligation was first referenced in this way by the ICJ in *Barcelona Traction*,[89] though the concept itself precedes its formal coinage in that case. Indeed, earlier accounts of international law, especially natural law ones, allowed for the idea that international obligations could be owed to all, independent of specific agreements or treaties.[90]

The first claim presented here is that the ICJ can authoritatively identify an *erga omnes* or *erga omnes partes* obligation. When it does so, the ICJ is not claiming to *create* an *erga omnes* obligation but rather serves as an epistemic authority.[91] The Court can serve this role not only in contentious cases but in advisory opinions as well (a point to which we return below).

The ICJ has identified the existence of *erga omnes* obligations several times. For instance, in 2004, in a case about Israel's construction of a wall in the Occupied Palestinian Territory, the ICJ issued an advisory opinion in which it found "that the obligations violated by Israel include certain obligations *erga omnes*. . . . The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law."[92]

The ICJ found something similar in its recent advisory opinion from 2024 on Israel's presence in the Occupied Palestinian Territory:

> [T]he obligations violated by Israel include certain obligations *erga omnes*. . . . Among the obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination and the

89. *See* Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶ 33 (Feb. 5).

90. *See* Hugo Grotius, *On the Law of War and Peace*, *in* 2 THE CLASSICS OF INTERNATIONAL LAW at ix, 33 (James Brown Scott ed., Francis W. Kelsey trans. 1925) (1646); EMER DE VATTEL, THE LAW OF NATIONS 72 (Béla Kapossy & Richard Whatmore eds., Thomas Nugent trans., Liberty Fund, Inc. 2008) (1758). Note that *erga omnes* obligations are distinct from *jus cogens* norms. A *jus cogens* norm (also known as a peremptory norm of international law) is "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Int'l L. Comm'n, Rep. on the Work of Its Seventy-First Session, at 142, U.N. Doc. A/74/10 (2019).

91. One could contrast here the idea of "settled jurisprudence," which Judge Ronny Abraham described as involving "the prudence of wise counsel." Allegations of Genocide Under Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.), Admissibility of Declarations of Intervention, Declaration of Judge Abraham, 2023 I.C.J. 354, ¶ 8 (June 5). One might also contrast here the idea that the ICJ constitutes a subsidiary means for determining the existence and content of rules of international law, as noted by the International Law Commission. *See* Int'l L. Comm'n, Rep. on the Work of Its Seventy-Fifth Session, at 31 U.N. Doc. A/79/10 (2024) ("Decisions of international courts and tribunals, in particular of the International Court of Justice, are a subsidiary means for the determination of the existence and content of rules of international law.").

92. Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 155 (July 9).

> obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law.[93]

This meant that Israel was under an obligation to bring an end to its "presence in the Occupied Palestinian Territory as rapidly as possible."[94] The ICJ continued: "[A]ll States must co-operate with the United Nations to put those modalities into effect."[95] Furthermore, it observed:

> [I]n view of the character and importance of the rights and obligations involved, all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory.[96]

Opinions like this are important because they exemplify that the ICJ can serve as an epistemic authority—identifying an obligation owed by all States to all States—even if it is doing so through a nonbinding advisory opinion.

The Court may also identify *erga omnes partes* obligations—that is, obligations owed to all parties to a treaty. In *The Gambia v. Myanmar*, the ICJ stated that:

> In view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention. . . . It follows that any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.[97]

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93. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, ¶ 274 (July 19, 2024), https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf. The Court was building on earlier decisions in which it had found both self-determination and aggression to be *erga omnes* obligations. *See, e.g.*, East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 90, ¶ 29 (June 30) (identifying self-determination as an *erga omnes* obligation); Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶¶ 33–34 (Feb. 5) (identifying the prohibition against aggression as an *erga omnes* obligation).

94. Legal Consequences Arising from the Policies and Practices of Israel in Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, ¶ 267 (July 19, 2024), https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf.

95. *Id.* ¶ 275.

96. *Id.* ¶ 279.

97. Application of Convention on Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Provisional Measures, 2020 I.C.J. 3, ¶ 41 (Jan. 23); *see also* Application of the Convention on Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Preliminary Objections, 2022 I.C.J. 477, ¶ 98 (July 22).

This is important because the ICJ here suggests that States can bring another State into compliance if it has violated an *erga omnes partes* obligation.

Thus far, we have claimed that the ICJ serves in these instances as an epistemic authority, meaning that it has a special ability to ascertain the existence of *erga omnes* and *erga omnes partes* obligations. But what reason is there to think that the ICJ is an epistemic authority? First, the very fact that the ICJ is constituted by international law experts is one reason to think so. The ICJ Statute specifies that judges are to be elected "from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest juridical offices, or are jurisconsults of recognized competence in international law."[98] Second, ICJ judges are elected by two of the most important organs of the UN system—the General Assembly and the Security Council—thereby reflecting significant international endorsement, which can be said to stamp them with an imprimatur of epistemic authority.[99]

There may be a concern that advisory opinions do not play the same role as decisions in contentious cases. Yet even though they are non-binding, advisory opinions are recognized for "carry[ing] great legal weight and moral authority" as authoritative interpretations of the law by the highest court in the international legal order.[100] As Hersch Lauterpacht, one of the architects of the modern legal order who sat as an ICJ judge in the early days of the Court,[101] put it,

> The Court follows its own decisions for the same reasons for which all courts . . . do so, namely, because such decisions are a repository of legal experience to which it is convenient to adhere; because they embody what the Court has considered in the past to be good law; because respect for decisions given in the past makes for certainty and stability, which are of the essence of the orderly administration of justice; and (a minor and not invariably accurate consideration) because judges are naturally reluctant, in the absence of compelling reasons to the contrary, to admit that they were previously in the wrong.[102]

This is true of advisory opinions as it is of judgments in contentious cases. Recognizing this, submissions to the Court often cite prior advisory opinions.[103] Additionally, courts beyond the ICJ, including domestic courts, cite the Court's

98. ICJ Statute art. 2.

99. There are a variety of places we can look further to develop this thought. For instance, Article IX of the Genocide Convention, which refers to disputes about the "interpretation, application or fulfillment" of the Genocide Convention to the ICJ, might be seen as evidence of the view that the ICJ is an epistemic authority. *See* Genocide Convention, *supra* note 10, at art. IX.

100. *See Advisory Jurisdiction*, *supra* note 48.

101. *See* OONA A. HATHAWAY & SCOTT J. SHAPIRO, THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD xxi, 300–01 (2017) (describing the history of the construction of the "New World Order," in which Hersch Lauterpacht is one of the key architects).

102. HERSCH LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT 14 (1958) (explaining the Court's reliance on its own prior decisions, despite the absence of a formal doctrine of precedent).

103. *See, e.g.*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Application Instituting Proceedings Containing a Request for

decisions as authoritative interpretations of the law.[104] These interpretations not only "contribute to the clarification and development of international law" but also serve as "an instrument of preventive diplomacy" that helps strengthen "the peaceful relations between States."[105]

If the ICJ is an epistemic authority—if it can generally identify the existence of *erga omnes* and *erga omnes partes* obligations and their violations better than States can—then this authority might become practical as well, giving States a special reason to defer to the ICJ's judgments, on an account of authority derived from Joseph Raz. According to Raz's service conception of authority, one sometimes has reasons to defer to epistemic authorities, insofar as following them will

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the Indication of Provisional Measures, ¶¶ 131, 133 (Dec. 29, 2023), https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf.

104. The following examples demonstrate how various domestic courts around the world have cited and relied upon ICJ decisions when rendering their judgments. In *Pushpanathan v. Canada*, decided in 1998, the Supreme Court of Canada heard an appeal by Veluppillai Pushpanathan to reverse the Immigration and Refugee Board's finding that he was not entitled to refugee status under Article 1F(c) of the UN Refugee Convention. [1998] 1 S.C.R. 982, 982–83 (Can.). In Judge Bastarache's majority opinion, he referenced the *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* case and the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* advisory opinion as persuasive examples of how international judicial bodies have defined acts that fall under Article 1F(c). *Id.* at 1030–31. In *Vietnam Association for Victims of Agent Orange v. Dow Chemical Co.,* decided in 2008, the Second Circuit heard a case brought by Vietnamese nationals who sued U.S. chemical companies for injuries allegedly sustained from exposure to Agent Orange during the Vietnam War. 517 F.3d 104, 112–13 (2d Cir. 2008). In Judge Miner's opinion, he referenced the ICJ's "authoritative interpretation of Article 23(a)" of the 1907 Hague Regulations as articulated in the ICJ's advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*. *Id.* at 120. In *Military Prosecutor v. Albers and Ors and Germany*, decided in 2012, Italy's Supreme Court of Cassation heard an appeal by Germany that challenged the rulings of lower military courts that denied Germany immunity from liability for Nazi war crimes committed in Italy during World War II. Cass. Pen., Sez. I [Court of Cassation], August 9, 2012, n. 32139, ¶¶ F3–F5 (It.) *translated in Military Prosecutor v Albers and Ors and Germany*, OXFORD PUB. INT'L L., https://opil.ouplaw.com/display/10.1093/law:ildc/1921it12.case.1/law-ildc-1921it12 (last visited Sep. 13, 2025). Relying on the ICJ's judgment in *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, the court reversed previous rulings on the matter, ultimately granting Germany State immunity from the jurisdiction of Italian courts. *Id.* ¶¶ A1–A8. In *Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, the International Tribunal for the Law of the Sea (ITLOS) rendered a decision in 2021 on the preliminary objections raised in a case concerning a maritime boundary dispute between Mauritius and the Maldives. Case No. 28, Preliminary Objections and Judgment of Jan. 28, 2021, 30 ITLOS Rep. 17, ¶ 351. The tribunal rejected the Maldives' claim that it lacked jurisdiction over the dispute. *Id.* The tribunal reached this decision by turning to the ICJ's determinations in the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* advisory opinion and affirming that this opinion had "legal effect and clear implications for the legal status of the Chagos Archipelago." *Id.* ¶ 246. The tribunal also referenced the advisory opinion when addressing whether to treat Mauritius as "the coastal State in respect of the Chagos Archipelago." *Id.* ¶ 250; *see also* REFLECTION PAPER ON THE PROPOSAL TO EXTEND THE COURT'S ADVISORY JURISDICTION, EUR. CT. OF HUM. RTS. ¶ 44, https://www.echr.coe.int/documents/d/echr/Courts_advisory_jurisdiction_ENG (last visited Sep. 13, 2025) ("Despite the fact that its advisory opinions would not be formally binding on the domestic courts, the Court itself should consider them as valid case-law . . . when ruling on potential subsequent individual applications.").

105. *See Advisory Jurisdiction*, *supra* note 48.

best help one to conform to one's own independent reasons.[106] David Lefkowitz has explicitly applied this argument in the context of international law, claiming that there is "practical authority" in Raz's account if two conditions are met: the relevant actors are more likely to act on the balance of their reasons by following the authority over any other strategy, and there is no special cause for these actors to prioritize their own judgment over their strongest reasons.[107] In the context of the ICJ, insofar as the ICJ is an epistemic authority that can more reliably identify *erga omnes* and *erga omnes partes* obligations than individual States can, and there is no special cause for States to follow their own judgments, then a Razian account of reasons and authority supports the conclusion that the ICJ, in virtue of its epistemic authority, is also a practical authority, providing States justification to heed its judgments on the existence of *erga omnes* and *erga omnes partes* obligations.[108]

B. THE ICJ'S DECISIONS AS A SOURCE OF ERGA OMNES OR ERGA OMNES PARTES OBLIGATIONS

This Section now develops a more ambitious claim: that the obligation to comply with an ICJ decision in a contentious case is itself an *erga omnes* obligation. To preview the argument, the prohibition on the use of force is an *erga omnes* obligation. That prohibition implies the necessity of a peaceful mechanism for resolving disputes—a role that the ICJ is uniquely suited to play in the current international system. Even though only the States that are parties to a case are bound to comply with the ICJ's decisions in contentious cases, that obligation is an obligation that is owed to the broader international community, for the obligation is, at least in part, an obligation to uphold the functioning and efficacy of an essential alternative to the use of force. This argument then proposes that the obligation to comply with the ICJ's decisions is an *erga omnes* obligation—the critical claim of our argument. If correct, this would mean that the ICJ not only identifies or ascertains the existence of *erga omnes* obligations, but it also creates *erga omnes* obligations in virtue of its role as a critical peaceful dispute resolution mechanism. Having offered the broader and more ambitious form of the argument (that compliance with ICJ decisions is an *erga omnes* obligation), we then develop a narrower argument that compliance with ICJ decisions is an *erga omnes partes* obligation.

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106. *See generally* JOSEPH RAZ, THE MORALITY OF FREEDOM 38–69 (1986) (describing Raz's service conception of authority); Joseph Raz, *The Problem of Authority: Revisiting the Service Conception*, 90 MINN. L. REV. 1003 (2006) (responding to critiques of the service conception of authority).

107. David Lefkowitz, *The Sources of International Law: Some Philosophical Reflections*, *in* THE PHILOSOPHY OF INTERNATIONAL LAW 187, 191 (Samantha Besson & John Tasioulas eds., 2010).

108. Note, crucially, that this argument does not rest on the claim that the ICJ's decision on the existence of *erga omnes* or *erga omnes partes* obligations must always be correct in any particular case, in order for it to be an epistemic authority in general. It is in the nature of an epistemic *authority* that it is to be followed, not merely because it is correct in the particular case, but because it has a greater tendency towards correctness. If the ICJ is an epistemic authority, it means that heeding it on balance helps one to do better than one's own particular judgment, and that is the ground of the epistemic authority being contemplated here.

We begin with the observation that the prohibition on the use of force is an *erga omnes* obligation. This *erga omnes* argument does not rest on consent to or ratification of any particular treaty.[109] In the case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, the Court affirmed that the prohibition on the use of force in the UN Charter had achieved the status of customary international law and called it a "fundamental or cardinal principle of such law."[110] Indeed, the prohibition on aggressive war is arguably the paradigmatic *erga omnes* obligation. In *Barcelona Traction*, in which the Court first recognized the existence of a class of obligations that are "the concern of all States,"[111] the Court specifically identified the prohibition against aggression as an *erga omnes* obligation.[112]

The prohibition on the use of force, however, does not stand alone. War, after all, used to be the main way in which States resolved their disputes with one another.[113] When force was outlawed, States required another way to resolve their disputes—one that did not require resort to force. Hence, the prohibition on the use of force necessarily implies the need for a peaceful means of authoritatively resolving disputes. The ICJ, we maintain, plays this critical role within the current international legal system, offering a place for the pacific settlement of disputes between States.

Critically, this argument applies only where the Court is acting in its formal dispute resolution role—that is, when it makes a decision in a contentious case, including by ordering provisional measures.[114] It does not apply to the Court acting under its advisory jurisdiction. In such instances, the Court is rendering advice to the organ that requested the opinion, not resolving a dispute between States. Its advisory opinions can identify *erga omnes* obligations but not *create* them.

Many contemporaries recognized the critical role of a peaceful dispute resolution mechanism in creating an effective system to keep the peace. For instance, the British lawyer William Malkin stated in 1941, as World War II was still raging, that "the only assumption which it is necessary to make is that the state of the world after the war will be such that some form of international tribunal will be

109. The prohibition on the use of force is also a *jus cogens* norm, meaning that it does not permit any derogation. *See, e.g.*, Int'l L. Comm'n, Rep. of the Study Group on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, at 77 U.N. Doc. A/CN.4/L.682 (Apr. 13, 2006) ("Overall, the most frequently cited candidates for the status of *jus cogens* include: (a) the prohibition of aggressive use of force . . . .").

110. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 190 (June 27).

111. Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶ 33 (Feb. 5).

112. *Id.* ¶ 34 ("Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression . . . .").

113. *See* HATHAWAY & SHAPIRO, *supra* note 101, at xv (noting that the "Old World Order was defined first and foremost by the belief that war is a legitimate means of righting wrongs").

114. An advisory opinion does not constitute a "decision" within the meaning of Article 59 of the ICJ Statute. *See* ICJ Statute art. 59.

desirable."[115] Then, speaking about the design of the tribunal, Malkin discussed it in the context of "keeping the world in order" through "this particular form of international activity."[116] The U.S. Secretary of State, Cordell Hull, made similar points in 1942, noting that "it is plain fact that some international agency must be created which can—by force if necessary—keep the peace among the nations in the future" and, more specifically, that "one of the institutions which must be established and given vitality is an international court of justice."[117] The Department of State felt that "machinery for the orderly and judicial determination of justiciable questions should constitute a part of post-war international organization."[118] Hans Kelsen in *Peace Through Law*, which was published a few months before the Dumbarton Oaks Conference began, offered a similar vision, arguing that an efficacious world court would be an essential ingredient for peace in the postwar legal order.[119] Intentions like these suggest that, even if the ICJ Statute did not exist or had not yet been fully ratified, the practical reasons to create—and then support—such a court would exist independent of any treaty. Indeed, Immanuel Kant said centuries ago that "reason, from the throne of the highest morally legislative power, delivers an absolute condemnation of war as a procedure for determining rights, and, on the contrary, makes a condition of peace, which cannot be instituted or assured without a pact of nations among themselves, a direct duty."[120]

The ICJ was created for the purpose of supporting the project of peace in the postwar legal order by providing a forum for the peaceful resolution of disputes.[121] Other mechanisms were possible, but now that a specific system has

115. Geoffrey Marston, *The London Committee and the Statute of the International Court of Justice*, *in* FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE 40, 43 (Vaughan Lowe & Malgosia Fitzmaurice eds., 1996).

116. *Id.* at 43–44.

117. *Id.* at 45.

118. *Id.* at 45–46.

119. *See supra* note 43 and accompanying text. Kelsen published *Peace Through Law* in June of 1944, drawing on earlier ideas, and so its framework is independent of the beginning of Dumbarton Oaks in August of the same year. *See* THOMAS OLECHOWSKI, HANS KELSEN: BIOGRAPHIE EINES RECHTSWISSENSCHAFTLERS 726 (2020). It is worth noting that Kelsen, when he later more explicitly reflected on the founding of the UN and ICJ Statute, was more pessimistic about enforcement prospects. *See* HANS KELSEN, THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS 544 (1951) (noting that if the Security Council "does not give effect to the judgment of the International Court of Justice[,]" then "there is no legal possibility of enforcing the law under the Charter of the United Nations"). Our argument accords more with the ambitious vision Kelsen offers earlier in *Peace Through Law* and goes beyond the limits of what he says in *The Law of the United Nations*.

120. IMMANUEL KANT, TOWARD PERPETUAL PEACE (1795), *reprinted in* IMMANUEL KANT: PRACTICAL PHILOSOPHY 311, 327 (Mary J. Gregor ed. & trans. 1996). Kant adds that this would be "a league of a special kind, which can be called a *pacific league* (*foedus pacificum*), and what would distinguish it from a *peace pact* (*pactum pacis*) is that the latter seeks to end only *one* war whereas the former seeks to end *all war* forever." *Id.*

121. We acknowledge that there are many other international peaceful dispute resolution mechanisms, including private arbitration and other international courts. It is possible that one could extend our argument to these other bodies. We note, however, that the ICJ plays a distinctive role in the international system. It is the only international court of general jurisdiction. One hundred ninety-three States are party to its Statute. Hundreds of treaties include jurisdictional clauses granting jurisdiction

been set up, there is, we argue, an *erga omnes* obligation to comply with the decisions of the Court that has been established for this very purpose. Now that we have a Court, and it serves this critical role in the international infrastructure for peace, it is essential that the Court's decisions be efficacious. As Michael Reisman has observed, "[i]n an organized community, the expectation of the effectiveness of enforcement mechanisms is a factor inducing compliance."[122] The duty to comply with the judgments of the Court, then, is owed not only to the other party to the case but to *all* States.

Let us elaborate: when two States are bound to comply with an ICJ decision, they have an obligation to adhere to the Court's ruling.[123] The question here is not who has the obligation to comply—it is clearly only the two States who possess these obligations[124]—but rather *to whom* those obligations are owed. The contention

over disputes between States to the Court, in addition to the States that have assented to its general compulsory jurisdiction. *See supra* note 34. The Court is, therefore, *sui generis* in the role that it plays in resolving disputes between States in the modern international system. Insofar as similar arguments were to be attempted for other tribunals or bodies, those arguments would need to be attentive to the unique features of those tribunals or bodies, including any relevant differences to the *sui generis* features of the ICJ that we have pointed to here.

122. W. M. Reisman, *The Enforcement of International Judgments*, 62 AM. SOC'Y INT'L L. PROC. 13, 17 (1968).

123. *See* ICJ Statute art. 59.

124. The drafting history of Article 59 offers just as much clarity on what it *is*—and what it *is not*. The concept for Article 59 was first introduced by Nordic and Western European States as draft language for a provision in the Permanent Court of International Justice's (PCIJ) Statute. *See* Chester Brown, *Article 59*, *in* THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY 1561, 1563 (Andreas Zimmermann & Christian J. Tams eds., 3d ed. 2019). For instance, one of the draft versions read as follows: "[s]uch sentence shall only apply to the contesting parties, including any intervening parties, and to the particular case upon which judgement has been delivered." *Id.* (quoting Draft Article 53 of the Draft Regulations for the Establishment of the Permanent Court of International Justice Provided for in Article 14 of the Covenant of the League of Nations (1920)). The Assembly of the League of Nations approved a refined version of the proposed text which at its core, was intended to "underline the opinion that the Court should not be considered to be a law-making or law-creating institution." *Id.* at 1564. Without any adjustments made to the text of Article 59 (which in the PCIJ Statute was Article 57*bis*), the provision was adopted. *Id.* In practice, the Court has invoked the provision in distinct situations. For instance, in *The Monetary Gold* case, Italy initiated proceedings against France, the United Kingdom, and the United States to claim monetary gold that the three States asserted a right to under a 1946 reparation agreement. *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, INT'L CT. OF JUST., https://www.icj-cij.org/CASE/19 [https://perma.cc/G4WU-8XS7] (last visited Sep. 13, 2025). The monetary gold was initially removed from Italy by the Germans but was ultimately determined to have been the property of Albania. Monetary Gold Removed from Rome in 1943 (It. v. Fr., U.K. and U.S.), Application Instituting Proceedings, 8–9 (May 19, 1953), https://www.icj-cij.org/sites/default/files/case-related/19/019-19530519-WRI-01-00-BI.pdf. The Court, recognizing that Albania's legal interests would be affected by its binding decision, invoked Article 59 and declined to render a decision on the question submitted, as Albania was not a party to the case. Monetary Gold Removed from Rome in 1943 (It. v. Fr., U.K. and U.S.), Judgment, 1954 I.C.J. 19, 32–33 (June 15). In its explanation, the Court stated: "[T]he vital issue to be settled concerns the international responsibility of a third state, the Court cannot, without the consent of that third state, give a decision on that issue binding upon any State, either the third state, or any of the parties before it." *Id.* This explanation falls in line with the Court's subsequent determinations, where it has said unequivocally that if a judgment's core subject matter impacts a third state (i.e., a State not a party to the case and not an intervener), it will decline to issue a judgment. *See* Brown, *supra* note 124, at 1567. However, if a

of the present argument is that those obligations to comply are not merely owed to each other, but to all States of the international legal community.

As alluded to earlier, it is important to reflect on how quotidian the question of "who an obligation is owed to" is, for it is a question that travels with every instance of there being an obligation at all. For instance, one might promise to wash the dishes at home and thereby incur an obligation to wash the dishes. Only that promisor has the obligation. But that alone leaves unresolved the question of who the obligation is owed to. Does the promisor only owe it to their parents to wash the dishes, or to every member of the family? The question is underdetermined by the mere existence of the obligation—yet it requires an answer.

Here, we argue, the obligation to comply with a decision of the ICJ is owed not only to the other State, or States, that are party to the case, but to the entire international community. Compliance is, in short, an *erga omnes* obligation. As we noted at the outset of this Section, even though only the States that are party to the case *hold* the obligation, they owe this obligation not only to the other party but also to the entire international community. They do so because complying with the Court's decision is integral to ensuring there remains a functioning and effective system of dispute resolution that does not entail the resort to force. When States fail to comply with a decision of the Court, they undermine its legitimacy and effectiveness. And in doing so, they undermine the common project of peace, as they remove a genuinely effective alternative to force for the resolution of disputes between States. It is because the project of peace *matters to all*—and creates obligations owed to all—that the obligation to comply is also owed to all.

It is important to note the following about the nature of this argument: it is concerned with the effectiveness of the ICJ as a pacific means for settling disputes, rather than the substantive contents of particular cases. To put matters in analytic terms, the *erga omnes* obligation for compliance is owed with respect to the ICJ *qua ICJ*, rather than with respect to the specific substantive weight of the case at hand. In this way, the obligation to comply does not vary in strength depending on the perceived importance of the matter at hand: it matters not whether the ICJ adjudication concerns something that appears highly technical in substance, on the one hand, or something that is of manifestly significant geopolitical consequence, on the other hand. The *erga omnes* obligation to comply is the same across cases of varying substantive contents—the argument is not that "important" cases ground the *erga omnes* character of the obligation, but rather that contributing to the functioning of the World Court is what grounds that character of the obligation. It is *noncompliance itself* that says to the Court and to the international community that "it is not important that the Court is obeyed." It is therefore noncompliance, independent of the substance of the case, that causes the institutional injury. Another upshot of this dimension of the argument is that it avoids

matter *may* affect a third State, the Court will *not* invoke Article 59 and prevent the case, or question, from being considered. *See id.* at 1567–68.

the need for States to further engage in self-judgment about the substantive importance of cases in recognizing the nature of an *erga omnes* obligation violation.

What is the strength of the institutional injury that takes place? While it would be difficult to provide an answer to that question in quantified terms, we claim that the institutional injury is *significant*, and any appropriate measure taken in response must be scaled to bring the noncompliant State back into compliance. Each particular act of noncompliance is a statement that the ICJ, as an institution, does not deserve compliance, and that is an injury to its functioning as a pacific means of dispute settlement. When States and the General Assembly determine the appropriate steps for enforcement, as will be discussed in Part III, it is this significant institutional injury that provides the locus of analysis for proportional countermeasures and other enforcement steps.

As we noted in Section I.B, compliance with the ICJ has been robust for many decades, even in the absence of Security Council enforcement. This may explain why States have continued to turn to the Court. Yet noncompliance is on the rise, especially with regard to provisional measures.[125] While it is unclear what the precise breaking point might be, each of these increasing acts of noncompliance engenders the precise kind of institutional injury that concerns us. The fact of increased noncompliance, in each of its manifestations, is a concrete assault on the general efficaciousness of the Court, which is, as we have emphasized, the springboard for the present inquiry and argument.

Finally, it is also important to emphasize that this argument does not imply that *all* kinds of international agreements and treaties generate *erga omnes* obligations for compliance in the same way that decisions of the ICJ do.[126] Some might be concerned that the argument shows that whenever there is an international obligation that even remotely touches on the general purposes of the legal order, it is an obligation that is *erga omnes*. Yet the argument presented here does not have such extensive implications, for it is tailored to and built upon claims about the specific importance—and principal centrality—of the ICJ in the international legal order. The central point is that if war is outlawed, then there needs to be a genuine alternative for resolving disputes peacefully between States. The ICJ has been created to precisely serve that role. Hence, the ICJ holds a distinctive and pivotal place in the international legal order. As a result, the argument here is specific to decisions of the ICJ, by virtue of its central role as an alternative—and a replacement—for violent dispute resolution between States.

Having made the broad form of the argument—that is, that there is an *erga omnes* obligation to comply with judgments of the Court—we now also offer a narrower form of the argument. The narrower form relies on *erga omnes partes* obligations. *Erga omnes partes* obligations are said to be owed "under a multilateral treaty . . . to all the other States parties to the same treaty, in view of their

125. *See supra* Section I.B.

126. The argument also does not apply equally to all international dispute resolution mechanisms. *See supra* note 121.

common values and concern for compliance."[127] The concept of an *erga omnes partes* obligation hinges on the idea that there is a "common interest" based on "shared values" between parties to the same treaty or convention.[128] That common interest is in turn determined by analyzing a treaty's object and purpose.[129]

Here, the identification of an *erga omnes partes* obligation to comply with ICJ decisions rests on the specific existence of the UN Charter and ICJ Statute and the latent and structural status that they accord to the Court. As such, the specific existence of the UN Charter and the ICJ Statute, alongside widespread assent to them, is an explicit justification for the position that States must comply with ICJ decisions for the benefit of all States that are party to the UN Charter, not just the other party or parties to the case. In short, the obligation has an *erga omnes partes* character, in virtue of its rooting in this foundational and constitutive multilateral treaty.[130]

There is little doubt that the object and purpose of the UN Charter is to effectuate peace; the central aim of this postwar agreement was to secure and maintain international peace and security. The UN Charter opens with the words, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."[131] As part of this object and purpose, Article 2(4) of the UN Charter specifically prohibits the use of force, and at the same time, it establishes the ICJ as the "principal judicial organ of the United Nations"—one that is "integral" to this vision of peace.[132] As such, this foundational and constitutive international agreement set up the implicit architecture for the present argument: the ICJ is distinctively placed as the outlet for settling differences between States in the postwar

127. *See* Institut de Droit International, *Resolution: Obligations and Rights* Erga Omnes *in International Law*, art. 1(b) (Aug. 27, 2005), https://www.idi-iil.org/app/uploads/2017/06/2005_kra_01_en.pdf; Eugenio Carli, *Community Interests Above All: The Ongoing Procedural Effects of Erga Omnes Partes Obligations Before the International Court of Justice*, EJIL: TALK! (Dec. 29, 2023), https://www.ejiltalk.org/community-interests-above-all-the-ongoing-procedural-effects-of-erga-omnes-partes-obligations-bef ore-the-international-court-of-justice [https://perma.cc/WD7T-ETD3].

128. *See* Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶ 68 (July 20) ("States parties to the Convention have a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity."); Application of Convention on Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Preliminary Objections, 2022 I.C.J. 477, ¶ 107 (July 22) (finding that "a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention"); *see also* Application of Convention on Prevention and Punishment of Crime of Genocide (The Gam. v. Myan.), Provisional Measures, 2020 I.C.J. 3, ¶ 41 (Jan. 23) ("[T]he contracting States . . . have, one and all, a common interest . . . .").

129. *See* Hachem et al., *supra* note 69, at 290–91.

130. *Cf.* Matei Alexianu, *Third-Party "Provisional Countermeasures": A Proposal to Give Teeth to Provisional Measures*, EJIL: TALK! (Mar. 20, 2024), https://www.ejiltalk.org/third-party-provisional-countermeasures-a-proposal-to-give-teeth-to-provisional-measures [https://perma.cc/49C8-KX7M] ("Even in *erga omnes (partes)* cases where the applicant state is not directly injured by an underlying legal violation (e.g., The Gambia and South Africa), that state would nevertheless be injured by the breach of a provisional measure, since compliance is directly owed to that state.").

131. U.N. Charter preamble.

132. *Id.* at art. 2, ¶ 4; *accord id.* at art. 92; ICJ Statute art. 1.

legal order in which force is not an option. And indeed, the UN Charter explicitly declares that "judicial settlement" is one of the "first" options to take for the pacific settlement of disputes.[133]

When States—now numbering 193[134]—assented to this foundational and constitutive international agreement, they committed to weighty international obligations to maintain international peace and security and to support the structure designed to preserve such peace. Indeed, it is by no accident that all States that are parties to the UN Charter are also *ipso facto* parties to the ICJ Statute.[135] This automatic inclusion underscores the critical role the ICJ plays in the overall infrastructure for peace established by the UN Charter.

The UN Charter includes a prohibition on the use of force. It recognizes that States parties need a place that can efficaciously and peacefully resolve their disputes. The ICJ Statute, in turn, specifies that the decisions of the Court are binding on the parties to the dispute, meaning that they are obligated to comply with it.[136] In so doing, it functionally effectuates the Court as the "principal" judicial organ and among the "first" options for pacific, rather than force-based, settlement of disputes.[137] Indeed, the entire functioning of a court requires that States involved in disputes before it be bound by the decisions that result.

This approach is narrower than the prior argument, which identifies the obligation to comply with ICJ judgments as an *erga omnes* obligation. The narrower approach would apply only to the States parties to the UN Charter and ICJ Statute, and only in light of their status as States parties to those treaties. Granted, there are few States that exist outside those agreements, hence the practical difference may be modest. Under the broader account, even if there were fewer signatories to the UN Charter and ICJ Statute, the obligations of supporting international peace that we speak of here, including in their manifestation of seeking an efficacious dispute settlement mechanism that is nonviolent, would not exclude those who remain outside the agreements. The broader account, moreover, rests on a deeper foundation than does the narrow one. After all, *erga omnes partes* obligations have been described as obligations that are of "an exclusively *conventional* nature."[138] Nonetheless, for all practical purposes, the two arguments we have laid out will lead to the same result. Thus, a reader unpersuaded by the broader account may find the narrower account more persuasive, a conclusion that would permit the reader to continue onto the remainder of this Article, which builds on the fundamental claim that the obligation to comply with an ICJ decision is a duty that extends beyond just the parties to a case.[139]

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133. *See* U.N. Charter art. 33, ¶ 1.

134. *About Us*, U.N., https://www.un.org/en/about-us [https://perma.cc/J2Y3-KTTS] (last visited Sep. 13, 2025).

135. *See* U.N. Charter art. 93, ¶ 1.

136. ICJ Statute art. 59.

137. *See* U.N. Charter art. 92; *id.* at art. 33, ¶ 1.

138. Carli, *supra* note 127 (stating that "*erga omnes partes* obligations are thus obligations of an exclusively conventional nature").

139. We furthermore reserve space for the idea that the broader argument is indeed enhanced by the narrower argument—in other words, that these justificatory strands are not mutually exclusive. Those

Now, with this argument in mind, the international community may turn what has long been seen as international law's "Achilles heel"—the enforcement of its highest court's decisions—"into an asset."[140]

III. EXPANDED ENFORCEMENT

We have argued that ICJ decisions can identify or ground *erga omnes* and *erga omnes partes* obligations. This claim has significant upshots for the justification of enforcement measures. It implies that when an *erga omnes* obligation has been violated, there is an ensuing legal right for all States—not just those directly affected by the violation—to pursue countermeasures to enforce those obligations. For violations of *erga omnes partes* obligations, all States parties possess such a legal right. This right creates the prospect of decentralized enforcement of ICJ decisions by States acting on their own or collectively. It also strengthens the justification for States to act together through the General Assembly to collectively enforce those obligations. This Part discusses each in turn.

A. INDIVIDUAL STATE ENFORCEMENT

When a State is harmed by another State's internationally wrongful act, that State is entitled to take otherwise unlawful action—known as a "countermeasure"—against the responsible State to induce compliance with its legal obligations.[141] There are many constraints on permissible countermeasures—for example, they must be reversible, proportionate, and designed to bring the violating State back into compliance.[142] "Countermeasures are a feature of a decentralized system by which injured States may seek to vindicate their rights and restore the legal relationship with the responsible State which has been ruptured by the internationally wrongful act."[143]

Ordinarily, States are only allowed to use countermeasures when they have been directly injured. The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (the "Draft Articles") disclaim any attempt "to regulate the taking of countermeasures by States other than the injured State."[144] But there is a growing literature supporting the position that States are entitled to use countermeasures—sometimes termed collective countermeasures or "third-party" countermeasures—where there has been a violation of an *erga omnes* obligation—that is, an obligation owed to all.[145] The

normative, functional, and structural considerations that underlie our *erga omnes* argument are only further bolstered by the fact of specific assent to the UN Charter and ICJ Statute.

140. Hachem et al., *supra* note 69, at 266.

141. *See* Int'l L. Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, at 130–31, U.N. Doc. A/56/10 (2001) [hereinafter (D)ARSIWA]. For a succinct overview of the "conditions and limitations" international law imposes on the use of countermeasures, see David E. Pozen, *Self-Help and the Separation of Powers*, 124 YALE L.J. 2, 57–58 (2014).

142. *See* (D)ARSIWA, *supra* note 141, at 128–29, 131.

143. *Id.* at 128.

144. *Id.* at 129.

145. *See* Amanda Bills, *The Relationship Between Third-party Countermeasures and the Security Council's Chapter VII Powers: Enforcing Obligations* Erga Omnes *in International Law*, 89 NORDIC

claim is that if an obligation that is owed to all has been violated, then all presumably have been injured. This creates a corridor of possible justification for all of those injured States to take countermeasures against the noncompliant State, individually or collectively.[146] "[C]ollective countermeasures can be made in response to a state's violation of an obligation *erga omnes*—that is, obligations arising 'towards the international community as a whole' in the protection of which all states have a 'legal interest.'"[147]

This idea—that all States are harmed when any one of them breaches an *erga omnes* obligation—can be found in the Draft Articles. Specifically, Article 48 states the following:

> Any State other than an injured State is entitled to invoke the responsibility of another State [if] the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or . . . the obligation breached is owed to the international community as a whole.[148]

Article 54 further elaborates that "'injured' States . . . are not the only States entitled to invoke the responsibility of a State for an internationally wrongful act."[149] Now, while the Draft Articles do not go so far as to create a positive framework of collective enforcement, they leave open this possibility. Recent work, for example, has argued that in light of Russia's breach of its *erga omnes* obligation not to unlawfully use force against another sovereign State, States are justified in pursuing countermeasures against Russia, including the collective continued freezing of Russian central bank assets.[150] A similar argument applies to *erga omnes partes* obligations, though only the States parties to the treaty at issue have the legal right to pursue countermeasures.

J. INT'L L. 117, 118–20 (2020); Oona A. Hathaway, Maggie M. Mills & Thomas M. Poston, *War Reparations: The Case for Countermeasures*, 76 STAN. L. REV. 971, 978 (2024).

146. *See* CHRISTIAN J. TAMS, ENFORCING OBLIGATIONS *ERGA OMNES* IN INTERNATIONAL LAW 198 (2005) (arguing that "all States are entitled to take countermeasures in response to breaches of those particularly important obligations that qualify as obligations *erga omnes*"); *see also* Hathaway et al., *supra* note 145, at 1024 ("[C]ollective countermeasures can be made in response to a state's violation of an obligation *erga omnes* . . . ."); Lea Brilmayer & Isaias Yemane Tesfalidet, *Third State Obligations and the Enforcement of International Law*, 44 N.Y.U. INT'L J.L. & POL. 1, 5–6 (2011) (developing an argument that third states might participate in the enforcement of international obligations).

147. Hathaway et al., *supra* note 145, at 1024. Admittedly, the term "collective countermeasures" may be a bit of a misnomer in the context of countermeasures for the violation of *erga omnes* obligations. The very idea of the *erga omnes* obligation is that the obligation is owed to all—hence all are injured and have a right to put in place countermeasures for this injury, even if one does not accept the idea of collective or third-party countermeasures.

148. (D)ARSIWA, *supra* note 141, at 126.

149. *Id.* at 137.

150. *See* Hathaway et al., *supra* note 145, at 1023–24. *See also* Philip Zelikow, *A Legal Approach to the Transfer of Russian Assets to Rebuild Ukraine*, LAWFARE (May 12, 2022, 10:21 AM), https://www.lawfaremedia.org/article/legal-approach-transfer-russian-assets-rebuild-ukraine [https://perma.cc/4PBN-KZ85].

Countermeasures can include nonperformance of almost any international law obligation owed to another State, save the obligation to refrain from the threat or use of force.[151] In practice, countermeasures have taken a variety of forms. They may include, for example, significant prohibition of exports of goods and technology, prohibition of landing rights for national airplanes, prohibition on imports of national products, freezing of funds, suspending investment rights, or even refusing access to territorial waters or overflight or airplane landing privileges.[152] There are several recent examples of both countermeasures and retorsions.[153] For example, the Netherlands recently halted deliveries of F-35 fighter jets to Israel over concerns they might be used in unlawful military operations.[154] The United Kingdom recently suspended thirty of its arms export licenses.[155] Spain cancelled the purchase of police ammunition from an Israeli firm.[156] Namibia and Malaysia have refused to allow ships carrying arms to Israel to dock at their ports.[157] Colombia halted coal exports to Israel, stating that exports would only resume if Israel were to comply with the ICJ's order to withdraw from the Gaza Strip.[158]

In sum, as Part II argued, ICJ decisions can both recognize *erga omnes* and *erga omnes partes* obligations, and compliance with them may itself be an *erga omnes* obligation (or, in the narrower version of the argument, an *erga omnes partes* obligation). If that is so, then ICJ decisions might be enforced through

151. (D)ARSIWA, *supra* note 141, at 131, 143.

152. *See id*. at 138.

153. A retorsion is a "lawful means of retaliation by one state against another." *Retorsion*, OXFORD REFERENCE, https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100416821 [https://perma.cc/55P6-H6UK] (last visited Sep. 13, 2025). Whereas a countermeasure is an action that would be unlawful if not justified as a lawful countermeasure, a retorsion is simply the refusal to undertake cooperation to which the other State is not entitled. *See* Thomas Giegerich, *Retorsion*, OXFORD PUB. INT'L L. (Sep. 2020), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e983 [https://perma.cc/A6PV-78HF].

154. *See* Cassandra Vinograd, *Dutch Court Moves to Block Export of Fighter Jet Parts to Israel*, N.Y. TIMES (Feb. 12, 2024), https://www.nytimes.com/2024/02/12/world/middleeast/fighter-jet-israel-netherlands.html.

155. Joshua Nevett & James Landale, *UK Suspends Some Arms Exports to Israel*, BBC (Sep. 2, 2024), https://www.bbc.com/news/articles/cd05pk95j2xo [https://perma.cc/E7VL-QNWK].

156. *Spain Cancels Purchase of Police Ammunition from Israeli Firm*, REUTERS (Oct. 29, 2024, at 09:30 ET), https://www.reuters.com/business/aerospace-defense/spain-cancels-purchase-police-ammunition-israeli-firm-2024-10-29 [https://perma.cc/FB5L-A3UD].

157. *See Malaysia Bans Israeli-Flagged Ships from Using its Ports in Response to Gaza War*, THE TIMES OF ISRAEL (Dec. 20, 2023, at 22:45 ET), https://www.timesofisrael.com/malaysia-bans-israeli-flagged-ships-from-using-its-ports-in-response-to-gaza-war; Wycliffe Muia, *Namibia Blocks Ship over Israel War-Crime Concerns*, BBC (Aug. 27, 2024), https://www.bbc.com/news/articles/c20rgvqr37ro [https://perma.cc/3F52-J3VY]. In January 2025, Namibia, Malaysia, and Colombia became members of The Hague Group, through which they and other States are coordinating action to enforce the ICJ's decisions concerning Israel. *See Inaugural Joint Statement*, PROGRESSIVE INT'L: HAGUE GRP. (Jan. 31, 2025), https://act.progressive.international/english [https://perma.cc/75KF-SQPV].

158. Manuel Rueda, *Colombia Will Suspend Coal Exports to Israel Over War in Gaza,* AP NEWS (June 8, 2024), https://apnews.com/article/colombia-israel-coal-exports-467a61fed8c0779f27a3179629717436 [https://perma.cc/L7CZ-CKSF].

individual States putting in place countermeasures aimed at bringing a noncompliant State back into compliance.[159]

B. COORDINATED ENFORCEMENT

There are a number of challenges that arise for States acting on their own. First, a single State may not have a significant impact. Generally speaking, countermeasures are more effective the more States participate in them. Second, the countermeasures doctrine requires that countermeasures be proportionate to the internationally wrongful act they are responding to. If many States engage in collective countermeasures, there is a distinct possibility that they will collectively exceed what would be a proportionate response. Some mechanisms for coordination, therefore, help ensure that countermeasures are effective but not excessive. Here, we consider how various States might act together, both to induce greater pressure at compliance and to coordinate the proportionality of their efforts. Below we discuss two methods of coordination—ad hoc and through the UN General Assembly.

1. Ad Hoc Coordination

Collective countermeasures in general face questions about how their scope can be limited to what is fitting or appropriate. To be lawful, countermeasures must be proportional to the harm done by the violating State, but if every State is permitted to take countermeasures, how is it possible to ensure that the total amount of countermeasures is not excessive? Indeed, the Draft Articles mention that countermeasures can be "liable to abuse and this potential is exacerbated by the factual inequalities between States."[160] Perhaps for this reason, when the Draft Articles address situations where States that are not directly injured take countermeasures, it calls this practice "embryonic" and "controversial," and it disclaims any intention of "regulat[ing] the taking of countermeasures by States other than the injured State."[161] Noting that the violation of an *erga omnes* or an *erga omnes partes* obligation might qualify all States (or all States parties) as injured can assuage this fear to some extent, but it does not displace the need to address the proper bounds of countermeasures when multiple States are involved.

One way in which this dilemma could be addressed is through coordination among States that are taking countermeasures against a violating State. States can and should coordinate their efforts, and one first way to engage in multilateral

159. *See* Oona A. Hathaway, Maggie Mills & Thomas Poston, *The Emergence of Collective Countermeasures*, ARTICLES OF WAR (Nov. 1, 2023), https://lieber.westpoint.edu/emergence-collective-countermeasures [https://perma.cc/F58X-YAQF] (making the case for collective countermeasures). The argument offered here differs from, for example, Oscar Schachter's argument that "states are entitled under international law (and possibly may be considered under a duty) to assist in the execution of a decision of the International Court, if that decision has not been complied with and the successful party requests such assistance." Oscar Schachter, *The Enforcement of International Judicial and Arbitral Decisions*, 54 AM. J. INT'L L. 1, 11 (1960). If our argument is correct, States need not await a request for assistance, and they are not limited to merely attaching property belonging to the debtor State.

160. (D)ARSIWA, *supra* note 141, at 128.

161. *See id*. at 129.

action is through direct coordination with one another. For instance, States can decide to "team up" and apply countermeasures against a noncompliant State. This could be done on an ad hoc basis, where States monitor each other's actions and engage in ongoing diplomacy. However, this approach could be time-consuming and create diplomatic friction. Alternatively, States could create a standing body that coordinates collective countermeasures among States—ideally, this body would develop the appropriate procedures for applying proportionate countermeasures.

Coordinated countermeasures are not new. There have been several examples of measures taken by States other than an injured State—often in coordination with one another. For example, in 1981, Western countries suspended treaties providing for landing rights of Aeroflot in response to human rights violations by the Polish government; in 1982, the European Community and other countries adopted trade sanctions on Argentina when it took control over the Falkland Islands; in 1990, many States adopted a trade embargo and froze Iraqi assets in response to Iraq's illegal invasion of Kuwait; and in 1998, several States froze Yugoslav funds and imposed a flight ban in response to a humanitarian crisis in Kosovo.[162] More recently, a host of coordinated economic, trade, and diplomatic sanctions and countermeasures have been levied against Russia since its invasion of Ukraine, including the freezing of over $300 billion in central bank assets.[163]

In the latest example of coordinated countermeasures, a group of States formed what they dubbed "The Hague Group" to enforce the International Criminal Court's arrest warrants and the ICJ's decisions relating to the ongoing war in Gaza.[164] The group's inaugural joint statement states that the members are "[c]onvinced that collective action through coordinated legal and diplomatic measures . . . is an urgent imperative to uphold the principles of justice and accountability that form the foundation of the UN Charter."[165] The group is currently coordinating efforts to

162. *See id.* at 138.

163. *See, e.g.*, Scott Horsley, *In An Effort to Choke Russian Economy, New Sanctions Target Russia's Central Bank*, NPR (Feb. 28, 2022, at 16:31 ET), https://www.npr.org/2022/02/28/1083580974/in-an-effort-to-choke-russian-economy-new-sanctions-target-russias-central-bank?t=1646164495488 [https://perma.cc/C9LE-XKNH] (describing sanctions on Russia's central bank); Zeke Miller, Mike Balsamo & Josh Boak, *US Strikes Harder at Putin, Banning All Russian Oil Imports*, AP NEWS (Mar. 8, 2022, at 21:17 ET), https://apnews.com/article/russia-ukraine-war-us-russia-oil-ban-120c0152cf310a5b593f6ae7a2857e62 [https://perma.cc/UTT3-XEP6] (describing major trade action by the United States against Russia). For more on the legality of collective countermeasures against Russia, which was subject to an ICJ preliminary measure ordering it to cease its invasion of Ukraine, see generally Hathaway et al., *supra* note 145. *See also* Philippa Webb, Eur. Parliamentary Rsch. Serv., *Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine*, at 2, 24–31 (2024), https://www.europarl.europa.eu/RegData/etudes/STUD/2024/759602/EPRS_STU(2024)759602_EN.pdf [https://perma.cc/PA5R-UYDE] (examining legal bases for overcoming Russia's immunity from enforcement against Russian Central Bank assets, including countermeasures doctrine and citing the ICJ decision against Russia).

164. *See* Patrick Wintour, *South Africa and Malaysia to Launch Campaign to Protect International Justice*, THE GUARDIAN (Jan. 31, 2025), https://www.theguardian.com/law/2025/jan/31/south-africa-and-malaysia-to-launch-campaign-to-protect-justice [https://perma.cc/6AXF-YPPD].

165. *Inaugural Joint Statement*, *supra* note 157.

"interrupt the global supply chain for Israel's defence industries," prevent arms shipments to Israel when such transactions risk violating international law, and block vessels from docking at ports under their jurisdiction "where there is a risk that the vessels are used to transport fuel and arms to Israel."[166]

2. Coordination Through the UN General Assembly

The General Assembly may play a role in coordinating States to exercise their right to engage in collective countermeasures in response to a State's noncompliance with an ICJ decision. Through the General Assembly, member states can call on States to jointly implement lawful sanctions or retorsions against noncompliant States. To avoid excessive trade restrictions that might be disproportionate to the harm, the General Assembly could establish recommended parameters for decision-enforcement measures. In this way, the General Assembly can serve as a forum for coordinating action.

As the only UN organ representing all 193 member states—each of which is party to the ICJ Statute—the General Assembly is ideally positioned to organize these enforcement efforts. All member states hold an equal vote and an equal seat at the table.[167] Colloquially known as the "World's Parliament,"[168] the General Assembly functions as a "standing international conference" of States, where any member state can bring forward international issues it deems worthy of global attention.[169] Under the UN Charter, the General Assembly possesses the powers to debate and make recommendations on "any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter."[170] While the Security Council has the primary "responsibility for the maintenance of international security"[171] and is

166. Sondos Asem, *Holding Israel Accountable: What Is The Hague Group?*, MIDDLE E. EYE (Feb. 11, 2025, at 10:00 UTC), https://www.middleeasteye.net/news/holding-israel-accountable-what-hague-group [https://perma.cc/2SN7-RUMM]. As of July 10, 2025, the group had expanded to include more than twenty countries and had plans to convene in an "emergency summit" to declare "concrete measures against Israel's violations of international law." Sondos Asem, *Exclusive: Spain and Ireland to Join More Than 20 States to Declare 'Concrete Measures' Against Israel*, MIDDLE E. EYE (July 10, 2025, at 17:06 BST), https://www.middleeasteye.net/news/spain-and-ireland-join-more-20-states-declare-concrete-measures-against-israel [https://perma.cc/WJN7-PRLT]. The group most recently met during the during the General Assembly's High-Level Week, recommitting to taking action against Israel. Patrick Wintour, *World Must Deny Israel 'Tools of Genocide', Says Growing Alliance of Activist States*, THE GUARDIAN (Sep. 26, 2025, at 13:37 ET), https://www.theguardian.com/world/2025/sep/26/world-must-deny-israel-tools-of-genocide-says-growing-alliance-of-activist-states [https://perma.cc/525L-LPX9].

167. U.N. Codification Div., Off. of Legal Affs., Charter of the United Nations: Article 10 Repertory of Practice (1945–1954), volume 1, at 257, https://legal.un.org/repertory/art10/english/rep_orig_vol1_art10.pdf [https://perma.cc/C9HG-PWHA] (last visited Sep. 13, 2025) ("[R]epresentatives . . . stress[ed] the overall responsibility of the Assembly as a world forum for the consideration of international problems and its role in the Organization as the only principal organ on which all States Members are represented.").

168. Press Release, General Assembly, General Assembly Adopts Resolution Calling for Immediate, Sustained Humanitarian Truce Leading to Cessation of Hostilities between Israel, Hamas, U.N. Press Release GA/12548 (Oct. 27, 2023) (quoting statement by Riyad Mansour, Permanent Observer for the State of Palestine).

169. M. J. Peterson, *General Assembly*, *in* THE OXFORD HANDBOOK ON THE UNITED NATIONS 119, 119 (Thomas G. Weiss & Sam Daws eds., 2d ed. 2018).

170. U.N. Charter art. 10.

171. Peters, *supra* note 56, at 1031.

given a formal role in enforcing ICJ decisions under the UN Charter, these responsibilities are not exclusive to it. The General Assembly shares with the Security Council the obligation to pursue the purposes of the UN, including first and foremost "to maintain international peace and security."[172]

The General Assembly can not only coordinate States already intending to put in place countermeasures and other sanctions against a noncompliant State, but it can also affirmatively act to encourage member states to take such action.[173] The General Assembly has twice called for compliance with a merits decision of the ICJ. In 1986, after the decision against the United States in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*,[174] the United States vetoed a draft resolution calling for "full and immediate compliance" with the Court's judgment.[175] Within a week, the General Assembly adopted the vetoed resolution nearly verbatim.[176] Several decades later, the General Assembly adopted a resolution invoking the same call for "full and immediate compliance" with the Court's decision against the United States in *Avena and Other Mexican Nationals (Mexico v. United States)*.[177] Both resolutions established the important principle that the General Assembly has the authority to call on States to comply with the Court's judgments. But neither resolution offered specific guidance to States not directly involved in the cases as to what obligations they might have to encourage compliance with the Court's decisions.

The General Assembly offered far more guidance to States in response to the ICJ's *The Wall* advisory opinion, in which the Court observed that "obligations

172. *See* U.N. Charter art. 1. The General Assembly is not limited, moreover, to the formal authorities specified in the UN Charter. In 1956, in an advisory opinion on the capacity of the General Assembly to create a tribunal to adjudicate internal disputes, the ICJ found that the General Assembly's authority was *not* confined to the powers expressly provided in the UN Charter. The General Assembly also possesses those powers that, "though not expressly provided in the Charter," are implied "as being essential to the performance of its duties." Effect of Awards of Compensation Made by United Nations Administrative Tribunal, Advisory Opinion, 1954 I.C.J. 47, 56 (July 13) (citation omitted).

173. *See* U.N. Charter art. 10; *id.* at art. 93, ¶ 1.

174. *See* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27); Corfu Channel, Judgment, 1949 I.C.J. 171 (Apr. 9).

175. U.N. Sec. Council, Congo, Ghana, Madagascar, Trinidad and Tobago and United Arab Emirates: Draft Resolution, U.N. Doc. S/18428 (Oct. 28, 1986), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_18428.pdf [https://perma.cc/V55M-DMY8]; *In Hindsight: The Security Council and the International Court of Justice*, SEC. COUNCIL REP. (Dec. 28, 2016), https://www.securitycouncilreport.org/monthly-forecast/201701/in_hindsight_the_security_council_and_the_international_court_of_justice.php [https://perma.cc/SM5B-EHLS]. Following this resolution, Nicaragua called for a Security Council meeting to discuss the United States' continued noncompliance with the Court's judgment "in accordance with the provisions of the Charter." SCHULTE, *supra* note 22, at 201. This marked the first time (and last) that Article 94(2) was invoked. *See id.* But as the provision reads, the Security Council possesses the discretion to act—or not act—in a case of noncompliance that is brought to its attention. U.N. Charter art. 94, ¶ 2.

176. G.A. Res. 41/31 (Nov. 3, 1986). For more on the *Nicaragua* case and its possible implications for the authority of the General Assembly to act in cases of noncompliance with the ICJ's decisions, see Attila Tanzi, *Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations*, 6 EUR. J. INT'L L. 539, 546–47, 558–61 (1995).

177. G.A. Res. 73/257 (Dec. 20, 2018).

violated by Israel include certain obligations *erga omnes*."[178] The Court stated that all States had the duty "not to recognize the illegal situation resulting from the construction of the wall" and "not to render aid or assistance in maintaining the situation created by such construction" and that all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War were "under an obligation . . . to ensure compliance by Israel with international humanitarian law as embodied in that Convention."[179] The Court also called on UN organs, including the General Assembly and the Security Council, to "consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall."[180]

Israel rejected the advisory opinion, arguing that the wall's construction was justified by Israel's right to self-defense, and thus continued building the wall.[181] The General Assembly responded to Israel's noncompliance by passing another resolution demanding that Israel comply, spelling out each line of the Court's findings. It stated that "respect for the Court and its functions is essential to the rule of law and reason in international affairs" and reaffirmed the need for member states to fulfill "their legal obligations as mentioned in the advisory opinion" and to ensure Israel's compliance with the Fourth Geneva Convention.[182] While the wall remains,[183] the General Assembly's actions in the wake of the ICJ's advisory opinion nonetheless represent an exercise of the General Assembly's authority to call on States to support an ICJ decision.

The General Assembly took similar actions in response to the advisory opinion on the *Occupied Palestinian Territory*, issued in July 2024, following a request from the General Assembly roughly two years earlier.[184] The Court concluded

178. Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 155 (July 9).

179. *Id.* ¶ 159.

180. *Id.* ¶ 163.

181. Israel did make some changes to the wall's planned path in response to a decision of its own Supreme Court that various sections of the wall should be modified to reduce the harm to the "fabric of life" of Palestinian residents in the affected villages within the West Bank enclave. HCJ 7957/04 Mara'abe v. Prime Minister of Israel, 60(2) PD 477, ¶ 116 (2005) (Isr.). *See generally* Susan M. Akram & S. Michael Lynk, *The Wall and the Law: A Tale of Two Judgements*, 24 NETH. Q. HUM. RTS. 61 (2006) (describing the two judgments and comparing Israel's response to them).

182. G.A. Res. ES-10/15, at 3–4 (Aug. 2, 2004). Notably, 150 States voted in favor and only 6 abstained. *See UN General Assembly Resolutions Tables*, U.N.: DAG HAMMARSKJÖLD LIBR., https://research.un.org/en/docs/ga/quick/emergency [https://perma.cc/3SJQ-68YX] (last visited Sep. 14, 2025).

183. *See* Linah Alsaafin, *Israel's Separation Wall Endures, 15 Years After ICJ Ruling*, AL JAZEERA (July 9, 2019), https://www.aljazeera.com/news/2019/7/9/israels-separation-wall-endures-15-years-after-icj-ruling [https://perma.cc/5XRE-BPV2].

184. *See* G.A. Res. 77/247, ¶ 18 (Jan. 9, 2023). This resolution contributes to an extensive body of resolutions from the General Assembly and others aimed at ending Israel's unlawful occupation of the West Bank, Gaza Strip, and East Jerusalem. *See, e.g.*, G.A. Res. 75/98 (Dec. 18, 2020); G.A. Res. 74/89 (Dec. 26, 2019); G.A. Res. 73/99 (Dec. 18, 2018); G.A. Res. 72/87 (Dec. 14, 2017); G.A. Res. 71/98 (Dec. 23, 2016); S.C. Res. 2334 (Dec. 23, 2016); Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 159 (July 9); G.A. Res. ES-10/15 (Aug. 2, 2004); G.A. Res. ES-10/14 (Dec. 12, 2003).

that "the obligations violated by Israel include certain obligations *erga omnes*."[185] The Court called on the General Assembly and the Security Council to consider "the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory."[186]

The General Assembly responded to the ICJ's call and adopted a resolution aimed at ending Israel's presence in the Occupied Palestinian Territory in the next twelve months.[187] The resolution calls on States to support the ICJ's decision. First, and most critically for our purposes, the resolution echoes the obligations outlined in the ICJ's advisory opinion for Israel, member states, and international organizations, including the UN.[188] This call to action is both a "joint and separate" effort to uphold Palestine's right to self-determination and ensure respect for *erga omnes* obligations.[189] Notably, the resolution explicitly outlines the duty to "implement sanctions [on Israel], including travel bans and asset freezes, against natural and legal persons engaged in the maintenance of Israel's unlawful presence in the Occupied Palestinian Territory."[190]

The resolution underscores the Court's essential and authoritative role, affirming that "respect for the International Court of Justice and its functions, including in the exercise of its *advisory jurisdiction*, is essential to international law and justice and to an international order based on the rule of law."[191] In doing so, it "stress[es]" the *erga omnes* obligations arising from Israel's unlawful occupation, highlighting its direct connection to Palestine's right to self-determination.[192] It asserts that these obligations are "the concern of all States" and "all States can be held to have a legal interest in their protection."[193] It "[c]onfirms its determination to examine further practical ways and means to secure the full respect of the advisory opinion and the full implementation of all relevant United Nations resolutions, notably in case of non-compliance."[194] The Court's identification of an *erga omnes* obligation—and its call on all States to take collective action to enforce that obligation—is one form of General Assembly action our proposal envisions.

Thus far, the General Assembly's coordination of State responses to unlawful actions by member states has been done on a case-by-case basis. To better

185. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, ¶ 274 (July 19, 2024), https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf.

186. *Id.* ¶ 285.

187. G.A. Res. ES-10/24 (Sep. 19, 2024). The resolution was adopted during an emergency special session; the General Assembly can convene an emergency special session within 24 hours of a request by the majority of member states or by seven members of the Security Council. G.A. Res. 377(V), ¶ 1 (Nov. 3, 1950).

188. *See* G.A. Res. ES-10/24, at 2 (Sep. 19, 2024).

189. *Id.* at 6.

190. *Id.* at 7.

191. *Id.* at 4 (emphasis added).

192. *Id.* at 5.

193. *Id.*

194. *Id.* at 8.

coordinate States' responses to a failure to comply with a decision of the Court, the General Assembly could create an institutional structure for this purpose. It could create what might be called an "Outcasting Council." This Council would meet regularly with two primary objectives in mind: (1) to monitor the Court's decisions and (2) to assess and implement outcasting measures against noncompliant States. For instance, when a State fails to comply with a judgment, the Outcasting Council would promptly evaluate the severity of the State's noncompliance and determine the appropriate measures it should take in response.[195] These measures could include diplomatic isolation, economic sanctions, and the halting of military aid, all applied, adjusted, and lifted through a single mechanism. This design feature would ensure that the Outcasting Council acts decisively but also ceases to act once a State complies.

Moreover, the Outcasting Council's proactive stance would discourage States from defying the Court's rulings in the first place. Knowing that a dedicated body is ready to enforce compliance gives weight to the Court's rulings and reinforces adherence to international law. The establishment of the Outcasting Council would thus strengthen the enforcement of ICJ decisions across the international community. The Council could bridge the gap between judicial decisions and practical enforcement, ensuring that the Court's judgments do not ring hollow. Another advantage of the Outcasting Council is that it clarifies what returning to compliance entails for a noncompliant State by observing how the Council collectively and expeditiously eases countermeasures once a noncompliant State moves towards compliance. This approach—showcasing the Council's actions as coordinated and proportional—would offer States stronger incentives to come back into compliance.

The General Assembly has the power to create the Outcasting Council under Article 22 of the UN Charter, which authorizes it to "establish such subsidiary organs as it deems necessary for the performance of its functions."[196] Historical precedent also supports the creation of such a body. In the 1940s, as the Security Council became increasingly paralyzed by the events leading up to the Cold War, the United States proposed the creation of an "Interim Committee" to "strengthen the machinery for peaceful settlement and place the responsibility for such settlement broadly upon all the Members of the United Nations."[197] After numerous rounds of negotiations, the General Assembly adopted a resolution that established the committee, widely known as the "Little Assembly."[198] Operating until the mid-1950s, the committee was tasked with addressing issues referred to it by the General Assembly, handling disputes when the General Assembly was not in

195. States that are part of the Outcasting Council would also be required to accept measures imposed on them if they fail to comply with an ICJ decision.

196. U.N. Charter art. 22.

197. Yuen-Li Liang, *The Establishment of the Interim Committee of the General Assembly*, 42 AM. J. INT'L L. 435, 435 (1948) (internal citation omitted); *see also* Clyde Eagleton, *The Work of the UN Interim Committee*, 42 AM. J. INT'L L. 627, 627 (1948) (describing the functions of the Interim Committee); G.A. Res. 111 (II), ¶ 2 (Nov. 13, 1947) (establishing the Interim Committee).

198. Eagleton, *supra* note 197, at 627.

session, and proposing measures to strengthen cooperation among member states.[199] In the years since, the General Assembly has created numerous subsidiary bodies.[200] These offer significant precedent for a resolution by the General Assembly to create an Outcasting Council.

C. INSTITUTIONAL ENFORCEMENT

The UN General Assembly can encourage and coordinate States' individual responses. But States can also act through the General Assembly in another way: by exercising the organ's institutional authority in support of an ICJ decision. Put differently, the General Assembly itself offers a mechanism through which States may engage in enforcement.

The General Assembly's ability to exercise its institutional authority does not depend solely on the argument that compliance with ICJ decisions is an *erga omnes* obligation, as is the case with the capacity of States to resort to countermeasures. Yet States seeking to enforce *erga omnes* obligations are not limited to taking actions, such as countermeasures, that they could not otherwise lawfully take. Rather, they *may* take such actions, but they may *also* exercise other authorities that they already lawfully possess toward the same end. Exercising the institutional authority of the General Assembly to support compliance with the ICJ's judgments is an exercise of the authority—and responsibility—of the General Assembly to secure international peace and security. Moreover, our proposition—that compliance with ICJ decisions constitutes an *erga omnes* obligation (or, in the narrower account, an *erga omnes partes* obligation), a claim reinforced by the Court's essential role within both the international and UN systems—adds urgency and further justification to the General Assembly's institutional response. Here, we outline four institutional responses that could affirm and enforce a decision of the Court: (1) call on UN organs to support an ICJ decision; (2) deny States the benefits of UN membership; (3) block the election of State nominees to the ICJ; and (4) suspend or expel a noncompliant member.

1. Call on UN Organs to Support an ICJ Decision

The General Assembly can call on UN organs to act in support of the Court's decisions. It has done this before. In 2017, the General Assembly adopted Resolution 71/292, requesting the ICJ to render an advisory opinion on (1) whether the United Kingdom's separation of the Chagos Archipelago from Mauritius before it gained independence (i.e., exercised its right to self-determination) was lawful; and (2) what legal consequences arise from the United Kingdom's continued administration of the Chagos Archipelago under international law.[201] In 2019, the ICJ

199. *See* Peterson, *supra* note 169, at 125; *see also* Douglas W. Coster, *The Interim Committee of the General Assembly: An Appraisal*, 3 INT'L ORG. 444, 446, 449 (1949) (describing the Interim Committee's principal functions during its first year and a half as: "1) preparatory work, 2) work in implementing Assembly resolutions, 3) consultative work, 4) work as a study group, and 5) constitutional work").

200. *See* Hathaway et al., *supra* note 59, at 33, 63.

201. *See* Legal Consequences of Separation of Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶ 1 (Feb. 25). Some believe the General Assembly was able to pass

issued its advisory opinion on the matter, concluding that Mauritius' consent to the United Kingdom's detachment of the Chagos Archipelago, in exchange for its independence, was "not based on the free and genuine expression of the will of the people concerned."[202] Thus, it violated Mauritius' right to self-determination under international law, an *erga omnes* obligation.[203] This finding informed the Court's ruling on the second question, namely that the United Kingdom's continued control over the Chagos Archipelago "constitutes a wrongful act entailing the international responsibility of that State."[204] The Court called on the United Kingdom to "end its administration of the Chagos Archipelago as rapidly as possible,"[205] and requested the General Assembly to come up with the "modalities necessary for ensuring the completion of the decolonization of Mauritius."[206] Given that the right to self-determination is an *erga omnes* obligation, the ICJ called on all member states to cooperate with the UN in implementing the modalities the General Assembly would devise.[207]

Three months after the ICJ issued its advisory opinion, the General Assembly passed Resolution 73/295 in which it affirmed the ICJ's decision and demanded the complete decolonization of Mauritius consistent with the Court's opinion.[208] It emphasized that the right to self-determination creates an *erga omnes* obligation, making all member states responsible for ensuring Mauritius' decolonization.[209] The resolution, moreover, called on the UN, "all its specialized agencies," and "all other international, regional, and intergovernmental organizations" to support the decolonization process.[210]

In October 2024, the United Kingdom and Mauritius finally reached a political agreement in which the United Kingdom agreed to transfer sovereignty over all islands in the Chagos Archipelago to Mauritius.[211] As the United Kingdom's

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this resolution because of Brexit, which allowed many European States and others to vote against the United Kingdom. *See* Mark Leon Goldberg, *Exiled by the United Kingdom to Make Way for a US Navy Base, Chagos Islanders May Soon Return Home*, U.N. DISPATCH (Oct. 5, 2023), https://undispatch.com/exiled-by-the-united-kingdom-to-make-way-for-a-us-navy-base-chagos-islanders-may-soon-return-home/ [https://perma.cc/DLL5-M95F].

202. *See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965: Overview of the Case,* INT'L CT. OF JUST., https://www.icj-cij.org/case/169 [https://perma.cc/CJN6-U6FF] (last visited Sep. 14, 2025). Our analysis of the case does not address the issue of the removal of Chagossians from the territory.

203. *Id.*

204. Legal Consequences of Separation of the Chagos Archipelago from Mauritius in 1965, 2019 I. C.J., ¶ 177.

205. *Id.* ¶ 178.

206. *Id.* ¶¶ 179–80 (noting that the ICJ tasked the General Assembly with these modalities because the right to self-determination falls under its purview).

207. *Id.* ¶ 180 ("[A]ll States have a legal interest in protecting [this] right . . . .").

208. G.A. Res. 73/295 (May 24, 2019), at 2, ¶¶ 2–3.

209. *Id.* at 2, ¶ 2(e).

210. *Id.* at 3, ¶¶ 6–7; *see Map of the World*, U.N. (Oct. 21, 2022), https://www.un.org/geospatial/content/map-world [https://perma.cc/Z7QE-DHQK] (noting that the UN has removed the name "British Indian Ocean Territory" and replaced it with "Chagos Archipelago (Mauritius)").

211. *UK and Mauritius Joint Statement, 3 October 2024*, U.K. GOV'T (Oct. 3, 2024), https://www.gov.uk/government/news/joint-statement-between-uk-and-mauritius-3-october-2024 [https://perma.cc/SU7Y-BN4U].

Foreign Secretary at the time acknowledged, "[i]t was just a matter of time before our only choices would have been abandoning the base altogether. Or breaking international law."[212]

2. Deny States the Benefits of UN Membership

The General Assembly has authority over its structure, privileges, and membership benefits. From the perspective of the General Assembly, these measures can be thought of as intended to "deny[] the disobedient the benefits of social cooperation and membership."[213] These tools do not require the General Assembly to step outside of its authorized powers—rather, they draw on the General Assembly's explicitly delineated or inherent functions.

The following is not an exhaustive list of the actions the General Assembly could take to encourage compliance with the Court's judgments—it merely highlights some of the tools it already has at its disposal.[214] For example, the General Assembly may suspend a noncompliant member state from a UN organ, like the Economic and Social Council,[215] or a subsidiary organ, such as the Human Rights Council or the Board of Auditors.[216] Suspension could also extend to any of the six main committees that make up the General Assembly.[217] One of the most influential committees, which seldom generates public attention, is the Fifth Committee (the Committee on Administrative and Budgetary Questions). The Fifth Committee oversees, allocates, and approves every dollar of the UN regular budget and the UN peacekeeping budget, as the committee entrusted with the "administrative and budgetary matters" of the UN.[218] Notably, instead of using a standard one-member-state, one-vote procedure, the Fifth Committee adopts resolutions by consensus—a method chosen because of the significant financial

212. *Foreign Secretary's Statement on the Chagos Islands, 7 October 2024*, U.K. GOV'T (Oct. 7, 2024), https://www.gov.uk/government/speeches/foreign-secretary-oral-statement-on-the-chagos-islands-7-october-2024 [https://perma.cc/44DF-RXGR].

213. *See* Oona Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L.J. 252, 258 (2011).

214. U.N. Charter art. 18, ¶ 2; Rules of Procedure of the General Assembly, Rule 83, U.N. Doc. A/520/Rev.20 (2022); *see also* Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16 EUR. J. INT'L L. 879, 883 (2005) (noting that "the decisional powers of the GA are restricted to 'organizational' matters internal to the UN legal order (including semi-external matters such as the budget, or admission, suspension and expulsion of members)").

215. U.N. Charter art. 7, ¶ 1.

216. *See* G.A. Res. 60/251, ¶ 8 (Apr. 3, 2006); *UN General Assembly Votes to Suspend Russia from the Human Rights Council*, U.N.: U.N. NEWS (Apr. 7, 2022), https://news.un.org/en/story/2022/04/1115782 [https://perma.cc/Q5CJ-VVSS]; *Mandate*, U.N.: U.N. BD. OF AUDITORS, https://www.un.org/en/auditors/board/mandate.shtml [https://perma.cc/5BJ2-JN32] (last visited Sep. 14, 2025). The suspension of elected member states to the Board of Auditors would be procedurally novel and perhaps difficult to undertake; the alternative option would be to block the nomination of a noncompliant State to this prestigious board.

217. For information on the six main committees of the General Assembly, see *U.N. General Assembly Documentation*, U.N.: DAG HAMMARSKJÖLD LIBR., https://research.un.org/en/docs/ga/committees [https://perma.cc/2J6U-H9GE] (last visited Sep. 14, 2025).

218. *See* G.A. Res. 45/248 B, VI, ¶ 1 (Dec. 21, 1990).

implications of its decisions.[219] This consensus approach benefits less powerful States since a single State can impede or block the adoption of a resolution. Consequently, suspending a member state from this committee would deliver a significant blow, particularly if the member state is one of the main financial contributors to the UN, as are many of the P5. In other words, a noncompliant State can be suspended from participating in the Fifth Committee, effectively preventing it from having an outsized influence over the UN regular budget and the UN peacekeeping budget for a given fiscal year.

The Fifth Committee could also leverage its authority over the UN regular budget to impose direct and financial consequences on States that fail to comply with the ICJ's decisions.[220] This might allow for creative and interesting means of enforcing ICJ judgments. For instance, while the budget covers basic administrative and operational costs for the UN, it also involves resource allocations that affect States, the deprivation of which could be of tangible cost to a noncompliant State.[221] To implement this proposal, member states in the Fifth Committee could adjust the formula for equitable geographical distribution in a way that would result in lowering the "desirable range" of UN Secretariat positions for noncompliant States.[222] This recalibration would result in a member state being categorized as "overrepresented" in the UN Secretariat based on the number of its nationals already employed by the UN. This "stick" could change the UN Secretariat's composition in the long term, inflicting on repeat noncompliant States not just a short-term consequence but also a long-term one. Proposals along these lines—of wielding the budget as a carrot-and-stick mechanism—must be sensitive to questions about proper stewardship and role, including nuances about the procedures and specific authorities of the Fifth Committee.

Other measures available to the General Assembly may seem less punitive at first glance but have significant practical impact. For instance, the General Assembly could suspend a member state from speaking during the General Debate at its annual High-Level Week,[223] which is often undertaken by a State's president or prime minister.[224] Alternatively, and perhaps equally damaging reputationally, a member state could be relegated to speaking last during the General Debate. A member state can also have its privilege to host meetings at the UN,

219. *See What Does It Mean When a Decision Is Taken "By Consensus"?*, U.N.: DAG HAMMARSKJÖLD LIBR., https://ask.un.org/faq/260981 [https://perma.cc/R398-4A5Z] (last visited Sep. 14, 2025).

220. *See* U.N., BASIC FACTS ABOUT THE UNITED NATIONS 6 (42d ed. 2017).

221. Notably, this sanction would have a disproportionate impact on States that depend more on UN support.

222. U.N. Secretary-General, *Overview of Human Resources Management Reforms: Assessment of the System of Desirable Ranges*, ¶ 9, U.N. Doc. A/69/190/Add.4 (Sep. 2, 2014). *See generally* Joint Inspection Unit, U.N. Secretary-General, *Application of the Principle of Equitable Geographical Distribution of the Staff of the United Nations Secretariat*, U.N. Doc. A/36/407 (Aug. 19, 1981).

223. *See, e.g.*, *High Level Week 2024 #UNGA79*, U.N.: GEN. ASSEMBLY U.N., https://www.un.org/pga/78/high-level-week-2024-unga79 [https://perma.cc/D69A-9ARU] (last visited Sep. 14, 2025).

224. *See* U.N. Secretariat, *Opening Dates of Forthcoming Regular Sessions of the General Assembly and of the General Debate*, U.N. Doc. A/INF/77/1 (Jan. 21, 2022).

including informal meetings and bilaterals, revoked.[225] A member state may also be barred from serving in leadership positions at the UN, such as President or Vice President of the General Assembly or Chair or Vice-Chair of one of the General Assembly's six committees.[226] However, the leadership position we find most appropriate for sanction—because the punishment fits the crime—is discussed in the following Section.

3. Block the Election of State Nominees to the ICJ

The ICJ, which consists of fifteen judges, conducts elections for five judicial positions every three years, with sitting judges eligible to seek reelection.[227] Although ICJ judges are elected by the General Assembly and the Security Council, the General Assembly can block the election of a candidate to the ICJ from a State that refuses to comply with a judgment of the Court.[228] Candidates need an absolute majority of votes in the General Assembly and the Security Council to be elected.[229] This means that with a majority in the General Assembly, a coalition of member states could indefinitely block a nominee from a noncompliant State. While this might not be sufficient to lead to compliance in most cases, it is another instance of international solidarity behind a real and tangible consequence.

The General Assembly may also penalize a noncompliant State by blocking the reelection of its nominees to the Court,[230] or by preventing the reelection of its nominees to the post of President or Vice-President of the ICJ.[231] For example, in early November 2023, the General Assembly elected five judges to the ICJ.[232] At the time of this election, Russian Judge Kirill Gevorgian, who joined the Court in 2021, was up for reelection. The General Assembly overwhelmingly supported the election of other candidates, with Judge Gevorgian receiving the

225. This action would be even more impactful if implemented during the General Assembly's High-Level Week, as it would prevent heads of state and ministers of foreign affairs from holding bilateral meetings with their counterparts from other States during the sidelines of the UN's most important week. To further underscore this point, the UN designates specific (and makeshift areas) for bilateral meetings during High-Level Week, making it highly noticeable, inconvenient, and perhaps even alarming if a head of state cannot meet with another leader on UN grounds. *See, e.g.*, Lidia Kelly, *Zelenskiy Holds Flurry of Bilateral Meetings at UN to Shore Up Support for Ukraine*, REUTERS (Sep. 24, 2024, at 04:49 ET), https://www.reuters.com/world/zelenskiy-holds-talks-with-pm-kishida-japans-energy-aid-ukraine-2024-09-23 [https://perma.cc/3HX7-EDEF].

226. Rules of Procedure of the General Assembly, Rules 30, 103, U.N. Doc. A/520/Rev.20 (2022).

227. *See* ICJ Statute art. 13, ¶ 1; *Members of the Court*, INT'L CT. OF JUST., https://www.icj-cij.org/members [https://perma.cc/E36X-D5XT] (last visited Sep. 14, 2025). There has been an effort to ensure the judges on the Court reflect a measure of geographical diversity so that the Court's composition reflects diverse legal traditions and regional perspectives. *See* Press Release, General Assembly, Justices' Diverse Perspectives, Experiences Make International Court of Justice 'Truly a World Court', Its President Tells Sixth Committee during Annual Visit, U.N. Press Release GA/L/3647 (Oct. 29, 2021).

228. *See* ICJ Statute arts. 4, 10.

229. ICJ Statute art. 10, ¶ 1.

230. *See* ICJ Statute art. 13, ¶ 1.

231. *See* ICJ Statute art. 21, ¶ 1.

232. Press Release, General Assembly, General Assembly Elects Five Judges to International Court of Justice, U.N. Press Release GA/12559 (Nov. 9, 2023).

second lowest number of votes among the candidates for the Court.[233] It was evident that support for Judge Gevorgian's reelection was dwindling, with only Belarus, China, and Russia expressing interest in his reelection.[234] The outcome of this election was a direct response to Russia's continued unlawful invasion of Ukraine,[235] in direct contravention of the ICJ's provisional measures in *Ukraine v. Russia*.[236] This marks the first time in the Court's history that a Russian (or Soviet) judge is not serving on its bench.[237]

Some may claim that this approach is inaccessible to the General Assembly, given that Article 2 of the ICJ Statute states that "[t]he Court shall be composed of a body of independent judges, elected regardless of their nationality."[238] However, the decision to block a State's nominee is not necessarily a decision based on nationality, though in practice it often is the case that States nominate their own nationals. Moreover, while there is no formal agreement on geographical representation for the Court, there is an informal understanding to maintain two to three judges from Africa, three to four judges from Asia, two to three judges from Latin America and the Caribbean, four to five judges from Western Europe and Other States, and two to three judges from Eastern Europe.[239] The UN has justified this approach by arguing that the Court should be composed not only of highly qualified individuals, but also of individuals who reflect its "truly global" character.[240] States nominate candidates for the Court and campaign vigorously for them. When their nominees are passed over, it is seen as a defeat for the nominating State.[241]

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233. *See id.*

234. *See* U.N. Secretary-General, *Election of Members of the International Court of Justice: List of Nominations by National Groups*, U.N. Doc. A/78/98-S/2023/446 (July 7, 2023).

235. *See* Scott R. Anderson et al., *The World Reacts to Russia's Invasion of Ukraine*, LAWFARE (Feb. 24, 2022, at 16:57 ET), https://www.lawfaremedia.org/article/world-reacts-russias-invasion-ukraine [https://perma.cc/7RNR-M6T6]; Press Release, General Assembly, General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops, U.N. Press Release GA/12407 (Mar. 2, 2022).

236. *See* Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. 211, ¶ 86 (Mar. 16).

237. *In First, Russian Judge Loses UN World Court Seat*, MOSCOW TIMES (Nov. 10, 2023), https://themoscowtimes.com/2023/11/10/in-first-russian-judge-loses-un-world-court-seat-a83065 [https://perma.cc/VK6L-2Z4N]. The "non-re-election of the Russian candidate follows a pattern of the Russian Federation not being able to either secure seats for the Russian Federation as such, or for individual Russian candidates, in international organizations ever since the armed attack by the Russian Federation against Ukraine in February 2022." Andreas Zimmermann, *Five, Four, Three… and Counting Down? – The Outcome of the Recent Triennial Elections at the International Court of Justice –*, EJIL: TALK! (Nov. 17, 2023), https://www.ejiltalk.org/five-four-three-and-counting-down-the-outcome-of-the-recent-triennial-elections-at-the-international-court-of-justice [https://perma.cc/J9FR-UR4S].

238. ICJ Statute art. 2.

239. *See November 2020 Monthly Forecast*, SEC. COUNCIL REP. (Oct. 30, 2020), https://www.securitycouncilreport.org/monthly-forecast/2020-11/international-court-of-justice.php [https://perma.cc/UYU8-LJR7].

240. *See* S. Gozie Ogbodo, *An Overview of the Challenges Facing the International Court of Justice in the 21st Century*, 18 ANN. SURV. INT'L & COMP. L. 93, 96, 96 n.15 (2012) (describing that "[t]he attempt to globalize the Court has been institutionalized in practice").

241. *See, e.g.*, James Landale, *How UK Lost International Court of Justice Place to India*, BBC (Nov. 21, 2017), https://www.bbc.com/news/uk-politics-42063664 [https://perma.cc/VJN5-T2ZJ]. Under Article 31(3) of the ICJ Statute, parties to a contentious case may request that a judge of their

4. Suspend or Expel a Noncompliant Member

The General Assembly could seek to suspend or expel a member in response to its failure to comply with an ICJ judgment. While it is far from clear that the General Assembly possesses the legal authority to expel a member in the absence of Security Council action,[242] there is some precedent for such an action.

The General Assembly sought to expel South Africa in the wake of the Court's decisions in the *South West Africa* cases.[243] In 1960, Ethiopia and Liberia took matters into their own hands and instituted proceedings against South Africa at the ICJ.[244] They alleged that South Africa's apartheid policies in South West Africa (now Namibia) violated its Genocide Convention obligations.[245] The Court dismissed the case for lack of standing, and as a result, the Court did not reach the merits of the allegations of apartheid in South West Africa.[246] In the aftermath, the General Assembly passed Resolution 2145 (XXI) to continue to put pressure on South Africa to end apartheid. The General Assembly affirmed its "right to take appropriate action in the matter, including the right to revert to itself the administration of the Mandated Territory."[247] The resolution concluded with the General Assembly explicitly revoking South Africa's authority over South West Africa and transferring its administration to the UN.[248]

This General Assembly resolution prompted the Security Council to request an advisory opinion from the ICJ on "the legal consequences for States of the continued presence of South Africa in Namibia."[249] In the advisory opinion, the Court concluded that South Africa's presence in Namibia was illegal and that it must "withdraw its administration from Namibia immediately."[250] It further found that member states were all under an obligation to "recognize the illegality and

choosing serve on an ad hoc basis when the bench does not include a judge of their nationality. ICJ Statute art. 31, ¶ 3. This mechanism helps maintain State confidence in the ICJ's judicial process even when a State's candidate to the ICJ is not elected or reelected to the Court.

242. A close reading of Articles 5 and 6 of the UN Charter suggests that the Security Council must be involved in matters of UN membership. The Security Council must recommend the expulsion or suspension of a member state from the UN even if the General Assembly is the body that carries out that decision. U.N. Charter arts. 5–6.

243. *See* South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Preliminary Objections, 1962 I.C.J. 319 (Dec. 21); South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Second Phase, 1966 I.C.J. 6 (July 18); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16 (June 21). For the General Assembly's expulsion of South Africa, see *infra* note 256; *see also* E. Emmett, *The Mandate Over South-West Africa*, 9 J. COMPAR. LEGIS. & INT'L L. 111, 114–15 (1927).

244. South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Preliminary Objections, 1962 I.C.J. 319, 321 (Dec. 21).

245. *Id.*

246. *See* Julius Stone, *Reflections on Apartheid After the South West Africa Cases*, 42 WASH. L. REV. 1069, 1069 (1967).

247. G.A. Res. 2145 (XXI), at 2 (Oct. 27, 1966).

248. *Id.* ¶¶ 4–6.

249. S.C. Res. 284, ¶¶ 1–2 (July 29, 1970).

250. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, ¶ 133 (June 21).

invalidity" of South Africa's presence in Namibia, as well as "refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia."[251] Indeed, it concluded that "the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law."[252] It continued, "no State, which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of such relationship, or of the consequences thereof."[253]

In response to South Africa's noncompliance, the General Assembly adopted additional resolutions. The first resolution called on States and organizations to sever diplomatic, trade, and military relations with South Africa and urged the Security Council to take up "effective measures to ensure the full implementation of comprehensive mandatory sanctions against South Africa."[254] The second resolution involved the adoption of the International Convention on the Suppression and Punishment of the Crime of Apartheid (the "Apartheid Convention"), which declared apartheid a crime against humanity. The resolution also pressed the Security Council to intervene, denoting that apartheid "disturb[ed] and threaten[ed]" international peace and security.[255] These resolutions demonstrate that when the Security Council has failed to act, the General Assembly has stepped in.[256]

In 1974, the General Assembly voted to expel South Africa from the UN. Ninety-one States voted in favor, twenty-two against, and nineteen abstained.[257] Expulsion of this nature was unprecedented, especially for the General Assembly.[258] Many viewed the expulsion as a legally invalid but nonetheless important symbolic gesture by the General Assembly to put pressure on the South African regime.[259] This attempt at expulsion is an example of what has been called "internal outcasting," which is when "the internal bureaucratic structures of a legal system enforce the law without resorting to the threat or use of physical force."[260]

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251. *Id.* ¶ 119.

252. *Id.* ¶ 126.

253. *Id.*

254. G.A. Res. 2396 (XXIII), ¶¶ 4–5, 10–16 (Dec. 2, 1968).

255. *See* G.A. Res. 3068 (XXVIII), annex, International Convention on the Suppression and Punishment of the Crime of Apartheid (Nov. 30, 1973).

256. U.N. GAOR, 29th Sess., 2281st plen. mtg. at 839, U.N. Doc. A/PV.2281 (Nov. 12, 1974) (noting that the General Assembly and the Credentials Committee had previously rejected South Africa's credentials, as approved by G.A. Res. 3206 (XXIX)).

257. *Id.* at 856.

258. The General Assembly reinstated South Africa's membership in G.A. Res. 48/258 after it ended apartheid and held free and fair elections. In this resolution, the General Assembly took note of South Africa's willingness "to participate in the work of the United Nations in accordance with the purposes and principles of the Charter of the United Nations." G.A. Res. 48/258, at 6 (June 23, 1994).

259. *See* Kathleen Teltsch, *South Africa Is Suspended By U.N. Assembly, 91-22*, N.Y. TIMES (Nov. 13, 1974), https://www.nytimes.com/1974/11/13/archives/south-africa-is-suspended-by-un-assembly-9122-un-session-barssouth.html.

260. Hathaway & Shapiro, *supra* note 213, at 305.

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Part III of this Article has outlined our vision for what States and the General Assembly can do to enforce the Court's decisions. The next part—Part IV—is devoted to stepping back to both consider the overall picture of compliance with ICJ decisions that this argument imagines and to address objections to the proposals made herein.

IV. THE EMERGENT PICTURE AND ADDRESSING OBJECTIONS

It is time to take stock. With the combination of our theoretical interventions about *erga omnes* and *erga omnes partes* obligations in Part II and our recommendations for expanded enforcement in Part III, we have arrived at the claim that there can be a much more decentralized and democratized form of enforcement for ICJ judgments, beyond the paralyzed inaction of the Security Council. In this final Part, we bring together the vision for international law and peace that this argument provides. We also recognize that our ambitious conclusions may give rise to certain objections, which we then address.

A. THE EMERGENT PICTURE AND VISION

This Article has argued for an ambitious set of conclusions: taking the problem of noncompliance and enforcement as its departure point, it has sought to place the ICJ back into a larger—and indeed more longstanding—vision of its place in the postwar international world order.

For even as this Article has been motivated by recent observations about the increasing geopolitical significance thrust upon the Court—and the accompanying compliance issues that come with it—it has equally been motivated by the deeper aspirations that had been quietly set for the World Court before it had even heard its first case. For, gazing upon a war-torn world that had taken the lives of millions, the designers of the ICJ sought to create a court that would effectively adjudicate disputes between States while simultaneously outlawing force as a means of settling those disputes—something its predecessor, the PCIJ, had failed to achieve. It was not merely theorists like Kelsen who made these points.[261] Hersch Lauterpacht wrote in 1958 that "the primary purpose of the International Court . . . lies in its function as one of the instruments for securing peace in so far as this aim can be achieved through law."[262]

Given that the Security Council has failed to take steps to ensure the Court is actually effective in achieving these ends, this Article has claimed the authority for States and the General Assembly to perform the task of rendering the ICJ effective. Although it envisions a broader authority for States to take countermeasures individually and collectively, the vision is not one of reckless chaos unleashed (a point to which we return below). It is rather one of measured, more

261. *See* KELSEN, *supra* note 43, at 14 (describing the need to establish "an international court" connected to an obligation "to renounce war and reprisals as means of settling conflicts").

262. LAUTERPACHT, *supra* note 102, at 3.

democratic and more decentralized efforts at moving towards an international legal order that takes seriously the aims of peace and nonviolent resolution of disputes.

What is the emergent picture meant to look like in practice? We expect that States will continue to comply with many, perhaps even most, decisions of the ICJ, as they have in past decades.[263] Yet where there is noncompliance, aggrieved States will no longer be left without options. And the effectiveness and legitimacy of the Court need not be hindered by a P5 veto in the Security Council.

The measured response that the argument of this Article licenses is neither the unleashing of violent actions nor disproportionate reactions, but instead for States to take peaceful measures that are designed to induce a noncompliant State into compliance. The obligation that a noncompliant State owes is to *all States*, to the extent that its noncompliance is an incremental detriment to the effectiveness of the ICJ. Hence, all States are now empowered to take limited and nonviolent measures to enforce an ICJ judgment. For instance, countermeasures and retorsions could include diplomatic sanctions, trade sanctions, asset freezes, or the suspension of financial aid. In the ideal case, these actions will be implemented through coordinated action among States, as previously emphasized. Yet, at the same time, States can also act through the General Assembly's institutional authority. Any action that the General Assembly takes will *itself* require the consideration, coordination, and ultimate assent of a wide array of States, which will further contribute to the measured, democratic, and coordinated nature of the response.

In the longer arc of the development of international law, these arguments—if taken to their measured effect—may help to nudge and eventually evolve the Court into a place where its decisions come with a greater degree of effective sanction when noncompliance occurs. The framework outlined by this vision would never allow the enforcement of ICJ decisions—through these decentralized means—to go beyond nonviolent measures, and hence the means proposed here are in full accord with the intended end of helping to secure international *peace*. Yet, skeptics might still question the ultimate role this framework assigns to the World Court, and it is to those objections that we now turn.

B. ADDRESSING OBJECTIONS AND CONCERNS

We recognize that our conclusions are ambitious in certain respects that they may give rise to certain concerns. In this Section, we therefore address a variety of objections: possible textual conflict with the UN Charter and ICJ Statute, concerns that the argument might license chaos, concerns about asymmetric power, and broader skepticism about strengthening the World Court.

1. First Objection: Textual Conflict

One source of doubt about this argument is that it may be underdetermined by the text of either the UN Charter or the ICJ Statute—or worse, that it is in explicit

263. *See supra* Section I.B.

conflict with both. Two provisions stand out: Article 59 of the ICJ Statute and Article 94(2) of the UN Charter. We consider each in turn.

First, Article 59 of the ICJ Statute states: "The decision of the Court has no binding force except between the parties and in respect of that particular case."[264] The objection would be that this Article cabins the obligation as owed to just the respective parties in a contentious case and not to any other States. Yet, as already noted, the only States who owe the obligation of compliance are the two parties to the case— and we do not question this point. Only these parties are bound. But this point alone still leaves open the question of *to whom* the obligation is owed. Recall the example of washing dishes: only you and I have the obligation to wash dishes, but we still need to ask *to whom* our obligations are owed. And so, Article 59 of the ICJ Statute only clarifies which parties owe the obligation, not to whom the obligation is owed.

In addition, Article 59 leaves open the question of who can enforce the obligation. To see this, observe that Article 59 of the ICJ Statute exists alongside Article 94(2) of the UN Charter, which designates the Security Council as the enforcer. Plausibly, these two provisions are not redundant, but that would mean that Article 59, on its own, does not render obsolete the question of *who* should enforce. Hence, Article 59 alone—which speaks to who has the obligation—leaves open the question of who can enforce this obligation, insofar as it does not remove the need for Article 94(2). Put differently, questions of bindingness and enforcement are not one and the same.

Second, that leads to another potential objection on textual grounds, specifically about UN Charter Article 94(2), which provides:

> If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.[265]

One could claim that, because Article 94(2) explicitly designates the Security Council as the enforcer, it preempts consideration of alternative enforcers. But in fact, Article 94(2) does not claim that the Security Council is the *only* one that can enforce; as a strict textual matter, Article 94(2) simply says that the Security Council *may* enforce, which does not preclude the possibility of other enforcers.[266] Indeed, international law allows, at a minimum, the party to the case directly injured by the other party's noncompliance to respond with countermeasures, for the failure to comply with international law, as determined by the Court, is undoubtedly an

264. ICJ Statute art. 59.

265. U.N. Charter art. 94, ¶ 2.

266. We acknowledge that the U.S. Supreme Court has interpreted Article 94(2) as the "sole remedy for noncompliance." Medellín v. Texas, 552 U.S. 491, 509 (2008). It is true that Article 94(2) is the sole remedy specifically provided for in the UN Charter. However, this does not preclude other actors from taking enforcement action, as explained herein.

"internationally wrongful act."[267] If that is true, then Article 94(2) cannot constitute the only permitted means of enforcement under international law. Moreover, we emphasize that the Security Council has abdicated its role as enforcer, yet an efficacious court is still needed if we intend to maintain the pursuit of international peace. Hence, the doctrinal, structural, and normative considerations we have outlined throughout Part II provide overall justification for finding that there is a broader array of legitimate enforcers.

2. Second Objection: Chaos Unleashed

Another objection might be that this argument permits too much: that, in providing justification for States to take collective countermeasures, it threatens to unleash chaos in the international system. After all, a countermeasure is an action by a State that would be unlawful if not properly justified as a countermeasure. In response, it is important to emphasize the variety of ways in which this view is more moderate than it might seem and how the justified permissions are cabined in serious ways.

First, there is no *obligation* for States to respond but merely a *right* to respond. The claim is not that when one State fails to comply with an ICJ decision all other States must take action; they merely have a right to do so. Moreover, rather than unleashing unrestrained self-judgment, the proposal aims to contain it. That is because States must await an ICJ judgment before acting to enforce the *erga omnes* obligation recognized or generated by it. It is true that, at this point, States may decide whether to take such countermeasures. But any action taken must be directed at bringing the noncompliant State into compliance with the decision of the Court.[268] Rather than empowering unencumbered self-judgment, then, this argument explicitly directs States to find their legal right for countermeasures in a clear and identifiable source: an ICJ judgment.[269]

Second, even if a State chooses to pursue a specific countermeasure in line with its legal right, this countermeasure must be significantly limited in scope. It must be proportional to the injury suffered: the International Law Commission elaborates that "[c]ountermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question."[270] When multiple States implement countermeasures, their

267. *See* (D)ARSIWA, *supra* note 141, at 129–31.

268. A further concern might arise regarding who determines whether noncompliance has occurred. For instance, in some of the literature we have surveyed, there are concerns about partial, or incomplete, compliance with the Court's judgments. Even if there is some need to make these discernments, we think that these are reasonable judgments that a State can make—especially when acting in unison with others, as outlined in Section III.B. Moreover, as many of the cases of noncompliance we documented earlier exemplify, the most important cases of noncompliance will be more clear-cut, which puts to rest concerns about indeterminacy.

269. Where the ICJ identifies *erga omnes* obligations, as discussed in Section II.A, the self-judgment concerns are even more blunted. If anything, the argument reduces, rather than exacerbates, concerns about self-judgment, as States are expected to rely on an ICJ determination rather than declare—and act on—an *erga omnes* obligation on their own. *See, e.g.*, *supra* notes 93–95 and accompanying text.

270. (D)ARSIWA, *supra* note 141, at 134.

combined effect must remain proportionate to the violated obligation, thus limiting each State's individual scope of action (dependent, of course, on the existing responses).[271] Countermeasures must also be nonviolent. They cannot involve the use of force.[272] This doctrinal safeguard prevents the argument from inadvertently authorizing the very violence it seeks to avoid.

Lastly, the *erga omnes* obligation owed to other States corresponds to a relatively mild injury and thus entitles States to put in place modest countermeasures in response. To claim that the obligation is *erga omnes* is simply to say that it is owed to all member states, but it implies nothing about the strength of that obligation. A single instance of noncompliance with an ICJ decision does harm its legitimacy and efficaciousness, but it does not typically, in one fell swoop, destroy it altogether. If the obligation itself is only mild in strength, then the corresponding countermeasures that other States have a legal right to take would be proportionally mild. With an *erga omnes* obligation, the obligation could be *pro tanto* (with force to an extent), yet still overridable by other considerations.[273] Indeed, it could be the case that another State has a legal right to respond, but other considerations—preserving diplomatic or economic relations—make it most sensible for that State not to take a countermeasure.

One might still worry that this creates an "excuse" for States to take irresponsible action under the "guise" of a countermeasure. But irresponsible States will be irresponsible States, and the threat of irresponsibility cannot be a blinder that prevents careful thinking about what is justified. On the contrary, careful doctrinal clarification—explicitly outlining what is justified—is the best way to address and counter the actions of States behaving irresponsibly.

3. Third Objection: Asymmetric Power

A third objection might allege that this picture creates a risk for abuse by powerful States. Our argument claims that all States have the legal right to take countermeasures against a noncompliant party to an ICJ decision. But an objector might be concerned that, as a practical consequence, only powerful States are likely to make use of this legal right, and even if a weaker State did act, its efforts in isolation may have a more limited impact. As a result, an objector might argue that our proposal will serve to solidify lopsided power imbalances in the international arena, granting newfound legitimacy to the enforcement actions of powerful States.

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271. *See* Hathaway et al., *supra* note 145, at 1033 ("Maintaining the proportionality of collective countermeasures will require cooperation, even if only to reach a collective agreement on the quantum of compensation or other reparation due. If numerous states join in deploying collective countermeasures, the cumulative impact may be disproportionate to the severity of the violation *erga omnes* to which they respond, even if each individual state's countermeasures are individually proportional to the injuries that the violation caused." (footnote omitted)).

272. *See* (D)ARSIWA, *supra* note 141, at 131.

273. In contrast, *jus cogens* refers to a principle from which no derogation can be permitted. *See supra* note 90.

While we acknowledge the risk, there are reasons to believe this objection is not insurmountable. First, the empirical assumptions of the objection are not necessarily true—and, in fact, the argument may well instead license the joint action of weaker States, clearing away a bottleneck currently caused by the exclusive power of the Security Council to enforce the Court's decisions. Recall that the formal upshot of the argument is that *all* States now have a legal right to engage in countermeasures—and there is no fundamental reason to think that only powerful States would engage do so. Indeed, in recent years, weaker States have been more likely to both bring and win cases at the ICJ.[274] Our argument licenses weaker States to work together to take collective countermeasures to enforce judgments in their favor—joining together their enforcement power rather than just relying only on their own. Our argument explicitly and emphatically recommends coordination and collaboration among States, as well as General Assembly action. It thus offers a practical plan for how a coalition of States can pursue enforcement together, without having to rely on a powerful State to get the job done.

Finally, even if stronger States are better positioned to enforce ICJ judgments than weaker States, that is not necessarily an argument against our approach. Insofar as the argument is concerned with the effectiveness of the ICJ and the rule of law in the international space, more enforcement is better than less, even if it is imperfect. In other words, our argument does not inherently result in asymmetric enforcement. On the contrary, it offers practical recommendations designed to counteract such imbalances: it grants a legal right to *all* States to take countermeasures, and it envisions mechanisms by which multiple States could pool their power to pursue enforcement even against more powerful States.

4. Fourth Objection: General Skepticism of a World Court

Fourth and finally, a more general source of doubt about the argument might concern whether it is wise and advisable to support the legitimacy of the ICJ and its decisions in general—whether it is wise to provide it with more efficaciousness and enforceability. As mentioned earlier, Kelsen in his 1944 classic, *Peace Through Law*, envisioned an international legal system with a supranational court that could be enforced.[275] But some might be skeptical for two reasons: one might be generally skeptical of an internationalist vision, where more enforceable power accumulates at the supranational stage, or one might be specifically skeptical of placing more enforceable power in a judicial body at the supranational stage (instead, preferring something more along the lines of a global democracy).

Responding to skepticism about an internationalist vision would take us beyond the confines of this specific argument. But in short, it is important to emphasize that if war is to be outlawed, genuine alternatives must take its place. For that is what would, as a practical aspiration, help to lead to and maintain peace. Responding to skepticism about the Court more broadly, one could debate

274. *See generally* Goldenziel et al., *supra* note 71 ("[W]eaker states are increasingly using international law to challenge more powerful states.").

275. *See* KELSEN, *supra* note 43, at 14.

whether global democracy is preferable to a powerful central court. However, there is at minimum a more localized argument about feasibility to be made: while global democracy is far from a reality, enhancing the ability of States to take some collective countermeasures to support the efficacy of the ICJ is within immediate reach—and hopefully would make a positive impact on the system. Hence it is one worth pursuing. Moreover, by enabling broader participation in enforcing ICJ decisions, the approach offered here arguably has a democratizing effect on the international legal system.

CONCLUSION

In the wake of the second of two devastating world wars, the global community gathered to establish the UN in order "to save succeeding generations from the scourge of war." The UN Charter established three principal organs—the Security Council, the General Assembly, and the ICJ to give effect to this aim. The ICJ was not a mere appendage. It was to play a core role in the new system, offering States a place where they could seek peaceful resolution of their disputes after renouncing the right to use war. To serve this role, however, the Court must be an efficacious forum for the settlement of these disputes. For nearly eight decades, it has served that role.

Today, in a world filled with conflict, States are increasingly looking to the Court to defend their legal rights. The Court's growing relevance brings a growing challenge—the threat that the States that lose will fail to comply with the Court's judgments. The Security Council, which is tasked with enforcing these decisions, has not once done so and is unlikely to do so in the current moment of rising great power rivalry. There are already signs that compliance with the Court's decisions—once close to eighty percent—has declined. If that trend continues, it could delegitimize the Court. Over time, this could deprive the international system of a peaceful means of effectively resolving disputes—and that, in turn, could put the entire system at risk.

This Article has laid out the normative and doctrinal basis for States to play a greater role in the enforcement of the Court's decisions. It relies on a collective interest that all States possess in the maintenance of international peace and security. Compliance or noncompliance with the Court's decisions is not a matter of interest only to the States that are party to the case. It is of interest to all States not because they have any stake in the particular dispute, but because they have a stake in the Court itself and in its capacity to resolve disputes between States peacefully.

It is easy for States to say that they want peace; what is difficult is to design a system that can achieve it. The architects of the UN aimed to do just that. The system they designed is imperfect, but it has nonetheless proven remarkably successful. The Court has played an indispensable role in this system. The argument offered in this Article recognizes that the pursuit of peace is an ongoing shared project, requiring collective effort by all States to establish and maintain a peaceful and prosperous world.