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THE DIALOGIC FUNCTION OF I.C.J. PROVISIONAL MEASURES DECISIONS IN THE U.N. POLITICAL ORGANS: ASSESSING THE EVIDENCE*

MICHAEL RAMSDEN** AND JIANG ZIXIN***

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I. INTRODUCTION

The aim of this article is to consider the degree to which provisional measures ordered by the International Court of Justice (I.C.J.) have influenced United Nations (U.N.) diplomacy and the exercise of functions by its political organs in the areas of international peace, security, and human rights. This article evaluates this influence by examining decisions in which the I.C.J. indicated provisional measures, denoting the remedy available to the Court, on an interim basis, to restrain or instruct the parties to take certain measures to preserve either or both parties' rights pending the outcome of the case.¹ In doing so, this article builds on scholarly literature about the function of I.C.J. provisional measures as part of a broader litigation strategy to influence negotiations and political settlements.² Although the formal purpose of provisional measures is to preserve existing legal rights pending an outcome on the merits of a dispute,³ scholars have also noted parties' use of provisional measures to advance a broader strategic purpose beyond the confines of the interim remedy proceedings.⁴ The existing literature emphasizes two functions for

1. There is growing scholarly literature both on the legal and strategic nature of provisional measures before the I.C.J and other supranational courts. *See, e.g.*, Karin Oellers-Frahm, *Use and Abuse of Interim Protection Before International Courts and Tribunals*, in COEXISTENCE, COOPERATION AND SOLIDARITY: LIBER AMICORUM RUDIGER WOLFRUM (Holger P. Hestermeyer et al. eds., 2012), at 1685–1703; Erlend M. Leonhardsen, *Trials of Ordeal in the International Court of Justice: Why States Seek Provisional Measures When Non-Compliance Is To Be Expected*, 5 J. INT'L DISP. SETTLEMENT 306 (2014); Cameron A. Miles, *Provisional Measures Before International Courts and Tribunals* 443–72 (2017); Michael Ramsden, *Accountability for Crimes Against the Rohingya: Strategic Litigation in the International Court of Justice*, 26 HARV. NEGOT. L. REV. 153 (2021).

2. *See, e.g.*, sources cited *supra* note 1.

3. U.N. Charter art. 40.

4. Oellers-Frahm, *supra* note 1, at 1686.

provisional measures.⁵ First, provisional measures help parties predict their chances of success at the merits phase of litigation.⁶ While the evidentiary threshold in interim proceedings is lower,⁷ the Court's ordering of provisional measures nonetheless provides an early indication to the parties as to a likely outcome on the merits or what evidence is needed to succeed at the merits phase. The Court's interim order might in turn encourage a negotiated settlement. For example, the interim decision in *Passage Through the Great Belt* is said to have induced Denmark to negotiate a settlement on the case.⁸ Second, provisional measures have been sought to advance wider strategic goals of the parties.⁹ These goals are various and depend on the strategic calculations of the State seeking provisional measures, although the impact of doing so might also produce unintended effects (good or bad).¹⁰ A common goal will be to seek provisional measures with the aim of bringing a situation to the attention of the international community.¹¹ This might arise, for example, where a cause has failed to gain traction in international institutions be that due to geopolitical blind spots or flaws in institutional design, such as veto misuse by permanent members of the Security Council.¹² Another goal will be to use the legally binding nature of provisional measures as an instrument to pressure States into action.¹³ The premise here being that State

5. *Id.*

6. *Id.* at 1686–87; Miles, *supra* note 1, at 445–48.

7. Miles, *supra* note 1, at 445–48.

8. *Passage through the Great Belt (Finland v. Denmark)*, Provisional Measures Order, 1991 I.C.J. Rep. 12 (July 29); Miles, *supra* note 1, at 448–49.

9. As to the goals and impact of strategic litigation in the context of provisional measures, see generally Michael Ramsden, *Strategic Litigation before the International Court of Justice: Evaluating Impact in the Campaign for Rohingya Rights*, EUR. J. INT'L L. (2022 forthcoming).

10. *Id.* This reflects a growing litigation practice described as “strategic litigation,” denoting the use of courts as an instrument to advance wider systemic change. For a survey of this litigation model, see Michael Ramsden and Kris Gledhill, *Defining Strategic Litigation*, 4 CIV. JUST. Q. 407 (2019).

11. Oellers-Frahm, *supra* note 1, at 1687.

12. See, for example, Ukraine's provisional measures request following Russia's 2022 invasion, prompted at least in part due to Russia's veto of a Security Council resolution. Michael Ramsden, *Strategic Litigation in Wartime: Judging the Russian Invasion of Ukraine through the Genocide Convention*, VAND. J. TRANS. L. (2023 forthcoming).

13. Leonhardsen, *supra* note 1, at 337.

observance of international law is important, the provisional measures order thereby inflicting reputational costs on offending States that can in turn influence the outcome of the dispute.¹⁴ This is equally the case in relation to courts of international organisations that have the power to interpret obligations incumbent on the membership to meet.¹⁵ In this respect, the impact of litigation taken within the court of an international organisation should be measured by the effects it produces within that organisation.¹⁶ This article focuses on the second function described here, concerning the effect of I.C.J. provisional measures in influencing international institutional action via the United Nations' principal political organs.

The United Nations' principal political organs are the Security Council and the General Assembly.¹⁷ Both organs have specific powers under the U.N. Charter to promote the peaceful settlement of disputes, maintain international peace and security, and advance human rights.¹⁸ Under the Charter, the Council has primary responsibility for maintaining international peace and security.¹⁹ The Council has enforcement powers under Chapter VII of the Charter, and its decisions are binding on Member States.²⁰ It can also enforce I.C.J. judgments.²¹ The Assembly, on the other hand, has powers to recommend Member States or the Council to act on a situation.²² While the Assembly cannot issue binding decisions (except on certain

14. Miles, *supra* note 1, at 454.

15. Markus W. Gehring, *Litigating the way out of deadlock: the WTO, the EU and the UN*, in *DEADLOCKS IN MULTILATERAL NEGOTIATIONS* 96 (2012) (Amrita Narlikar ed.) at 101–02; Michael Ramsden & Tomas Hamilton, *Uniting against Impunity: The U.N. General Assembly as a Catalyst for Action at the ICC*, 66 *INT'L & COMP. L. Q.* 893 (2017).

16. *Id.*

17. U.N. Charter art. 7 ¶ 1.

18. *Id.* arts. 1, 10, 24 ¶ 1, 39.

19. *Id.* arts. 24 ¶ 1, 39.

20. *Id.* art. 25.

21. *Id.* art. 94 ¶ 2. This arguably does not include provisional measures decided by the I.C.J., since article 94(2) refers specifically to “judgments” of the I.C.J., which would appear to refer to judgments on the merits. *Cf.* *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY, VOLUME II 1957–58* (Bruno Simma et al. eds., 3d ed., 2012).

22. U.N. Charter art. 10.

internal operational matters),²³ it is the most representative U.N. organ; nearly every State is a member of the Assembly.²⁴ Parties tend to use the Assembly to mobilize, shame, and pressure recalcitrant States.²⁵ Accordingly, this article considers the diplomatic impact of I.C.J. provisional measure decisions within the areas of international peace and security. Because the Assembly created the Human Rights Council (H.R.C.) as a subsidiary organ to advance human rights,²⁶ this article also considers the effect of provisional measure decisions on the work of the H.R.C.

Our discussion divides the cases in which the I.C.J. indicated provision measures into two categories: (1) cases that are primarily concerned with international peace and security, and (2) cases that are primarily concerned with human rights. “International peace” includes the absence of a threat or use of force against the territorial integrity or political independence of any State;²⁷ ‘security’ refers to the activity which is necessary for maintaining the conditions of peace.²⁸ Threats to international peace and security include international war and conflict, civil violence, organized crime, terrorism, weapons of mass destruction, and even poverty, disease, and environmental degradation.²⁹ Out of the entire twenty-three cases in which the I.C.J. indicated provisional measures, nine met our criteria of being

23. *Id.* arts. 10, 16–17.

24. *The Role of the UN General Assembly*, COUNCIL ON FOREIGN REL. (Sept. 28, 2021), <https://www.cfr.org/background/role-un-general-assembly>.

25. For analysis of this practice, see generally Michael Ramsden, *INTERNATIONAL JUSTICE IN THE UNITED NATIONS GENERAL ASSEMBLY* (2021) [hereinafter *INTERNATIONAL JUSTICE*]; Blaine Sloan, *UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS IN OUR CHANGING WORLD* (1992), at 42; Inis L. Claude, *Collective Legitimization as a Political Function of the United Nations*, 20(3) INT’L ORG. 367 (1966); Michael Ramsden, *Collective Legalization as a Strategic Function of the UN General Assembly in Responding to Human Rights Violations*, WISCON. INT’L L. J. (2023 forthcoming). For a recent example of such pressure, see Michael Ramsden, *Uniting for Peace: The Emergency Special Session on Ukraine*, HARV. INT’L L. J. (2022), <https://harvardilj.org/2022/04/uniting-for-peace-the-emergency-special-session-on-ukraine>.

26. G.A. Res. 60/251 (Mar. 15, 2006).

27. *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, VOLUME I (Bruno Simma et al. eds., 3d ed. 2012) at 109.

28. *Id.* at 110.

29. *Id.* at 111.

primarily concerned with international peace and security.³⁰ These cases fall broadly under the following categories: (1) nuclear weapons;³¹ (2) security of diplomatic missions and personnel;³² (3) border disputes;³³ and (4) the threat or use of force against or in the territory of another State.³⁴

Of the twenty-three cases in which the I.C.J. indicated provisional measures, ten are concerned with human rights.³⁵ These cases fall broadly under the following categories: (1) the prohibition of genocide;³⁶ (2) human rights in the context of armed conflict;³⁷ (3) the right to be free from racial discrimination;³⁸ and (4) rights of persons

30. See cases cited *infra* notes 31–34.

31. Nuclear Tests (Australia v. France), Interim Protection, 1973 I.C.J. REP. 99 (June 22); Nuclear Tests (New Zealand v. France), Interim Protection, 1973 I.C.J. REP. 135 (June 22).

32. United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, 1979 I.C.J. REP. 7 (Dec. 15).

33. Frontier Dispute (Burkina Faso v. Mali), Provisional Measures, 1986 I.C.J. REP. 3 (Jan. 10); Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Provisional Measures, 1996 I.C.J. REP. 13 (Mar. 15); Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Provisional Measures, 2011 I.C.J. REP. 6 (Mar. 8); Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Provisional Measures, 2011 I.C.J. REP. 537 (June 15).

34. Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Provisional Measures, 1984 I.C.J. REP. (May 10); Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Provisional Measures, 2000 I.C.J. REP. 111 (July 1).

35. See cases cited *supra* notes 31–34.

36. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, 1993 I.C.J. REP. 3 (Apr. 8); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, 2020 I.C.J. REP. 69 (Jan. 23).

37. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. REP. 104 (Apr. 19).

38. Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Geor. v. Russ.), Provisional Measures, 2008 I.C.J. REP. 353 (Oct. 15); Ukr. v. Russ., 2017 I.C.J. REP. 104 (Apr. 19); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, 2018 I.C.J. REP. 406 (July 23).

subject to the death penalty.³⁹ These cases involve a wide range of human rights, including the right to life, liberty and security of person;⁴⁰ the right not to be subjected to torture or other cruel, inhuman or degrading treatment;⁴¹ the right to equality before the law and non-discrimination;⁴² the right to a fair trial;⁴³ the right to private life;⁴⁴ the right to freedom of movement;⁴⁵ the right to education;⁴⁶ and the right to take part in government.⁴⁷ We excluded from our consideration the remaining three cases that were bilateral disputes with no human rights or international security dimension.⁴⁸

This article considers the effect of I.C.J. provisional measures in the political organs from two main vantage points. The first vantage point is in the formal exercise of powers by these organs, specifically in adopting resolutions designed to induce compliance with interim orders. This article will provide numerous examples where these powers were exercised. In this respect, the Council's adoption of a decision—pursuant to Chapter VII of the U.N. Charter—requiring compliance or sanctioning non-compliance represents the most powerful instrument to uphold a provisional measure.⁴⁹ By contrast,

39. Vienna Convention on Consular Relations (Paraguay v. United States of America), Provisional Measures, 1998 I.C.J. REP. 248 (Apr. 9); LaGrand (Germany v. United States of America), Provisional Measures, 1999 I.C.J. REP. 9 (Mar. 3); Avena and Other Mexican Nationals (Mexico v. United States of America), Provisional Measures, 2003 I.C.J. REP. 77 (Feb. 5); Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America), Provisional Measures, 2008 I.C.J. REP. 311 (July 16); Jadhav (India v. Pakistan), Provisional Measures, 2017 I.C.J. REP. 231 (May 18).

40. See, e.g., Gam. v. Myan., Provisional Measures, 2020 I.C.J. REP. 69.

41. See, e.g., *id.*

42. See, e.g., *id.* at 353; Ukr. V. Russ., 2017 I.C.J. REP. 104; Qatar v. U.A.E., Provisional Measures, 2018 I.C.J. REP. 406.

43. See, e.g., Qatar v. U.A.E., Provisional Measures, 2018 I.C.J. REP. at 417.

44. See, e.g., Ukr. v. Russ., Provisional Measures, 2017 I.C.J. REP. 104.

45. See, e.g., *id.*

46. See, e.g., Qatar v. U.A.E., Provisional Measures, 2018 I.C.J. REP. at 417.

47. See, e.g., Ukr. v. Russ., Provisional Measures, 2017 I.C.J. REP. 104.

48. Fisheries Jurisdiction (United Kingdom v. Iceland), Interim Protection, 1972 I.C.J. REP. 12 (Aug. 17); Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Interim Protection, 1972 I.C.J. REP. 30 (Aug. 17); Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, 2014 I.C.J. REP. 147 (Mar. 3).

49. As to these powers, see U.N. Charter, art. 41 ("The Security Council may

the Assembly's powers are generally understood to lack binding force, being recommendatory in character.⁵⁰ But even without legally binding powers, Assembly resolutions can pressure Member States to comply.⁵¹ Many Members have perceived Assembly resolutions as exerting 'political' or 'moral' pressure.⁵² Assembly resolutions also frame the legitimacy of a recalcitrant Member State's conduct.⁵³ The second vantage point is the extent to which I.C.J. provisional measures stimulated dialogue in the political organs and provided a forum for the disputing States to arrive at a settlement, using the provisional measures decision as a framework to do so.

We consider the reception of I.C.J. provisional measures in each of the United Nations' political organs in Parts II and III, respectively. Given that the H.R.C., has increasingly performed functions in the field of human rights, Part IV will consider the reception of I.C.J. interim remedies in this organ. In each part, we will consider: first, whether the provisional measures led the political organ to exercise the formal powers available to it; and second, whether the provisional

decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations"); art. 42 ("Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.").

50. *See, e.g.*, U.N. Charter art. 11(1) ("The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and make recommendations with regard to such principles to the Members or to the Security Council or to both.").

51. *See* Sloan, *supra* note 25, at 42.

52. *See id.* at 42, 497–98 (and U.N. speeches cited there); U.N. GAOR, 72nd Sess., 73rd mtg. at 27, U.N. Doc. A/72/PV.73 (Dec. 19, 2017); U.N. GAOR, 62nd Sess., 76th mtg. at 35, U.N. Doc. A/62/PV.76 (Dec. 18, 2007); U.N. GAOR, 52nd Sess., 71st mtg. at 18–19, U.N. Doc. A/52/PV.71 (Dec. 15, 1997).

53. *See, e.g.*, U.N. GAOR, 71st Sess., 58th mtg. at 14–15, U.N. Doc. A/71/PV.58 (Dec. 9, 2016) (stating that the Assembly "must stand with" the people of eastern Aleppo), U.N. GAOR, 65th Sess., 76th mtg. at 9, U.N. Doc. A/65/PV.76 (Mar. 1, 2011) (stating that the Assembly has sent a "powerful message to the world" on Libya).

measures stimulated dialogue in the political organs or strengthened the language of their resolutions. Part V concludes.

II. RECEPTION OF I.C.J. PROVISIONAL MEASURES IN THE SECURITY COUNCIL

A. EFFECT ON THE EXERCISE OF FORMAL POWERS BY THE SECURITY COUNCIL

The Council has broad powers under Chapter VII of the U.N. Charter to implement measures to maintain international peace and security.⁵⁴ Given that the Council can issue binding decisions, it does not need to rely on I.C.J. provisional measures as a source of legal obligation. However, an I.C.J. interim order can augment Council responses by drawing attention to an issue and recommending actions in relation to it. The Council in turn might use the interim order to help justify its desired action. In addition, the I.C.J. decision will involve some degree of adjudication of facts, something that the Council, as a political organ, cannot do without relying on fact-finding bodies.⁵⁵ Although practice is by no means comprehensive, there are some cases where provisional measures have had a direct bearing on Council decision-making.⁵⁶

i. United States v. Iran

A prominent example where the Council has used provisional measures to support its response in a situation is *United States v. Iran*.⁵⁷ In response to the actions of Iranian revolutionaries who captured the U.S. Embassy in Tehran, the United States instituted proceedings against Iran in the I.C.J.⁵⁸ The I.C.J. ordered provisional

54. U.N. Charter art. 39–43.

55. INTERNATIONAL JUSTICE, *supra* note 25, at 108.

56. United States Diplomatic and Consular Staff in Tehran (United States v. Iran), Provisional Measures, 1979 I.C.J. Rep. 7 (Dec. 15), available at <https://www.icj-cij.org/public/files/case-related/64/064-19791215-ORD-01-00-EN.pdf>; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, 1993 I.C.J. Rep. 3 (Apr. 8).

57. United States Diplomatic and Consular Staff in Tehran (United States v. Iran), Provisional Measures, 1979 I.C.J. Rep. 7 (Dec. 15).

58. *Id.*

measures requiring Iran to immediately ensure the restoration of the Embassy to U.S. control; to ensure the immediate release of all U.S. nationals held as hostages; and to afford full protection to all diplomatic and consular personnel of the United States.⁵⁹ Shortly before this order, the Council unanimously adopted Resolution 457 (1979) which “[u]rgently call[ed] upon the Government of Iran to release immediately the personnel” of the U.S. Embassy.⁶⁰ When Iran failed to do so, the Council adopted another resolution, this time using the I.C.J. order as an added basis for pressuring Iran.⁶¹ This second resolution, Resolution 461 (1979), reaffirmed Resolution 457.⁶² It expressed the Council’s disapproval of “the continued detention of the hostages contrary to . . . resolution 457 (1979) and the Order of the International Court of Justice.”⁶³ Should Iran not comply, the Council threatened “effective measures under Articles 39 and 41 of the Charter,” which include economic or diplomatic sanctions.⁶⁴

The I.C.J. provisional measures thus contributed to the Council’s prompt action in this situation. The provisional measures were mentioned both in the preamble of Resolution 461⁶⁵ which stated that the Council took them into account and in the operative paragraphs where the Council deplored their continued violation.⁶⁶ In a letter to the Council President, the United States also requested that the Council “meet at an early date to consider the measures which should be taken to induce Iran to comply with its international obligations.”⁶⁷ The United States emphasized Iran’s rejection of the I.C.J. provisional measures as posing a threat to international peace and security.⁶⁸ Iran’s violation of provisional measures was thus being used as part of the

59. U.S. v. Iran, Provisional Measures, 1979 I.C.J. REP. at ¶ 47.

60. U.N.S.C. Res. 457 (Dec. 4, 1979).

61. U.N.S.C. Res. 461 (Dec. 31, 1979).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. U.N.S.C. Res. 461 (Dec. 31, 1979).

67. Permanent Representative of the United States to the U.N., Letter dated 22 December 1979 from the Permanent Representative of the United States to the United Nations addressed to the President of the Security Council, U.N. Doc. S/13705 (Dec. 22, 1979).

68. *Id.*

justification for Chapter VII action.⁶⁹ Similar logic weighed heavily in the speech of the Bolivian delegate at the Council meeting to discuss the draft resolution.⁷⁰ As he pointed out, Iran's decision to "totally ignore" the provisional measures and the Council resolution posed a threat to international peace and security and justified the adoption of Chapter VII measures.⁷¹ Although other Council Members did not state their concern in precisely such terms, the fact that a number of them emphasized the provisional measures in their speeches suggests that it played a part in their decision to adopt Resolution 461.⁷²

The provisional measures seemed to have influenced the language of Resolution 461. Although this resolution was phrased as a reaffirmation of Resolution 457 (adopted prior to the provisional measures decision), it is noteworthy that the later resolution conforms to the language of the I.C.J. order in referring to "all persons of United States nationality" rather than "the personnel of the Embassy of the United States."⁷³ When Iran continued to defy the Council resolutions, the United States proposed a draft resolution that would have imposed a range of sanctions on Iran.⁷⁴ The U.S. delegate cited the I.C.J. provisional measures as authoritatively expressing the will of the 'world community'.⁷⁵ Niger's delegate also emphasized Iran's duty to "unconditionally obey" the I.C.J. decision.⁷⁶ But there were contrary voices. Mexico argued that it would be "contradict[ory]" to affirm the I.C.J.'s order "to ensure that no action will be taken by [the parties] which will aggravate the tension between the two countries" but to also "adopt . . . a draft resolution which most probably would have precisely that effect."⁷⁷ On this view, I.C.J. provisional measures and

69. *Id.*

70. U.N.S.C. Official Records, U.N. Doc. S/PV.2183 (Dec. 30, 1979), at ¶¶ 38, 39.

71. *Id.*

72. *Id.* at ¶¶ 11 (Nigeria), 21 (Zambia), 27 (Jamaica), 46 (Japan), 58 (Canada); U.N.S.C. Official Records, U.N. Doc. S/PV.2184 (Dec. 31, 1979), at ¶ 3 (Gabon).

73. U.N.S.C. Res. 461 (Dec. 31, 1979), at ¶ 3.

74. United States, Draft Security Council Resolution, U.N. Doc. S/13735 (Jan. 10, 1980).

75. U.N.S.C. Official Records, U.N. Doc. S/PV.2191, (Jan 11-13, 1980) ¶¶ at 25, 27.

76. *Id.* at ¶ 96.

77. *Id.* at ¶ 62.

Council actions are not necessarily complimentary but may conflict. The Soviet Union claimed that the dispute between the United States and Iran was a "bilateral dispute" that did not "fall within the purview of Chapter VII of the Charter."⁷⁸ Ultimately, the Council did not adopt the draft resolution because the Soviet Union voted against it.⁷⁹ This instance itself highlights the structural weakness in seeking to support the implementation of I.C.J. provisional measures in the Council, particularly where the interests of a permanent member or their client States are implicated in the interim order.

ii. Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)

Another example of provisional measures prompting Council action was *Bosnia and Herzegovina v. Yugoslavia*.⁸⁰ The I.C.J. ordered provisional measures on April 8, 1993, that Yugoslavia must "immediately . . . take all measures within its power to prevent commission of the crime of genocide" and to ensure that any military, paramilitary or irregular armed units Yugoslavia directed or supported did not commit any acts of genocide.⁸¹ Prior to this order, the Council issued many resolutions on the Yugoslavia situation.⁸² The Council began with Resolution 713 (1991) of September 25, 1991, in which, acting under Chapter VII, the Council imposed an embargo on all deliveries of weapons and military equipment to Yugoslavia.⁸³ In Resolution 771 (1992) of August 13, 1992, the Council then "[s]trongly condemn[ed] any violations of international humanitarian law, including those involved in the practice of 'ethnic cleansing'", demanding the parties to "cease and desist" from such violations.⁸⁴ Nevertheless, the provisional measures provided impetus for further action.⁸⁵ In a letter dated April 16, 1993, Bosnia wrote to the Council President to complain that Yugoslavia-backed forces were continuing

78. *Id.* at ¶ 48.

79. *Id.* at ¶ 149. (reporting that the count was ten in favor, two against and two abstentions; additionally noting that the U.S.S.R. had abstained in relation to Resolution 461 (1979))

80. *Bosn. & Herz. v. Yugoslavia, Provisional Measures*, 1993 I.C.J. REP. 3.

81. *Id.* at ¶ 52.

82. S.C. Res. 713 (Sept. 25, 1991); S.C. Res. 771 (Aug. 13, 1992).

83. S.C. Res. 713, *supra* note 82.

84. S.C. Res. 771, *supra* note 82.

85. *Bosn. & Herz. v. Yugoslavia*, 1993 I.C.J. REP. 3.

their assault on Bosnia and intensifying their assault on Srebrenica in ‘direct violation’ of the provisional measures.⁸⁶ Bosnia requested the Council to “take immediate measures under Chapter VII of the Charter to stop the assault and to enforce the Order of the International Court of Justice.”⁸⁷ On the same day, the Council unanimously passed Resolution 819 (1993), which “[took] note” of the I.C.J. provisional measures and included a series of demands, including a demand that Yugoslavia “immediately cease” the supply of military equipment to Bosnian Serb paramilitary units.⁸⁸

The next day, the Council adopted Resolution 820 (1993), which commended the Vance-Owen peace plan and decided on a wide range of Chapter VII sanctions in case of non-compliance with the plan.⁸⁹ The meeting records suggest that the I.C.J.’s order was, for some States at least, part of the motivation for the resolution.⁹⁰ Venezuela’s delegate noted that the I.C.J. order implied that Yugoslavia was “possibly responsible for committing crimes of genocide,” which was “the worst crime against humanity.”⁹¹ He warned that “[i]f the international community, represented by the Council, is not capable of meeting the concern” of the I.C.J., “the credibility and the legitimacy of the whole international political and judicial system would be profoundly and seriously compromised.”⁹² Morocco’s delegate inaccurately claimed that the I.C.J. had “finally recognized that this is a case of genocide” which made it necessary for the international community “to impose sanctions which no country anywhere could ignore.”⁹³ That said, none of the other delegates mentioned the provisional measures,⁹⁴ which suggests that the order was not a major motivator of the resolution (especially since the peace plan had been

86. Permanent Rep. of Bosnia and Herzegovina to the U.N., Letter dated Apr. 16, 1993 from the Permanent Rep. of Bosnia and Herzegovina to the U.N. addressed to the President of the Security Council, U.N. Doc. S/25616 (Apr. 16, 1993).

87. *Id.*

88. S.C. Res. 819 (Apr. 16, 1993).

89. S.C. Res. 820 (Apr. 17, 1993).

90. U.N. SCOR, 3200th mtg. at 99 U.N. Doc. S/PV.3200 (Apr. 17, 1993).

91. *Id.* at 31.

92. *Id.* at 31.

93. *Id.* at 43.

94. U.N. SCOR, 3200th mtg., *supra* note 90 at 7–30, 32–42.

months in the making).⁹⁵ The order nonetheless provided a basis for debate amongst Members on the responsibility of States for wrongful acts.

Even so, Council resolutions continued to use the “ethnic cleansing” label and avoided “genocide”, notwithstanding the fact that the I.C.J. provisional measures used the latter term.⁹⁶ As Michelle Ringrose observed, the “ethnic cleansing” euphemism has been used by the Council to avoid the practical implications of the “genocide” label, namely, the resultant duty to take action to prevent and suppress actions of genocide.⁹⁷ Despite this “workaround”, at least the delegates of Venezuela and Morocco saw the I.C.J. provisional measures as justifying the use of “genocide” in Council resolutions on this situation, suggesting that the I.C.J. decision contributed towards an acknowledgment of the massacres in Bosnia and Herzegovina as genocide.⁹⁸

B. INFORMAL EFFECTS

Despite these examples, the reality is that, in most cases, States have not expressly referenced or acted upon I.C.J. provisional measures in Council resolutions.⁹⁹ The failure to act upon provisional measures that have a broader peace and security dimension might arise for numerous reasons (including, for example, a lack of political will or a sense that the matter is best resolved through the I.C.J.’s procedures).¹⁰⁰ Nonetheless, there are instances where a Council

95. *Id.*

96. *See id.* at 99.

97. Michelle Ringrose, *The Politicization of the Genocide Label: Genocide Rhetoric in the U.N. Security Council*, 14.1 GENOCIDE STUD. & PREVENTION 124 (2020) (discussing how Security Council members navigate the linguistic rhetoric of genocide); *see also* Michael Ramsden, *The Crime of Genocide in General Assembly Resolutions: Legal Foundations and Effects*, 21 HUM. RTS. L. REV. 671 (2021).

98. *See also* Michael Ramsden, *The Crime of Genocide in General Assembly Resolutions: Legal Foundations and Effects*, 21 HUM. RTS. L. REV. 671 (2021).

99. U.N. SCOR, 3200th mtg., *supra* note 90, at 31, 43.

100. *See* Paola Patarroyo, *Monitoring Provisional Measures at the International Court of Justice: The Recent Amendment to the Internal Judicial Practice*, EJIL: TALK! BLOG OF THE EUR. J. OF INT’L L. (Jan. 22, 2021), <https://www.ejiltalk.org/monitoring-provisional-measures-at-the-international-court-of-justice-the-recent-amendment-to-the-internal-judicial-practice> (illustrating the ICJ’s mechanisms to

resolution on a situation was blocked due to a permanent member veto or threat of veto.¹⁰¹ In this situation, seeking an I.C.J. interim order might form part of a strategy to exert pressure on international actors, including on the Council for inaction. A related goal of seeking provisional measures might be to support the reframing of an issue in legal terms, thereby inflicting reputational costs on the non-compliant State and placing pressure on it to justify its position.

i. Mobilizing Shame Against a Recalcitrant State

One case where Member States subsequently used the interim order to shame the offending State was *Nicaragua v. United States*.¹⁰² In its provisional measure decision of May 10, 1984, the I.C.J. indicated that the United States should immediately cease and refrain from any action restricting, blocking or endangering access to or from Nicaraguan ports, and, in particular, the laying of mines.¹⁰³ Although formal action to uphold the provisional measures was an impossibility in the Council due to the veto, it is apparent that the I.C.J. decision had effects in other ways.¹⁰⁴ Given the United States' permanent membership on the Council, any attempt to pass a resolution in the Council to condemn the actions of the United States was destined for failure (let alone a resolution to impose sanctions).¹⁰⁵ The United States vetoed five resolutions on Nicaragua from 1982 to 1986.¹⁰⁶ Although the United States could veto resolutions because certain matters reflected a political decision pertaining to peace and security, ignoring the I.C.J.'s legal pronouncements would impose reputational

monitor compliance with provisional measures).

101. See generally Alison Duxbury, *Saving Lives in the International Court of Justice: The Use of Provisional Measure to Protect Human Rights*, 31 CAL. W. INT'L. L. J. 141, 158–160 (2000) (Assessing the implementation of provisional measures as a binding option for providing individuals immediate protection).

102. *Nicar. v. U.S.*, Provisional Measures, 1984 I.C.J. REP. 169.

103. *Id.* at ¶ 41.

104. *Nicar. v. U.S.*, Pleadings, Oral Arguments, Documents, 1984 I.C.J. REP. at 64 (Apr. 25, Apr. 27, May 10).

105. *Id.*

106. U.N. SCOR, 2347th mtg. at ¶ 140, U.N. Doc. S/PV.2347 (Apr. 2, 1982); U.N. SCOR, 2529th mtg. at ¶ 252, U.N. Doc. S/PV.2529 (Apr. 4, 1984); U.N. SCOR, 2580th mtg. at ¶¶ 266–68, U.N. Doc. S/PV.2580 (May 10, 1985); U.N. SCOR, 2693rd mtg. at ¶¶ 54–55, U.N. Doc. S/PV.2693 (July 31, 1986); U.N. SCOR, 2718th mtg. at ¶ 51, U.N. Doc. S/PV.2718 (Oct. 28, 1986).

costs.¹⁰⁷ As one commentator put it, Sandinista Nicaragua “effectively used the suit at the World Court to reframe the U.S.-Nicaraguan conflict using the norms and values of respect for international law and the rule of law,” thereby enabling it to mobilize public opinion against the United States.¹⁰⁸

The I.C.J. provisional measures were an important source of pressure against the United States, in the Council and elsewhere,¹⁰⁹ and they provided some justification for later draft resolutions.¹¹⁰ This view was certainly how Nicaragua saw it.¹¹¹ On May 10, 1984, the day the I.C.J. issued its provisional measures decision, Nicaragua sent a copy of excerpts of the judgment to the United Nations for circulation as a Council document.¹¹² On May 15, Nicaragua sent the United Nations a copy of a resolution adopted by a conference of the Non-Aligned Countries (Nicaragua being a member) for circulation in the Council and Assembly. This resolution urged the United States to comply with the provisional measures.¹¹³ The Council met to consider Nicaragua’s situation on September 7, 1984.¹¹⁴ Nicaragua’s delegate noted that “the United States, which throughout its history has proclaimed itself the defender of international law and has used the International Court whenever it suited its interests, said it would not recognize the Court’s jurisdiction on this issue for a period of two years.”¹¹⁵ He then proceeded to quote the first two paragraphs of the

107. Héctor Perla, Jr., SANDINISTA NICARAGUA’S RESISTANCE TO U.S. COERCION: REVOLUTIONARY DETERRENCE IN ASYMMETRIC CONFLICT 174 (2016) (explaining how the Sandinistas were able to “further their transnational public diplomacy efforts to denounce U.S. hostility toward Nicaragua.”).

108. *Id.*

109. Request for the Indication of Provisional Measures of Protection Submitted by the Government of Nicaragua (Nicar. v. U.S.), Oral Arguments, (Apr. 25, 27, May 10, 1984), <https://www.icj-cij.org/public/files/case-related/70/9629.pdf>.

110. Congo, Ghana, Madagascar, Trinidad and Tobago and United Arab Emirates Draft S.C. Res., S/18250 (July 31, 1986).

111. Permanent Rep. of Nicaragua to the U.N., Letter dated May 10, 1984 from the Permanent Rep. of Nicaragua to the U.N. addressed to the Secretary General, U.N. Doc. S/16556 (May 11, 1984).

112. Nicar. v. U.S., Provisional Measures, 1984 I.C.J. REP. 169.

113. Permanent Rep. of Nicaragua to the U.N., Letter dated May 15, 1984 from the Permanent Rep. of Nicaragua to the U.N. addressed to the Secretary General, U.N. Doc. A/39/260-S/16566 (May 15, 1984).

114. U.N. SCOR, 2557th mtg. at ¶ 11, U.N. Doc. S/PV.2557 (Sept. 7, 1984).

115. *Id.*

provisional measures in full and noted that, subsequent to the I.C.J.'s decision, "the United States Government once again cynically declared that it was not at that time carrying out any action contrary to the recommendation of the International Court."¹¹⁶ In response, the U.S. delegate did not directly address these accusations, but instead asserted that Nicaragua's complaints to the Council distracted from the "underlying problems of the region" and the "Contadora process they profess to support."¹¹⁷

Prior to the I.C.J.'s decision on the merits, its provisional measures decision would continue to feature in the Council.¹¹⁸ On May 10, 1985, the Council adopted Resolution 562 (1985).¹¹⁹ The direct cause of this resolution was the United States' decision on May 1 to impose a total trade embargo on Nicaragua.¹²⁰ The original draft resolution expressed "[r]egret" towards the trade embargo and called on States to refrain from the imposition of trade embargoes.¹²¹ The U.S. vetoed these paragraphs,¹²² but the adopted resolution contained a milder call for all States to refrain from carrying out "political, economic or military actions of any kind . . . which might impede the peace objectives of the Contadora Group."¹²³ It is impossible to measure the effect that the I.C.J.'s provisional measures had on this resolution.¹²⁴ The Council's debate did not specifically include the provisional measures, but Nicaragua did ask rhetorically that if the United States was "so sure of itself . . . why does it not resort to existing organs, such as the International Court of Justice, instead of acting in a contrary manner and disregarding the validity and competence of the Court on these issues?"¹²⁵ The I.C.J.'s provisional measures decision came up again in a Council debate on December 10, 1985, concerning an escalation in the type of weapons and supplies provided by the United States to

116. *Id.* at ¶¶ 12–13.

117. *Id.* at ¶ 61.

118. *Nicar. v. U.S., Provisional Measures*, 1984 I.C.J. REP. 169.

119. S.C. Res. 562 (May 10, 1985).

120. U.N. SCOR, 2577th mtg. at ¶ 38, U.N. Doc. S/PV.2577 (May 8, 1985).

121. *Nicaragua Draft S.C. Res., S/17172* (May 9, 1985).

122. U.N. SCOR, 2580th mtg., *supra* note 106, at ¶¶ 266–68.

123. S.C. Res. 562, *supra* note 119.

124. *Nicar. v. U.S., Provisional Measures*, 1984 I.C.J. REP. 169.

125. U.N. SCOR, 2578th mtg. at ¶ 227, U.N. Doc. S/PV.2578 (May 9, 1985).

the *contras*.¹²⁶ Nicaragua's delegate stated that this action confirmed the United States government's "disdain" for international law and for the I.C.J.'s order.¹²⁷ Here, the rule of law symbolism that an I.C.J. decision represents was used in an attempt to discredit the U.S. position on this issue.¹²⁸ This sentiment was echoed by several other countries (mostly aligned with the Soviet bloc).¹²⁹ The U.S., for its part, sought to undermine the authority of the I.C.J. by noting that "of the 15 judges on that Court, 10 of the countries to which those judges belong reject the compulsory authority of the . . . Court . . . , including some of Nicaragua's closest friends."¹³⁰

The pressure on the U.S. mounted when the I.C.J. decided the merits in favour of Nicaragua.¹³¹ Although the judgment superseded the provisional measures decision, a draft resolution on 31 July 1986 (which was vetoed) mentioned both in its preamble.¹³² The reference to the provisional measures served to emphasise the duration of U.S. non-compliance. 'Unfortunately', as Zimbabwe argued, 'this is not the first time the World Court has ruled on aspects of this issue.'¹³³ Prolonged U.S. non-compliance with the I.C.J. order since May 10, 1984, raised the Zimbabwe delegate's question: "Does international law then account for nothing? Is might to be equated with right in the conduct of international affairs?"¹³⁴ The delegate's speech illustrates how the provisional measures were important even after the judgment on the merits was handed down: prolonged non-compliance with the provisional measures strengthened the call for Council action to enforce the judgment on the merits.¹³⁵ As Nicaragua's delegate said at a meeting of the Council on October 21, 1986, "The failure of the

126. U.N. SCOR, 2633d mtg., U.N. Doc. S/PV.2633 (Dec. 10, 1985).

127. *Id.* at ¶ 26.

128. *Id.*

129. U.N. SCOR, 2634th mtg. at ¶¶ 42, 71, 119, 124 U.N. Doc. S/PV.2634 (Dec. 11, 1985); U.N. SCOR, 2636th mtg. at ¶¶ 99, 120, U.N. Doc. S/PV.2636 (Dec. 12, 1985).

130. U.N. SCOR, 2634th mtg. at ¶¶ 42, 71, 119, 124.

131. *Nicar. v. U.S.*, Judgment, 1986 I.C.J. REP. at 146.

132. S/18250, Congo, Ghana, Madagascar, Trinidad and Tobago and United Arab Emirates, Draft Resolution, Preamble (July 31, 1986).

133. U.N. SCOR, 2703d mtg. at 37, U.N. Doc. S/PV.2703, (July 31, 1986).

134. *Id.*

135. *Id.* at 21.

United States to comply [with the provisional measures] is public and notorious.”¹³⁶

ii. Catalyzing Diplomatic Exchanges

As alluded to earlier, one way in which a State can draw attention to I.C.J. provisional measures is by writing letters to the Council so as to encourage its good offices on a dispute. We will now consider two cases in which correspondence by the parties on the terms of I.C.J. provisional measures served to engage the Council in the process of dispute settlement.

Cameroon v. Nigeria related to an armed dispute between Cameroon and Nigeria over the Bakassi Peninsula.¹³⁷ On March 15, 1996, the I.C.J. indicated provisional measures to the effect that both parties were to observe a ceasefire agreement and not take any action to prejudice the rights of the other.¹³⁸ The parties were to ensure that the presence of armed forces in the Bakassi Peninsula did not extend beyond the positions in which they were situated prior to February 3, 1996.¹³⁹ The provisional measures also required the parties to take all necessary steps to conserve evidence and lend every assistance to the fact-finding mission of the Secretary-General.¹⁴⁰

From the start, letters played a crucial role as the means of communication between the parties and the Council. On February 28 and March 4 of 1994, Cameroon and Nigeria each wrote to the Council President to convey their perspectives on armed clashes related to the dispute and, in Cameroon’s case, to request an urgent Council meeting.¹⁴¹ Cameroon wrote two more letters to the Council President on March 28 and April 20 to transmit a communiqué of the

136. U.N. SCOR, 2715 mtg. at 5, U.N. Doc S/PV.2715 (Oct. 21, 1986).

137. *Cameroon v. Nigeria*, Provisional Measures, 1996 I.C.J. REP. 13 at 15–16.

138. *Id.* at 15–16.

139. *Id.*

140. *Id.*

141. Permanent Representative of Cameroon to the U.N., Letter from the Permanent Representative of Cameroon to the U.N. addressed to the President of the Security Council, U.N. Doc. S/1994/228 (Feb. 28, 1994); Permanent Mission of Nigeria to the U.N., Letter from the Chargé d’affaires a.i. of the Permanent Mission of Nigeria to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1994/258 (Mar. 4, 1994).

Organization of African Unity and to submit the informal text of a draft resolution.¹⁴² On April 29, the Council President responded in writing on behalf of the members of the Council to Cameroon and Nigeria, encouraging the efforts of the Organization of African Unity (O.A.U.) to reach a political settlement and requesting the U.N. Secretary-General, in consultation with the O.A.U. Secretary-General, to follow developments and keep the Council informed.¹⁴³ The conflict quieted down until February 3, 1996, when Nigerian troops advanced despite the case pending before the I.C.J.¹⁴⁴ On February 22, Cameroon wrote to the Council President to request the Council to invite a report from the Secretary-General on the situation in the Bakassi Peninsula and to urge Nigeria to withdraw its troops to their positions prior to December 21, 1993.¹⁴⁵ Nigeria also wrote to the Council, calling Cameroon's letter intentionally misleading.¹⁴⁶ In response, on February 29, 1996, the Council President wrote to Cameroon and Nigeria on behalf of the Council.¹⁴⁷ The Council condemned the recent violence and urged the parties to "redouble [their] efforts to reach a peaceful settlement through" the I.C.J.¹⁴⁸ The Council also called upon the parties to respect a ceasefire to refrain from violence that the parties had agreed to previously and to return

142. *Id.*

143. Permanent Representative of Cameroon to the U.N., Letter from the Permanent Representative of Cameroon to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1994/351 (Mar. 28, 1994); Permanent Representative of Cameroon to the U.N., Letter from the Permanent Representative of Cameroon to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1994/472 (Apr. 20, 1994).

144. U.N. President of the S.C., Identical letters addressed to the Permanent Representatives of Cameroon and Nigeria to the United Nations by the President of the Security Council, U.N. Doc. S/1994/519 (Apr. 29, 1994).

145. Republic of Cameroon, Letter dated from the Minister for Foreign Affairs of the Republic of Cameroon addressed to the President of the Security Council, U.N. Doc. S/1996/125 (Feb. 23, 1996).

146. Permanent Representative of Nigeria to the U.N., Letter from the Permanent Representative of Nigeria to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1996/140 (Feb. 27, 1996).

147. U.N. President of the S.C., Identical letters from the President of the Security Council addressed to the President of the Republic of Cameroon and to the Head of State and Commander-in-Chief of the armed forces of the Federal Republic of Nigeria, U.N. Doc S/1996/150 (Feb. 29, 1996).

148. *Id.* at 13.

their forces to the positions they occupied before the dispute was referred to the I.C.J.¹⁴⁹ Finally, the Council endorsed the U.N. Secretary-General's proposal to send a fact-finding mission to the Bakassi Peninsula.¹⁵⁰ This Council letter was noted in the preamble to the I.C.J.'s decision on provisional measures, and the measures indicated by the I.C.J. were strikingly similar to the recommendations of the Council.¹⁵¹

A number of subsequent letters mentioned the I.C.J. decision.¹⁵² In one dated April 12, 1996, the President of Cameroon wrote to the Council President to express his "full . . . support" for the provisional measures and to suggest several points for the fact-finding mission to investigate.¹⁵³ On May 2, Cameroon wrote to the Council President to inform the Council of new attacks by Nigerian troops against Cameroonian positions; Cameroon claimed that these events "prove[d] *a posteriori* the relevance . . . of the protective measures" indicated by the I.C.J. and the urgent need to begin the fact-finding mission.¹⁵⁴ On May 24, the Secretary-General wrote to the Council President, saying that the head of state of Nigeria had indicated to him his "awareness that the I.C.J. had urged the two countries to lend assistance to a United Nations mission to Bakassi and that, in deference to this order, the Government of Nigeria accepted in principle the idea of such a mission."¹⁵⁵ On December 12, 1996, Cameroon wrote to Nigeria to protest against electric and water supply projects implemented by Nigeria in disputed territory, which

149. *Id.*

150. *Id.*

151. *Cameroon v. Nigeria*, Provisional Measures, 1996 I.C.J. REP. 13 at ¶¶ 45–46; *cf. id.* at ¶ 20.

152. Permanent Mission of Cameroon to the U.N., Letter dated April 15, 1996 from the Chargé d'affaires a.i. of the Permanent Mission of Cameroon to the United Nations addressed to the President of the Security Council U.N. Doc S/1996/287 (Apr. 16, 1996).

153. *Id.* at 13.

154. Permanent Mission of Cameroon to the U.N., Letter dated May 2, 1996 from the Chargé d'affaires a.i. of the Permanent Mission of Cameroon to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1996/330 (May 2, 1996) at 14.

155. U.N. Secretary-General, Letter dated May 24, 1996 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/1996/390, (May 29, 1996).

Cameroon called “a flagrant violation of the protective measures”; the letter was copied to the Council.¹⁵⁶

Another case in which the parties to a dispute engaged the Council in correspondence was *Qatar v. United Arab Emirates*. This case related to the Qatar diplomatic crisis which began on June 5, 2017, when Saudi Arabia, the United Arab Emirates, Bahrain, and Egypt severed diplomatic relations with Qatar, purportedly on the ground of Qatar’s support for terrorism.¹⁵⁷ At the I.C.J., Qatar complained that measures taken by the United Arab Emirates on June 5, 2017, to expel all Qataris from its territory and prohibit Qataris from entering the United Arab Emirates, were discriminatory against Qataris in violation of the International Convention on the Elimination of All Forms of Racial Discrimination (C.E.R.D.).¹⁵⁸ On July 23, 2018, the I.C.J. ordered provisional measures requiring the United Arab Emirates: to ensure that families separated by the June 5 measures were reunited; that Qatari students affected by the measures were given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wish to continue their studies elsewhere; that Qataris affected by the measures were allowed access to courts and tribunals of the United Arab Emirates; and that both parties not take any measures to aggravate the dispute.¹⁵⁹

From the start, Qatar had called on the Council to intervene to resolve the diplomatic crisis, as it characterized the sanctions imposed against Qatar as violations of international law. Qatar’s foreign minister told reporters that “the United Nations is the right platform to

156. Permanent Mission of Cameroon to the U.N., Annex to the Letter dated December 16, 1996 from the Chargé d’Affaires A.I. of the Permanent Mission of Cameroon to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1996/1052 (Dec. 17, 1996). Such letters continued until 1998: Permanent Mission of Cameroon to the U.N., Letter dated March 13, 1998 from the Permanent Representative of Cameroon to the United Nations addressed to the President of the Security Council, U.N.Doc S/1998/228 (Mar. 13, 1998); Permanent Mission of Cameroon to the U.N., Letter dated December 11, 1998 from the Permanent Representative of Cameroon to the United Nations addressed to the President of the Security Council, U.N.Doc S/1998/1159 (Dec. 11, 1998).

157. See *Qatar v. U.A.E.*, Provisional Measures, 2018 I.C.J. REP. 406 at 6–7.

158. See *id.*

159. See *Qatar: U.N. Should Play a Role in Resolving Gulf Crisis*, AL JAZEERA (July 28, 2017), <https://www.aljazeera.com/news/2017/07/qatar-play-role-resolving-gulf-crisis-170727223916633.html>.

start from” and that “[t]here is a role for the Security Council and for the General Assembly and all the United Nations mechanisms” in resolving the crisis.¹⁶⁰ On the other hand, the United Arab Emirates advocated a “diplomatic solution at the regional level.”¹⁶¹ The Council was reluctant to intervene. The Council president, China’s U.N. ambassador, told reporters that the Council had not received a formal request for intervention and that “it’s something that should be sorted out among the brothers in the [Gulf Cooperation Council] and in the region.”¹⁶²

Such inaction of the Council (even after the I.C.J. provisional measures decision) explains why Qatar relied on informal methods such as letters to the Council to draw attention to its cause. Both Qatar and the United Arab Emirates had previously written letters to the Council addressing the crisis,¹⁶³ but the I.C.J.’s decision added a new dimension to their exhortations. On July 26, 2018, three days after the I.C.J. decision, Qatar wrote to the Council president regarding the provisional measures.¹⁶⁴ The letter did not merely transmit the decision but highlighted several important aspects of it. Qatar called the decision “a recognition by the highest international judicial body of the validity of the legal position of Qatar with regard to the crisis that has been concocted against it.” The decision also (according to Qatar) “reaffirm[ed] that Qatar has been correct to address the crisis and its impact on international peace and security, as well as its

160. *Id.*

161. *Id.*

162. *Id.* See also U.N. SAYS IT HAS RECEIVED NO FORMAL REQUEST FOR INTERVENTION IN QATAR CRISIS, AL ARABIYA (Aug. 1, 2017), <https://english.alarabiya.net/en/News/gulf/2017/08/01/UN-says-it-has-received-no-formal-request-for-intervention-in-Qatar-crisis.html>.

163. See, e.g., Permanent Representative of the United Arab Emirates to the U.N., Letter dated 4 May 2018 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council, U.N.Doc S/2018/425 (May 7, 2018); Permanent Representative of Qatar to the U.N., Identical letters dated May 9, 2018 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2018/441 (May 15, 2018).

164. Permanent Representative of Qatar to the U.N., Identical letters dated July 26, 2018 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council, U.N.Doc S/2018/562 (July 31, 2018).

humanitarian consequences, through international law, international and bilateral instruments, and international conflict-resolution mechanisms.”¹⁶⁵ While Qatar was “striving to de-escalate the situation,” it would continue to use “legal means” to protect the “interests and rights” of Qataris.¹⁶⁶ Three weeks later, on August 15, 2018, the United Arab Emirates responded with its own letter addressed to the Council.¹⁶⁷ It claimed that Qatar had “misrepresented” both Qatar’s policies and the order of the I.C.J., and that the United Arab Emirates was “already in compliance with the provisional measures.”¹⁶⁸ The United Arab Emirates also drew attention to the I.C.J.’s provisional measure that both parties should refrain from any action which might aggravate or extend the dispute, implying that Qatar’s accusations before the Council violated this measure.

On June 14, 2019, the I.C.J. handed down a second decision on provisional measures, rejecting the United Arab Emirates’ counter-request for provisional measures against Qatar.¹⁶⁹ On July 30, Qatar wrote to the Council President claiming “yet another international legal victory.”¹⁷⁰ The “decision confirmed that Qatar respects and fully complies with international legal rules and agreements” and “demonstrate[d] the validity of [Qatar’s] position since the start of the crisis.”¹⁷¹ Again, Qatar emphasized its eagerness to avoid escalation and find a diplomatic solution, while at the same time reiterating its commitment to using legal means to protect the rights of its nationals.¹⁷² As before, the United Arab Emirates felt compelled to respond in a letter dated September 9, 2019, to the Council

165. *Id.*

166. *Id.*

167. Permanent Representative of the United Arab Emirates, Letter dated August 15, 2018 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council U.N. Doc. S/2018/590 (Aug. 16, 2018).

168. *Id.*

169. *Qatar v. U.A.E.*, Provisional Measures, 2018 I.C.J. REP. 406.

170. Permanent Representative of the State of Qatar to the U.N., Identical letters dated 30 July 2019 from the Permanent Representative of the State of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2019/610 (Aug. 1, 2019).

171. *Id.*

172. *Id.*

President.¹⁷³ The Emirates repeated its accusation that Qatar had misrepresented the Court's decision and the emphasis in the order not to aggravate the dispute.¹⁷⁴ The United Arab Emirates also attempted to shift the attention to Qatar's alleged "policy of supporting extremism."¹⁷⁵ This dispute thus shows the use of I.C.J. provisional measures as a means for States to give publicity to their cause as well as to advance their narratives in international political fora.

III. RECEPTION OF I.C.J. PROVISIONAL MEASURES IN THE GENERAL ASSEMBLY

A. EFFECT ON THE EXERCISE OF FORMAL POWERS BY THE GENERAL ASSEMBLY

In this section, we consider the extent to which I.C.J. provisional measures have influenced the exercise of power by the Assembly. As mentioned, the Assembly can make recommendations to Member States and the Council. While it does not have the power to issue binding decisions, it is the most representative U.N. organ; nearly every State is a member of the Assembly. This organ has frequently been used to mobilize, shame, and exert pressure on recalcitrant States to bring their conduct back into conformity with international law.¹⁷⁶ The issue is whether the Assembly has recommended Member States to observe provisional measures and the form in which such recommendations took. Two cases in particular show some correlations.

i. Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)

We have already seen how the provisional measures in the *Bosnia*

173. Permanent Representative of the United Arab Emirates to the U.N., Letter dated 9 September 2019 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council U.N.Doc S/2019/728. (Sep. 10, 2019).

174. *Id.*

175. Permanent Representative of the United Arab Emirates to the U.N., Letter dated 9 September 2019 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council U.N.Doc S/2019/728. (Sep. 10, 2019)

176. *See generally* INTERNATIONAL JUSTICE, *supra* note 25.

and Herzegovina v. Yugoslavia (Serbia and Montenegro) case led to a swift response from the Council. The Assembly also responded to the I.C.J. decision, albeit eight months after the I.C.J. ordered provisional measures.¹⁷⁷ On December 20, 1993, the Assembly adopted Resolution 48/88 on the situation in Bosnia and Herzegovina,¹⁷⁸ noting in the preamble the provisional measures decision that Yugoslavia should immediately take all measures to prevent commission of the crime of genocide.¹⁷⁹ The resolution further noted the I.C.J.'s later statement that "the present perilous situation demands . . . [the] immediate and effective implementation of those [provisional] measures."¹⁸⁰ The operative part of the resolution included a list of thirty points. Inter alia, the Assembly "urge[d]" all States to continue the measures taken to comply with the sanctions imposed by the Council and condemned the "violations of the human rights of the Bosnian people and of international humanitarian law committed by parties to the conflict, especially those violations committed as policy, flagrantly and on a massive scale, by Serbia and Montenegro and the Bosnian Serbs."¹⁸¹ In contrast to the Council, which avoided mention of the term "genocide," the Assembly's resolution expressly "reaffirm[ed] its determination to prevent acts of genocide."¹⁸² This point is significant since the genocide was the subject matter of the provisional order. That said, in Resolution 47/121 (1992), the Assembly had already proclaimed that ethnic cleansing was "a form of genocide."¹⁸³ Even so, reference to the provisional measures decision in Resolution 48/88 shows this decision to be at least one of the motivators behind this resolution.

ii. *Ukraine v. Russian Federation*

Another example of a case in which I.C.J. provisional measures contributed to action by the Assembly is *Ukraine v. Russian*

177. U.N.G.A. Res. 48/88 (Dec. 20, 1993).

178. *Id.*

179. *Id.*

180. *Id.* at ¶ 59.

181. *Id.*

182. *Id.*

183. U.N.G.A. Res. 47/121 (Dec. 18, 1992).

Federation.¹⁸⁴ This case concerned allegedly discriminatory measures by Russia against Crimean Tatars in occupied Crimea.¹⁸⁵ On April 19, 2017, the I.C.J. indicated provisional measures that required Russia to refrain from maintaining limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*.¹⁸⁶ Russia was also required to ensure the availability of education in the Ukrainian language.¹⁸⁷

The Council's ability to act in relation to this case was limited by Russia's veto power. Prior to the I.C.J. decision, Russia had already vetoed two draft resolutions on the situation in Ukraine.¹⁸⁸ The Council passed a resolution on the downing of Malaysia Airlines flight MH17 in Ukraine, but that resolution did not attribute responsibility for the downing.¹⁸⁹ In contrast, the Assembly had adopted Resolution 68/262 on March 27, 2014, which affirmed the territorial integrity of Ukraine in response to Russia's annexation of Crimea.¹⁹⁰ On December 19, 2016, the Assembly adopted Resolution 71/205 on the situation of human rights in Crimea, in which it condemned "the abuses, measures and practices of discrimination against the residents of the temporarily occupied Crimea, including Crimean Tatars . . . by the Russian occupation authorities."¹⁹¹ The following year, on December 19, 2017, the Assembly once again considered the human rights situation in Crimea. In Resolution 72/190, the Assembly explicitly "[took] note of the order of" the I.C.J. and urged Russia to "fully and immediately comply" with the order.¹⁹² The Assembly later repeated this call in its subsequent Resolutions 73/263 of 2018¹⁹³ and

184. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. Rep. 104 (Apr. 19).

185. *Id.*

186. *Id.*

187. *Id.* at ¶ 106.

188. U.N. Doc. S/2014/189; U.N. Doc. S/2015/562.

189. U.N.S.C. Res. 2166 (July 21, 2014). For detailed analysis on this situation, see Michael Ramsden, *Uniting for MH17* 7(2) ASIAN J. INT'L. L. 337 (2017).

190. U.N.G.A. Res. 68/262 (Mar. 27, 2014).

191. U.N.G.A. Res. 71/205 (Dec. 19, 2016).

192. U.N.G.A. Res. 72/190 (Dec. 19, 2017).

193. U.N.G.A. Res. 73/263 (Dec. 22, 2018).

74/168 of 2019.¹⁹⁴

A comparison between Resolution 72/190 of 2017 and Resolution 71/205 of the previous year further illustrates the impact of the I.C.J. provisional measures. While the 2016 resolution urged Russia to “revoke immediately the decision declaring the Mejlis of the Crimean Tatar People an extremist organization and banning its activities, and repeal the decision banning leaders of the Mejlis from entering Crimea,”¹⁹⁵ the 2017 resolution added a call for Russia to “refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions.”¹⁹⁶ The 2017 resolution also urged Russia to “ensure the availability of education in the Ukrainian and Crimean Tatar languages.”¹⁹⁷ Besides the mention of the Crimean Tatar language, these two additions were lifted verbatim from the I.C.J.’s order.¹⁹⁸ Thus, the provisional measures led to substantive changes in the Assembly resolutions on this situation.

B. INDIRECT EFFECTS

i. Nicaragua v. United States

We previously discussed how Nicaragua used Council debates to draw attention to the I.C.J. provisional measures of May 10, 1984 in *Nicaragua v. United States*.¹⁹⁹ We now examine how it did the same in the Assembly. On October 24, 1984, the Assembly met to discuss the situation in Central America.²⁰⁰ The Contadora Group had introduced a draft resolution which urged States to sign the Contadora Act on Peace and Co-Operation in Central America of September 7,

194. U.N.G.A. Res. 74/168 (Dec. 18, 2019).

195. U.N.G.A. Res. 71/205, *supra* note 191, at ¶ 2(g).

196. U.N.G.A. Res. 72/190, *supra* note 192, at ¶ 3(j).

197. *Id.* ¶ 3(i).

198. *See* Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. Rep. 104, 40 (Apr. 19).

199. Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Provisional Measures, 1984 I.C.J. Rep. (May 10).

200. U.N.G.A. Official Records, U.N. Doc. A/39/PV.35 (Oct. 24, 1984).

1984.²⁰¹ But Nicaragua wanted more: “to denounce the policy of State terrorism of the Reagan Administration.”²⁰² To this end, it presented its own draft resolution which would have explicitly taken note of the I.C.J. provisional measures and asked for an end to U.S. aggression against Nicaragua.²⁰³

Countries that supported Nicaragua also tended to cite the decision of the I.C.J. Yemen called upon the United States to “abide by the text of the Order.”²⁰⁴ Poland expressed its “astonish[ment] that the United States would not recognize the authority of the International Court of Justice” and asserted that “compliance by the United States with the Provisional Measures . . . would improve conditions for a political solution to the problems of the region.”²⁰⁵ The Soviet Union noted that the United States’ openly proclaimed policy of flagrant interference” was “defying decisions of the International Court of Justice.”²⁰⁶ Cuba and Mongolia characterized the U.S. breach of the I.C.J. provisional measures as “flagrant violations of international law.”²⁰⁷ The provisional measures also featured in the speeches of India,²⁰⁸ Cyprus,²⁰⁹ Czechoslovakia,²¹⁰ Bulgaria,²¹¹ the German Democratic Republic,²¹² Syria,²¹³ Laos,²¹⁴ Byelorussia,²¹⁵ Algeria,²¹⁶ Zimbabwe,²¹⁷

201. Colombia, Mexico, Panama and Venezuela, Draft Resolution, U.N. Doc. A/39/L.6. (Oct. 18, 1984).

202. *Id.* at ¶ 40.

203. Nicaragua, Draft Resolution, U.N. Doc. A/39/L.7 (Oct. 22, 1984). See also U.N.G.A. Official Records, U.N. Doc. A/39/PV.35 (Oct. 24, 1984), at ¶ 73; U.N.G.A. Official Records, U.N. Doc. A/39/PV.36 (Oct. 24, 1984), at ¶ 214.

204. U.N.G.A. Official Records, U.N. Doc. A/39/PV.35 (Oct. 24, 1984), at ¶ 81.

205. U.N.G.A. Official Records, U.N. Doc. A/39/PV.36 (Oct. 24, 1984), at ¶ 4.

206. *Id.* at ¶¶ 69–70.

207. *Id.* §37; U.N.G.A. Official Records, U.N. Doc. A/39/PV.37 (Oct. 25, 1984), at ¶ 21.

208. U.N.G.A. Official Records, U.N. Doc. A/39/PV.35 (Oct. 24, 1984), at ¶ 88.

209. U.N.G.A. Official Records, U.N. Doc. A/39/PV.36 (Oct. 24, 1984), at ¶ 120.

210. *Id.* at ¶ 234.

211. U.N.G.A. Official Records, U.N. Doc. A/39/PV.37 (Oct. 25, 1984), at ¶ 32.

212. *Id.* at ¶ 67.

213. *Id.* at ¶ 137.

214. U.N.G.A. Official Records, U.N. Doc. A/39/PV.38 (Oct. 25, 1984), at ¶ 134.

215. *Id.* at ¶ 150.

216. *Id.* at ¶ 201.

217. *Id.* at ¶ 234.

Iran,²¹⁸ and Palestine.²¹⁹ Only Honduras dared to attempt to turn the I.C.J. provisional measures on their head and accuse Nicaragua of “distort[ing] the considerations put forward by the Court.”²²⁰ The United States did not address the I.C.J.’s decision at all, but instead emphasized its “support for diplomatic efforts to achieve an effective and lasting peace in Central America”²²¹ and raised the undemocratic nature of Nicaragua’s government.²²² In the end, after “extensive [off-the-record] consultations,” Nicaragua decided not to press for a vote on its draft resolution, and the Assembly adopted the Contadora Group’s resolution by consensus as Resolution 39/4 of October 26, 1984.²²³ But even though the resolution did not mention the provisional measures or U.S. non-compliance, the extensive discussion of the provisional measures during the Assembly meeting still provided a means to inflict reputational harm on the United States and mobilize international public opinion against it.

On October 21, 1985, the President of Nicaragua took the opportunity during the commemoration of the United Nations’ 40th anniversary to call upon the United States to abide by the I.C.J.’s provisional measures decision.²²⁴ He stated:

In a tacit admission of its own guilt, the United States has declared that it will not accept the Court’s jurisdiction nor abide by its findings. On the other hand, our presence in the Court constitutes a historic milestone in the defence of the sovereignty and self-determination of small nations.²²⁵

In his words, Nicaragua was “defending international law.”²²⁶ On November 22, 1985, at the Assembly meeting on the situation in Central America, Nicaragua continued to reiterate its call for the United States to abide by the I.C.J. provisional measures.²²⁷ As in the

218. *Id.* at ¶ 280.

219. *Id.* at ¶ 375.

220. U.N.G.A. Official Records, U.N. Doc. A/39/PV.36 (Oct. 24, 1984), at ¶ 214.

221. U.N.G.A. Official Records, U.N. Doc. A/39/PV.38 (Oct. 25, 1984), at ¶ 46.

222. *Id.* at ¶ 63.

223. U.N.G.A. Official Records, U.N. Doc. A/39/PV.39 (Oct. 26, 1984); U.N.G.A. Res. 39/4 (Oct. 26, 1984).

224. *Id.* at 6–7.

225. *Id.*

226. *Id.* at 9.

227. U.N.G.A. Provisional Verbatim Record, U.N. Doc. A/40/PV.88 (Nov. 22,

previous year, numerous delegates echoed Nicaragua, including the delegates of India,²²⁸ Vietnam,²²⁹ Laos,²³⁰ Syria,²³¹ Yugoslavia,²³² Ghana,²³³ the USSR,²³⁴ Yemen,²³⁵ Byelorussia,²³⁶ Zimbabwe,²³⁷ and Libya.²³⁸ Ultimately, those meetings did not result in a resolution that year, apparently because there was not enough time to discuss²³⁹ (although the Assembly did pass a related resolution that requested the immediate revocation of the U.S. unilateral trade embargo against Nicaragua).²⁴⁰ But the debates must have been embarrassing for the United States.

On June 27, 1986, the I.C.J. handed down its judgment on the merits, which effectively superseded the provisional measures.²⁴¹ On November 3, 1986, the Assembly finally adopted Resolution 41/31 which urgently called for compliance with the I.C.J. judgment.²⁴² Although the resolution did not mention the provisional measures, their importance should not be overlooked. By including the provisional measures in its chronology, Nicaragua could emphasize the duration of U.S. non-compliance with the I.C.J.'s decisions, enabling it to claim that "the Nicaraguan Government . . . has been extremely patient with the United States."²⁴³

1985) at 13.

228. U.N. Doc. A/40/PV.88, at 48.

229. U.N.G.A. Provisional Verbatim Record, U.N. Doc. A/40/PV.89 (Nov. 24, 1985), at 24.

230. *Id.* at 46.

231. *Id.* at 83.

232. U.N.G.A. Provisional Verbatim Record, U.N. Doc. A/40/PV.90 (Nov. 25, 1985), at 103.

233. *Id.* at 111.

234. U.N.G.A. Provisional Verbatim Record, U.N. Doc. A/40/PV.91 (Nov. 26, 1985), at 14.

235. *Id.* at 57.

236. *Id.* at 72.

237. *Id.* at 123.

238. *Id.* at 171.

239. *See* U.N.G.A. Provisional Verbatim Record, U.N. Doc. A/40/PV.122 (Dec. 18, 1985), at 6.

240. G.A. Res. 40/188, 148 (Dec. 17, 1985).

241. *See Nicar. v. U.S.*, Judgment, 1986 I.C.J. REP. at 146.

242. G.A. Res. 41/31, ¶¶ 1, 2 (Nov. 3, 1986).

243. U.N. GAOR, 41st Sess, 53rd plen. mtg. at 51, U.N. DOC. A/41/PV.53 (Nov. 6, 1986).

ii. Speeches at the Report of the ICJ

Given that opportunities to discuss an issue at the Assembly are limited, a State that wishes to draw attention to I.C.J. provisional measures will often take advantage of every opportunity to do so. Nicaragua did this when it called on the United States to comply with the I.C.J. decision during a speech at the Assembly's commemoration of the United Nations' 40th anniversary.²⁴⁴ Another such opportunity is the chance to give a speech on the occasion of a report of the I.C.J. Over the past three decades, there has been a large increase in the number of States that gave speeches at the report of the I.C.J.²⁴⁵ In 1989, only two States spoke at that occasion, and neither of them mentioned any specific decision of the I.C.J.²⁴⁶ In 2019, a total of forty-nine States gave speeches, many of which mentioned specific I.C.J. decisions.²⁴⁷ For the purposes of this article, it is worth examining how States used these speeches to draw attention to provisional measures of the I.C.J.

In *Georgia v. Russian Federation*, the I.C.J. considered Georgia's complaint that Russia practiced racial discrimination against ethnic Georgians in the Russian-occupied South Ossetia and Abkhazia regions of Georgia.²⁴⁸ On October 15, 2008, the I.C.J. indicated provisional measures compelling both parties to refrain from committing, sponsoring, defending, or supporting acts of racial discrimination within South Ossetia and Abkhazia.²⁴⁹ The parties were also required to do all in their power to ensure—without distinction as to national or ethnic origin—the security of persons, the right to freedom of movement and residence within the border of the State, and the protection of the property of displaced persons and of

244. *Id.*

245. See generally *Annual Reports*, I.C.J. (2021), <https://www.icj-cij.org/en/annual-reports>.

246. U.N. GAOR, 44th Sess., 43rd plen. mtg. at 11–15, U.N. DOC. A/44/PV.43 (Nov. 3, 1989).

247. U.N. GAOR, 74th Sess., 20th plen. mtg. at 8–24, U.N. DOC. A/74/PV.20 (Oct. 30, 2019).

248. Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (*Geor. v. Russ.*), Provisional Measures, 2008 I.C.J. 1–10 (Aug. 13).

249. *Geor. v. Russ.*, Provisional Measures, Order, 2008 I.C.J. at 398–99.

refugees.²⁵⁰ Further, they were also required to do all in their power to ensure that public authorities did not engage in acts of racial discrimination, while also facilitating humanitarian assistance in support of the rights under the C.E.R.D.²⁵¹ The provisional measures remained in place until the I.C.J. upheld Russia's preliminary objection that Georgia had not satisfied the procedural requirements under Article 22 of the C.E.R.D. for recourse to the I.C.J.²⁵²

Both Georgia and Russia made speeches addressing the provisional measures at the report of the I.C.J. to the Assembly on October 30, 2009.²⁵³ Both countries emphasized their respect and support for the Court.²⁵⁴ Georgia stated that it was “solely up to the Court to determine whether or not [Georgia’s] northern neighbours complied with the ruling” and referred to two specific examples of “clear factual evidence indicating that none of the provisional measures have been fulfilled.”²⁵⁵ On the other hand, Russia emphasized the strong minority opinion, pointing out that “for the very first time in its judicial proceedings on provisional measures, seven judges formed a united front, signing an opinion dissenting from the position of the other eight.”²⁵⁶ Russia cited the minority opinion, “[r]epeating the conclusion of the Russian side,” that “it was odd that Georgia, having referred to cases of racial discrimination allegedly committed by the Russian Federation since the early 1990s, had waited until armed conflict had broken out with Russian and South Ossetian forces to refer this dispute to the Court.”²⁵⁷ By taking its own arguments from the mouths of the dissenting judges, Russia managed to clothe its arguments with judicial authority. At the same time, it hedged its arguments. While it claimed to adhere to the I.C.J. decision Russia ended its speech ominously, warning of the danger that “international

250. *Id.*

251. *Id.* at ¶ 149.

252. Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ.), Judgment, 2011 I.C.J. REP. 70, ¶ 187 (Apr. 1).

253. U.N. GAOR, 64th Sess., 32nd plen. mtg. at 5–7, U.N. DOC. A/64/PV.32 (Oct. 30, 2009).

254. *Id.*

255. *Id.* at 5.

256. *Id.* at 7.

257. *Id.*

judicial proceedings will lose their purely legal nature and become forums for political manipulation under the pretext of international law.”²⁵⁸

In *Costa Rica v. Nicaragua*, the I.C.J. considered a border dispute between Costa Rica and Nicaragua over the San Juan River. Costa Rica complained that Nicaragua had occupied and constructed a canal in the disputed territory.²⁵⁹ On March 8, 2011, the I.C.J. indicated the following provisional measures: both parties should refrain from maintaining any personnel (civilian or military) in the disputed territory, except that Costa Rica may dispatch civilian personnel charged with the protection of the environment; the parties should refrain from any action which might aggravate or extend the dispute; and they should inform the Court as to compliance with the provisional measures.²⁶⁰ On November 22, 2013, in response to Costa Rica’s complaint that Nicaragua had commenced construction of two new canals in the disputed territory, the I.C.J. ordered further provisional measures: Nicaragua should refrain from dredging and other activities in the disputed territory; it should fill the trench it had dug already (and inform the Court as to compliance, providing photographic evidence); it should remove all personnel from the disputed territory; Costa Rica may take appropriate measures in relation to the two new channels so far as necessary to prevent irreparable environmental damage; and both parties should inform the Court as to compliance.²⁶¹

What is particularly interesting about this case is that Costa Rica did not refer to the provisional measures in its speeches at the report of the I.C.J. on October 26, 2011²⁶² and on October 30, 2014,²⁶³ but Nicaragua did. This is the opposite of what we would have expected, since Costa Rica was the applicant and Nicaragua the respondent. In 2011, Nicaragua’s delegate claimed that it had “faithfully abided by

258. *Id.* at 7.

259. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, 2010 I.C.J. 1–128 (Nov. 18).

260. *Id.* at ¶ 86.

261. *Id.*

262. U.N. GAOR, 66th Sess., 43rd plen. mtg. at 24–25, U.N. DOC. A/66/PV.43 (Oct. 26, 2011).

263. U.N. GAOR, 69th Sess., 34th plen. mtg. at 8–9, U.N. DOC. A/69/PV.34 (Oct. 30, 2014).

all the points in the ruling [on provisional measures] and [would] continue to do so.”²⁶⁴ In 2014, he did not mention the dispute with Costa Rica specifically, but made the general assertion that Nicaragua “has always faithfully fulfilled its international obligations” in the total of five cases currently before the Court to which it was a party.²⁶⁵ The absence of any mention of the provisional measures in the speeches of Costa Rica’s delegates can be explained by the formulaic character of their speeches; almost all of the delegate’s speech in 2014 was copied from the previous delegate’s speech at the same occasion in 2013.²⁶⁶

We have already mentioned the decision in *Ukraine v. Russian Federation*.²⁶⁷ At the report of the I.C.J. on October 25, 2018, Ukraine’s delegate pointed out that Russia did not comply with either of the I.C.J.’s substantive provisional measures—that Russia should lift its ban on the *Mejlis* and that it should ensure the availability of Ukrainian-language education.²⁶⁸ She accordingly called on “the entire international community to insist that Russia abide by international law, including the binding rulings of the International Court of Justice.”²⁶⁹ Faced with Ukraine’s accusations, Russia’s delegate stated that he “fe[lt] obliged to comment.”²⁷⁰ He criticized Ukraine for using this agenda item “not to evaluate the work of the Court during the reporting period but as propaganda for its position with regard to the proceedings against” Russia.²⁷¹ He also accused Ukraine of attempting to “impose its own understanding of the provisional measures.”²⁷² Both Ukraine and Russia made many of the

264. U.N. GAOR, 66th Sess., 43rd plen. mtg., *supra* note 262 at 24–25.

265. U.N. GAOR, 69th Sess., 34th plen. mtg., *supra* note 263 at 8–9.

266. U.N. GAOR, 68th Sess., 41st plen. mtg. at 18–19, U.N. DOC. A/68/PV.41 (Oct. 31, 2013).

267. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukr. v. Russ.*), Provisional Measures, Ord., 2017 I.C.J. Rep. 104, 140–41 (Apr. 19).

268. U.N. GAOR, 73rd Sess., 25th plen. mtg. at 8–9, U.N. DOC. A/73/PV.25 (Oct. 25, 2018).

269. *Id.* at 9.

270. *Id.* at 26.

271. *Id.*

272. *Id.*

same points on the same occasion the following year.²⁷³

The final case to consider in this section is *Qatar v. United Arab Emirates*. Qatar complained that, by measures dated June 5, 2017, the United Arab Emirates violated the C.E.R.D. by expelling all Qataris from its territory and prohibiting Qataris from entering the United Arab Emirates.²⁷⁴ On July 23, 2018, the I.C.J. ordered provisional measures, including that the United Arab Emirates ensure that families separated by the June 5 measures were reunited and that affected Qatari students be able to complete their education in the United Arab Emirates.²⁷⁵ Qatar highlighted the provisional measures in its speech at the report of the I.C.J. on October 25, 2018.²⁷⁶ It claimed that the decision “confirms [Qatar’s] determination to deal with the crisis, its effects on the maintenance of international peace and security[,] and its humanitarian consequences within the context of international law.”²⁷⁷ Without explicitly accusing the United Arab Emirates of non-compliance, Qatar’s delegate asserted that “[n]on-compliance with the Court’s decisions . . . undermines international efforts to maintain peace and security[,]” and that, under the San Francisco Conference which established the United Nations, non-compliance is “viewed . . . as a hostile act.”²⁷⁸ The United Arab Emirates in turn exercised its right to reply to what it referred to as “the decision by the International Court of Justice that requested both parties to refrain from any act that would exacerbate, perpetuate[,] or make their dispute more difficult to settle.”²⁷⁹ It claimed that the United Arab Emirates was “committed” to compliance with the provisional measures and had applied “humanitarian exceptions” to spare individual Qataris the consequences of the measures taken against Qatar.²⁸⁰ The provisional measures decision thus served as a means to force concessions from a State to bring its measures into compliance with international law.

273. U.N. GAOR, 74th Sess., 20th plen. mtg., *supra* note 247 at 8.

274. *Qatar v. U.A.E.*, Provisional Measures, 2018 I.C.J. REP. 406, ¶ 79.

275. *Id.*

276. U.N. GAOR, 73rd Sess., 25th plen. mtg., *supra* note 268, at 8–9.

277. *Id.*

278. *Id.*

279. *Id.* at 26.

280. *Id.*

IV. RECEPTION OF I.C.J. PROVISIONAL MEASURES IN THE HUMAN RIGHTS COUNCIL

The Assembly established the H.R.C. in 2006 and gave it the mandate of “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”²⁸¹ Among other things, the H.R.C. serves as a forum for dialogue on human rights.²⁸² It makes recommendations to the Assembly with regard to the promotion and protection of human rights; it undertakes a universal periodic review (U.P.R.) of the fulfilment by each State of its human rights obligations; and it submits an annual report to the Assembly.²⁸³

The impact of the I.C.J. provisional measures on H.R.C. discourse and functions is most apparent in the context of the U.P.R. The U.P.R. operates on a cycle of four to five years. It includes, *inter alia*, a national report prepared by the State under review, a compilation of United Nations information prepared by the Office of the United Nations High Commissioner for Human Rights (O.H.C.H.R.), and a report of the Working Group on the U.P.R., which includes a presentation by the State under review, recommendations of other States, and responses by the State under review.²⁸⁴ Provisional measures of the I.C.J. may be relevant at any of these stages. The combined availability of a national report, a presentation by the State under review, recommendations of other States, and an opportunity for the State under review to respond provide many chances for dialogue. Below we consider three cases which demonstrate this.

281. G.A. Res. 60/251, ¶ 2 (Apr. 3, 2006).

282. *Id.* at ¶ 12; U.N. GAOR, 66th Sess., 89th plen. mtg. at 24, U.N. DOC. A/66/PV.89 (Dec. 19, 2011).

283. G.A. Res. 60/215, *supra* note 281, at ¶ 3, 5(c), 5(e), 5(j). As to the impact of the H.R.C. on the work of the Assembly and Council, see U.N. GAOR, 66th Sess., 89th plen. mtg., *supra* note 282, at 24 (stating that the Assembly “enrich[es] the international human rights dialogue with their discussion”); Michael Ramsden & Tom Hamilton, *Uniting against Impunity: The U.N. General Assembly as a Catalyst for Action at the ICC*, 66 INT’L & COMP. L. Q. 893 (2017).

284. See generally *Basic Facts About the UPR*, U.N. H.R.C.: HRC BODIES: ABOUT THE UPR, <https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx> (last visited Mar. 26, 2022).

A. GEORGIA V. RUSSIAN FEDERATION

As will be recalled, in *Georgia v. Russian Federation*, the I.C.J. ordered provisional measures in relation to alleged racial discrimination by Russia against ethnic Georgians in Russian-occupied South Ossetia and Abkhazia.²⁸⁵ In the 2009 U.P.R. of Russia, Georgia submitted a recommendation that Russia “comply with the provisional measures prescribed by the International Court of Justice.”²⁸⁶ Russia responded that assertions about control by the Russian Federation over the territory of South Ossetia or the situation there do not correspond to reality[,] and therefore the issues raised do not fall under the jurisdiction of the Russian Federation.”²⁸⁷ Russia dismissed Georgia’s recommendation as irrelevant, for the somewhat vague reason that it “did not comply with the basis of the review stipulated in H.R.C. Resolution 5/1 ‘Institution-building of the United Nations Human Rights Council.’”²⁸⁸ The resolution Russia was referring to was the one that set out the basis of the U.P.R. Georgia in turn responded, in a *note verbale*, that Russia’s assertion was “inadequate, contradicting to the aims of H.R.C. and U.P.R., having the goal to justify and hide gross and systematic violations.”²⁸⁹ Since Russia had referred to the basis of the U.P.R. (which includes the U.N. Charter, the Universal Declaration of Human Rights, and other human rights instruments to which the State is a party), Georgia took the opportunity to argue point by point why Russian action in South Ossetia and Abkhazia involved violations of the U.N. Charter, the UDHR, and the C.E.R.D., citing the I.C.J. provisional measures as evidence of concerns in relation to the C.E.R.D.²⁹⁰

285. Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Geor. v. Russ.), Provisional Measures, 2008 I.C.J. REP. 353 (Oct. 15).

286. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Russ., U.N. Doc. A/H.R.C./11/19 (Oct. 5, 2009), at ¶¶ 80–81 [hereinafter Russia Report].

287. *Id.* at ¶ 77.

288. *Id.* at ¶ 86.

289. Permanent Mission of Georgia to the U.N., Note verbale dated March 3, 2009 from the Permanent Mission of Georgia to the United Nations Office and other international organizations at Geneva addressed to the Office of the High Commissioner for Human Rights, U.N. Doc. A/H.R.C./11/35 (Apr. 6, 2009).

290. *Id.*

Georgia also mentioned its application to the I.C.J. in its national report for its own U.P.R. in 2011.²⁹¹ In its compilation of U.N. information for Georgia's U.P.R., the O.H.C.H.R. also noted that the representative of the Secretary-General on the Human Rights of Internally Displaced Persons had reported that the I.C.J. ordered Georgia and "a third country" to take provisional measures relating to the C.E.R.D.²⁹² Notably, this report emphasized the I.C.J.'s provisional measure that "both parties shall facilitate, and refrain from placing any impediments to, humanitarian assistance in support of the rights to which the local population are entitled under [the C.E.R.D.]."²⁹³ In the interactive dialogue component of the U.P.R., Russia did not directly address the I.C.J. provisional measures, but again emphasized its view that South Ossetia and Abkhazia were independent States and "thus their human rights situation could not be discussed under the review of Georgia."²⁹⁴

B. UKRAINE V. RUSSIAN FEDERATION

The next case to consider is *Ukraine v. Russian Federation*.²⁹⁵ In Ukraine's presentation to the Working Group on the U.P.R. for Ukraine in 2018, Ukraine pledged to "continue using all of the measures available to ensure that the Russian Federation complied with the temporary measures ordered by the International Court of

291. Georgia, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Georgia, U.N. Doc. A/H.R.C./WG.6/10/GEO/1 (Nov. 8, 2010), at ¶ 142.

292. Office of the High Commissioner for Human Rights, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Georgia, U.N. Doc. A/H.R.C./WG.6/10/GEO/2 (Nov. 15, 2010), at ¶ 22.

293. U.N. Secretary-General, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Addendum: Mission to Georgia, U.N. Doc. A/H.R.C./10/13/Add.2 (Feb. 13, 2009), at ¶ 70.

294. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Georgia, U.N. Doc. A/H.R.C./17/11 (Mar. 16, 2011), at ¶ 32.

295. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. Rep. 104, 140–41 (Apr. 19).

Justice.”²⁹⁶ Russia did not respond specifically to the I.C.J. provisional measures, but it recommended that Ukraine “[a]dopt immediately all measures aimed at preventing discrimination and prosecution on ethnic or religious grounds,” thus implicitly counter-accusing Ukraine of racial discrimination.²⁹⁷

When it came to Russia’s U.P.R., Ukraine recommended that Russia should “[f]ully comply with the provisional measures order of April 19, 2017, of the International Court of Justice.”²⁹⁸ Russia, unsurprisingly, did not accept the recommendation.²⁹⁹ It did not respond specifically to the I.C.J. provisional measures, but it claimed generally that recommendations regarding human rights in South Ossetia and Abkhazia were “unacceptable as they did not comply with the principles of the universal periodic review, as set out in resolutions 5/1 and 16/21 of the Human Rights Council,” since those territories were “not part of the Russian Federation” and the “remark that those territories were under the ‘effective control’ of the Russian Federation was without basis.”³⁰⁰ The implicit assumption of the I.C.J. to the contrary, that Russia did appear to exercise control, thus did not force any concessions from Russia in relation to its conduct in South Ossetia and Abkhazia.

C. QATAR V. UNITED ARAB EMIRATES

Qatar mentioned the I.C.J. provisional measures in *Qatar v. United Arab Emirates* in the first paragraph of the “Challenges, Obstacles[,] and Future Vision” section of the national report for its 2019 U.P.R.³⁰¹ It portrayed its case before the I.C.J. as an effort to promote

296. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ukraine, U.N. Doc. A/H.R.C./37/16 (Jan. 3, 2018), at ¶ 7.

297. *Id.*

298. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Russia, U.N. Doc. A/H.R.C./39/13 (June 12, 2018), at ¶ 81.

299. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Russian Federation: Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, U.N. Doc. A/H.R.C./39/13/Add.1 (Sep. 3, 2018), at ¶ 9.

300. Russia Report, *supra* note 286, at ¶ 135.

301. Qatar, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Qatar, U.N. Doc. A/H.R.C./WG.6/33/QAT/1 (Mar. 1, 2019), at ¶ 89.

international law (the C.E.R.D. in particular) and protect human rights.³⁰² Qatar also mentioned how it supplemented its case before the I.C.J. with complaints to other international human rights bodies: “Qatar has submitted a complaint against both Saudi Arabia and the United Arab Emirates before the Committee on the Elimination of Racial Discrimination and it has submitted communications to nine special procedures mandate holders of the Human Rights Council.”³⁰³ Qatar also drew attention to the I.C.J. provisional measures at the presentation to the Working Group on the U.P.R.³⁰⁴

What is more interesting is how the United Arab Emirates attempted to use Qatar’s U.P.R. to support the United Arab Emirates’ position in the I.C.J. The United Arab Emirates submitted a number of recommendations to the Working Group, and in particular, it asked Qatar to “[a]mend Decree-Law 17 of 2010 regarding the establishment of the National Human Rights Committee to ensure that it is in compliance with the . . . Paris Principles,” to “[c]ease to instrumentalise the National Human Rights Committee in carrying activities for political ends,” and to “request the Committee to refrain from implementing government programmes in contradiction with the Paris Principles.”³⁰⁵ As per standard practice, the troika of States responsible for Qatar’s U.P.R. report amended the report to include the recommendations of the United Arab Emirates.³⁰⁶ What is remarkable is that the United Arab Emirates then wrote to the I.C.J. Registrar to claim the announcement of those amendments as “new . . . evidence” relevant to the United Arab Emirates’ request for provisional measures against Qatar, failing to mention that those amendments had in fact been submitted by the United Arab Emirates itself.³⁰⁷ Qatar objected to the submission of the item as evidence, and

302. *Id.*

303. *Id.*

304. Report of the Working Group on the Universal Periodic Review: Qatar (July 11, 2019) U.N. Doc A/H.R.C./42/15, §14.

305. *Id.*

306. Qatar v. U.A.E., Provisional Measures, 2018 I.C.J. REP. 406.

307. U.N. Human Rights Council, Letter dated 26 September 2019 from the Permanent Representative of Qatar to the United Nations Office at Geneva addressed to the President of the Human Rights Council, U.N. Doc. A/H.R.C./42/G/4, Annex II (Nov. 5, 2019).

the I.C.J. agreed that the evidence was “not material” to its decision.³⁰⁸ Qatar then wrote to the H.R.C. President, accusing the United Arab Emirates of attempting to “mislead” the I.C.J. and requesting that the President “draw the attention of the United Arab Emirates to the gravity of its misconduct, and request the State to avoid such inappropriate action in the future.”³⁰⁹

Aside from the U.P.R., Qatar’s case illustrates another way in which I.C.J. provisional measures can have an impact on H.R.C. activities. In the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance, she “strongly urges all parties to [the I.C.J.] proceedings to respect their obligations under international human rights law and to abide by the findings of . . . the International Court of Justice.”³¹⁰ Qatar’s own comments on that report declared that “[t]he Special Rapporteur and the international community is by now fully aware of the record of the violations of human rights to which the citizens of Qatar have been subject on account of their nationality, thanks to many reports issued and the decisions of the International Court of Justice.”³¹¹ This case suggests that the decisions of the I.C.J. support the H.R.C.’s activities—both in terms of fact finding and by providing legal and moral support to the H.R.C.’s exhortations.

V. CONCLUSION

The increased use of the I.C.J. for obtaining interim measures has led to growing scholarly reflection on the effectiveness of these measures. This scholarship has, however, remained at a relatively abstract level of identifying general possible sources of impact. This

308. Qatar v. U.A.E., Provisional Measures, 2018 I.C.J. REP. 406, ¶ 14.

309. Permanent Representative of Qatar to the U.N., Letter dated 26 September 2019 from the Permanent Representative of Qatar to the United Nations Office at Geneva addressed to the President of the Human Rights Council, U.N. Doc. A/H.R.C./42/G/4 (Nov. 5, 2019).

310. U.N. Human Rights Council, Visit to Qatar: Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, U.N. Doc. A/H.R.C./44/57/Add.1 (Apr. 27, 2020), at ¶ 5.

311. U.N. Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on her visit to Qatar: Comments by the State, U.N. Doc. A/H.R.C./44/57/Add.3, at 3 (June 29, 2020).

article has sought to go the extra step by considering how much I.C.J. provisional measures have influenced interactions and the exercise of functions within the U.N. principal political organs, the Assembly and Council, as well as the H.R.C., in attaining the objectives set out in the U.N. Charter.

The evidence presented above does establish the capacity for provisional measures dealing with international peace and security, and human rights, to inform activity within the U.N. political organs. In providing a preliminary judicial determination on a given state of affairs, such decisions serve a valuable purpose in providing the political organs with information to guide Member dialogue and support their recommendations or action. This evidence is particularly valuable in cases where there has been a lack of prior judicial determinations. The decisions also provide a framework for monitoring ongoing State compliance, although, admittedly, the political organs have not always consistently performed such monitoring function. Raising provisional measures decisions in the political organs also inflicts reputational costs on offending States, or, at the least, places a burden of justification upon them. This additional burden has led to discussion in these political organs on the measures that States are taking to bring their conduct into compliance with the interim orders.

At the same time, the evidence reviewed in this article shows a general lack of consistency of approach by the political organs in how they incorporate I.C.J. provisional measures into their response framework. One reason for this inconsistency might be because of the implication of the interests of permanent members of the Council (or their client States) in the provisional measures decision, thereby leading to the vetoes or watered-down resolutions that avoid contentious elements addressed by the I.C.J. Relatedly, the reception of provisional measures decisions in the political organs also have to be considered in light of the sometimes conflicting imperatives of crisis management within the political organs, where there might be a preference for resolutions to be drafted with strategic ambiguity so as to avoid alienating a party to a conflict, thereby ensuring their engagement. At the same time, there might be blind spots or a general lack of political will in the political organs to act upon a situation, with a preference to regard provisional measures implementation as a

matter of primary concern for the I.C.J. rather than the political organs.

The selective engagement of provisional measures decisions by the political organs in turn raises issues concerning ways to better establish dialogue between the I.C.J. and political organs within the U.N. system. It is not possible to explore the possibilities in detail here, although there are some options that can be borrowed from other campaigns for more consistent U.N. action in response to situations that undermine human rights and international peace. One proposal has envisaged a role for the Assembly to certify that a crisis poses an imminent threat of mass atrocity as a basis for the veto to be suspended in that situation.³¹² However, there are limits to the Assembly performing this function absent independent fact-finding: the certification of mass atrocity might be underpinned by the I.C.J.'s preliminary determinations on a situation (that is, where the Court has jurisdiction over such situation). Similarly, another proposal might be for an I.C.J. determination of preliminary measures to automatically trigger a special session of the Assembly or Council to consider ways of ensuring State compliance with these orders. The I.C.J. itself has adapted its working methods to provide greater monitoring of provisional measures decisions through the creation of an *ad hoc* committee comprising three judges to monitor implementation.³¹³ In a similar manner, as Members continue to consider ways to strengthen the functions of the political organs in the maintenance of international peace and security, and the advancement of human rights, an operational commitment to monitor I.C.J. provisional measures would provide an important means to support the attainment of these dual institutional objectives.

312. See JENNIFER TRAHAN, EXISTING LEGAL LIMITS TO VETO POWERS IN THE FACE OF ATROCITY CRIMES 133 (2020).

313. Resolution Concerning the Internal Judicial Practice of the Court art. 11, Apr. 12, 1976.