

# The ICJ and the Winter Holidays

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*As the mood of winter holidays has found its way in different parts of the world by now, readers interested in international law might curiously wonder what is happening during this time of the year at the International Court of Justice (the 'ICJ' or 'the Court'). Sitting in The Hague, the Court is the principal judicial organ of the United Nations and, in the words of its Statute, represents the main forms of civilization and the principal legal systems of the world. To answer our questions, we have invited Mr. Emmanuel Giakoumakis, Associate Legal Officer (référéndaire) to the former President of the Court, H.E. Judge Abdulqawi A. Yusuf, to give us some insights into the function of the Court during the holiday season. The views expressed in this article are personal and do not necessarily reflect those of the International Court of Justice.*

**Emmanuel, many thanks for accepting our invitation to participate in the 'Critical Christmas Week' at *Völkerrechtsblog*! As the year draws to an end, we have been wondering whether the Court is in session during this time of the year?**

Thank you very much for your very kind invitation, the pleasure is all mine!

To answer your question — as a permanent judicial body, the Court is in session throughout the year, even though it may designate certain days as judicial vacations or public holidays for the Judges and the staff of the Registry. Article 23(1) of the [Statute](#) states that the Court 'shall remain permanently in session, *except during the judicial vacations*, the dates and duration of which shall be fixed by the Court.' As a consequence of its increased workload over the past years, the Court normally meets throughout the year, except for mid-summer and the turn of the year ([A/C.5/53/11](#), para. 59).

Article 23(1) of the Statute is complemented by Article 20(4) and (5) of the [Rules of Court](#), which state that 'the Court shall observe the public holidays customary at the place where the Court is sitting'. In addition, Article 7(2) of the [Staff Regulations for the Registry](#) (which echoes Article 8(2) of the original [PCIJ Staff Regulations](#)) provides that '[t]he Registry shall normally observe public holidays in the Netherlands.' Consequently, the Court normally observes the public holidays which are [customary](#) in the Netherlands, and the Registry is closed on Christmas Day, Boxing Day and New Year's Day. In addition, the Court 'has the freedom to establish its schedule so as to ensure that no meetings or sittings are convened on other dates, and that other major religious, United Nations, or other holidays, are observed.' ([Ollivier](#), 519)

## What does that mean in practical terms? Does the Court remain available during holidays or judicial vacation?

Of course, the fact that the Court may not be ‘in session’ during such holidays does not mean that the Court is inactive during that time of the year. The Judges and Registry staff continue working on cases and related matters depending on the requirements of its schedule. In some cases, the Court has rendered its judgments on the [20th](#) or the [21st of December](#). In the *Corfu Channel* case, the three experts were [requested](#) to prepare (and ultimately [filed](#)) their expert report on certain questions on the merits between 17 December 1948 and 10 January 1949.

Besides, the Court continues to receive various communications from the parties at the end-of-year period, such as letters or pleadings. For example, the introductory application in *Ahmadou Sadio Diallo* was filed on [28 December 1998](#); the time-limit for the filing by Germany of the Counter-Memorial in *Certain Property* was [fixed](#) on the 27th of December 2002, whereas the Rejoinder in *Maritime Delimitation in the Indian Ocean* was [filed](#) on 18 December 2018.

In any event, it should be borne in mind that Article 20(4)-(5) of the Rules of Court refers to the status of the Court’s General List and the requirements of its current work as the overarching considerations when determining judicial vacations or holidays. It is therefore possible to contemplate circumstances that may warrant immediate action from the Court even during this time of the year — as it happened in the provisional measures phase in the *Sino-Belgian Treaty*. Article 20(6) of the Rules confirms that, ‘[i]n case of urgency the President may convene the Court at any time.’

That is especially the case for requests for the indication of provisional measures to prevent irreparable prejudice to certain rights *pendente lite*. Even though in some cases the Court will allow for a few weeks until the date of the opening of the oral proceedings, in some cases of utmost urgency the Court may be required to act within a few days (cf. the cases concerning the execution of sentences in *Jadhav* and *Breard*), if not within a few hours. Such was also the case of *LaGrand*, where the Court acted *proprio motu* just a few hours before the execution of Mr. LaGrand, without holding prior hearings.

In such exceptional circumstances, the interests of the Court’s schedule will prevail over public holidays or judicial vacations. For example, in the case of *Burkina Faso/ Mali* grave hostilities were reported on the 25<sup>th</sup> of December 1985 between the armed forces of the parties in the border region, which ended with the conclusion of a [ceasefire agreement](#) between the two Heads of State on the 28<sup>th</sup> and 31<sup>st</sup> of December 1985. The Court subsequently received two requests for the indication of provisional measures by the parties on [30 December 1985](#) and [7 January 1986](#), respectively. The documents were immediately communicated to the other party.

The Chamber [held](#) oral hearings on the 9<sup>th</sup> of January 1986 and issued an [Order](#) the following day, indicating that the parties should ensure the non-aggravation of their dispute and observe the ceasefire agreement of 31 December 1985.

## Is there a history behind the current practice of the Court?

Historically, both the ICJ and its predecessor, the Permanent Court of International Justice ('PCIJ'), have taken different approaches to the organisation of judicial work around the turn of the year. The underlying history is quite interesting as it shows the different dynamics at play between geographical representation, the permanent character of the Court, and the equality of Judges from different regions of the world.

Originally, [Article 23\(1\) and \(2\) of the PCIJ Statute](#) organised the judicial work of the PCIJ around 'ordinary sessions' that started on the 15th of June each year and lasted for as long as it was required for the treatment of cases and advisory opinions. The Advisory Committee of Jurists — the body entrusted by the League of Nations with the task of preparing a draft Statute for the PCIJ — chose that date on the understanding that 'the national life of the various countries [except in South America] was less active between the 15th June and the 15th October than in the winter' and this would enable Judges to work from their home countries when the Court was not in session ([Procès-verbal](#), 187). This, however, did not prevent the PCIJ from convoking extraordinary sessions at different times of the year, including during winter. For instance, the PCIJ convened extraordinary sessions to deal with the *Nationality Decrees Issued in Tunis and Morocco* (hearings [held](#) from 8 to 13 January 1923) and the *Mavrommatis* case (hearings [held](#) in early February 1925).

Nevertheless, the distinction between ordinary and extraordinary sessions quickly gave rise to practical difficulties and criticisms ([Ollivier](#), 510-512). In particular, it was [observed](#) that the composition of the Bench varied considerably depending on the time of the year: the 'ordinary' Judges would sit during the ordinary sessions held in the summer, whereas the Deputy-Judges would substitute ordinary Judges from overseas countries at the extraordinary sessions in the winter, due to the difficulties of travel at the time. It may be recalled that in the 1920s airplane was not as widespread a means of transport as it is today. This tended 'to give the Europeans a privileged position' during wintertime, given that the Deputy-Judges were expected to reside within a sufficiently short radius from The Hague ([Committee of Jurists, 1929 Minutes](#), 111).

To remedy this situation, the Committee of Jurists proposed 'a real international judicial year' for the functioning of the Court. Under the proposed arrangement, the PCIJ would 'remain constantly in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.' (*ibid*, 113).

At the Conference of the Parties regarding the revision of the PCIJ Statute, a discussion ensued about the desirability of having fixed judicial holidays stipulated in the Statute — rather than being fixed by the Court from year to year. The Chinese delegate [explained](#) that for countries like China that were very distant from The Hague, 'it was very important sometimes to know exactly when the Court would be in session and when it would be on vacation'. The Greek delegate, however, [replied](#) that the Court should be allowed some freedom in fixing its judicial vacations, taking into account the increasing volume of workload. He explained that '[i]f at the present time the Court were able to accord itself a fairly long vacation either in the summer or at Christmas or Easter, a few years hence it might have so much work to do that

it would be obliged to shorten its vacations'. Ultimately, the latter argument prevailed and Article 23 of the PCIJ Statute was revised along lines similar to the current text of Article 23 of the ICJ Statute.

Following the entry into force of the Revision Protocol in 1936, the PCIJ amended its Rules to re-organise its judicial year in light of the revised Statute. A new provision was inserted in the 1936 Rules, whereby the Court would observe the 'public holidays which are customary at the place where [it] is sitting'. After consultations, the Judges [decided](#), by five votes to four (with one abstention), that Christmas vacations would begin on the 18th of December until January 7th of the next year. These provisions were subsequently included in the 1946 Rules of the ICJ. Until 1978, the Rules of Court expressly referred to the fixed periods of vacations. This was omitted in the 1978 Rules. On some occasions, however, the Court has published its judicial vacations via a [press release](#). This year, the Court has [published](#) on its website the official holidays for 2021-2022, which include the 24th, 27th and 28th December 2021, as well as the 3rd of January 2022. So, you can see how different considerations come to bear when deciding issues of this nature.

### **Does the Court take an account of the previous year at the end of the year?**

Well, the fact that the Court is 'permanently in session' means that the Court's schedule is usually dependent upon factors other than the chronological limits of the calendar year ([Ollivier](#), 515). For example, in line with the tradition of the PCIJ, the Court prepares yearbooks and annual reports that cover the period from 1 August to 31 July of the following year, in order to distribute the report in sufficient time before the annual session of the Assembly. It is normally in the annual address before the Assembly that the President of the Court provides an account of what happened in the previous twelve months, rather than at the end of the calendar year.

### **Is there any tradition that the Court follows before or after the start of each year?**

I think that end-of-year traditions differ depending on the cultural, religious, and national background of the Judges and the members of staff who come from everywhere around the world. Perhaps a notable tradition is the decoration of a Christmas tree in front of the Peace Palace, not by the Court but by the [Carnegie Foundation](#), the institution that owns and manages the Peace Palace. I am told (with many thanks to Mr. Mark van IJzendoorn, Assistant Coordinator in Garden Management at the Carnegie Foundation) that this year's tree, which is 12 meters high, was brought from the Ardennes in Belgium and decorates the entrance of the Peace Palace. It is quite impressive.

### **Thank you so much for taking the time to respond to our questions!**

You are most welcome, and my best wishes for a joyful holiday season and a happy New Year!

