The International Court of Justice and the Parties: A Statistical Overview

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Most of the time when someone thinks about the International Court of Justice ('ICJ' or 'Court'), one is either thinking about a specific case or a specific country, and even if one is reflecting about the Court in itself as the principal judicial body of the United Nations, one does not have in mind the one hundred and fifty-one contentious cases that have been brought before the Court, or the one hundred and one countries that have been a party to one or more of those proceedings.

It is my opinion that a statistical overview of the cases of the ICJ has many benefits, not only for public international lawyers and scholars in this field, but also for professionals in other related social sciences, such as political science. Ultimately, the purpose of statistics is to provide data that enables an effective conduction of research of any kind, and, in this regard, what is better than going back to the fundamental, the basic, and to do so on the occasion of the 74th anniversary of the Court.

As stated by the creative coach Phil Svitek;

> In every discipline there is a starting position. The thing or things you should learn first. In learning these, you can then advance to the next, more difficult part of that discipline. It's like climbing stairs. You take one by one from the bottom until you get to the top. A lot of this is so plain and simple and yet everyday people try to skip sections or whole parts entirely. They are too impatient. Learning the fundamentals seems boring and wasteful of their time. They want to be masters right away. Nothing in life works this way.[2]

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[2] Phil Svitek, Going Back to Basics, available at https://philsvitek.com/going-back-to-the-basics/

Indeed, in every discipline there is a starting position, and in international litigation that position belongs to the actors involved in international litigation. With this in mind, I have prepared a modest and short paper which provides preliminary statistics on the countries that have been involved in the cases before the Court, with an emphasis on those that have appeared the most, either as an applicant, respondent or intervener ('litigants').

Contrary to the traditional legal paper, this short contribution does not provide a legal analysis of the cases that have been brought before the Court, but constitutes a first step in what should become a more complete and complex data-driven analysis of the cases and the litigants. My aim is to stimulate the reader to reflect about the role of the Court, its case law, the States and the main actors involved in the proceedings. The tables and graphics included in this paper provide an outline of the litigants in general and of those that have been more active before the ICJ.

At the end of this paper, I identify a number of important questions that could be explored further on the basis of the data presented herein. In addition, the database provided by new technological tools such as *Jus Mundi,* provides a valuable and indispensable source that enables anyone with an interest on the topic to deepen their analysis and to conduct the necessary legal research efficiently. I do hope that this will happen, since subsequent studies are not only desirable, but necessary, in order to find fresh and innovative approaches and answers on this topic. The answers to the questions included at the end of this paper would contribute greatly to a better understanding of international litigation and the role of the countries involved in each proceeding.

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A recent study on country-specific engagements with the ICJ has provided initial data on the active role of six countries before the Court; *i.e.* Australia, France, the United Kingdom ('UK'), Nicaragua, Russia and the United States of America ('USA'). The authors of this study chose these countries partially because of their extensive engagement in ICJ processes,[3] with the exception of Australia, which was included 'because it forms part of [their] larger study', and Russia, which was included because it is a permanent member of the United Nations Security

[3] Margaret A. Young, Emma N. and H. Charlesworth, Studying Country-Specific Engagements with the International Court of Justice, Journal of International Dispute Settlement (2019), p.584 (Margaret A. Young et al (2019)).

Council'[4]. Certainly, the UK, the USA, France and Nicaragua have been the most active litigants in the history of the ICJ. However, before we jump to this conclusion, it is important to provide a more general overview of the list of cases and to identify other relevant litigants, or in other words, to go back to basics.

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According to my calculations, since the *Corfu Channel* case and up to the date of writing, the Court has been seized on one hundred and fifty additional occasions, for a total of one hundred and fifty-one contentious cases. In terms of countries, one hundred and one countries have been involved in one, or more, of the contentious cases included in the General List of the Court[5]. The list of the litigants is as follows:

Table 1.

Albania	Denmark	Libyan Arab Jamahiriya
Argentina	Djibouti	Liechtenstein
Australia	Ecuador	Malaysia
Bahrain	Egypt	Mali
Belgium	El Salvador	Malta
Belize	Equatorial Guinea	Marshall Islands
Benin	Ethiopia	Mexico
Bolivia	Finland	Myanmar
Bosnia Herzegovina	France	Namibia
Botswana	Georgia	Nauru
Brazil	Germany	Netherlands
Bulgaria	Greece	New Zealand
Burkina Faso	Guatemala	Nicaragua
Burundi	Guinea	Niger
Cambodia	Guinea-Bissau	Nigeria
Cameroon	Guyana	North Macedonia
Canada	Honduras	Norway
Chad	Hungary	Pakistan
Chile	Iceland	Palestine
Colombia	India	Paraguay
Commonwealth of Dominica	Indonesia	Peru
Costa Rica	Iran	Portugal
Croatia	Israel	Qatar
Czechoslovakia	Italy	Romania
Democratic Republic of the Congo	Japan	Russia Federation
	Kenya	Rwanda
	Lebanon	Saudi Arabia
	Liberia	Senegal

[4] *Ibid.*

[5] The data presented in this paper has a margin of error of plus/minus 3% or 4% at a 96% confidence level.

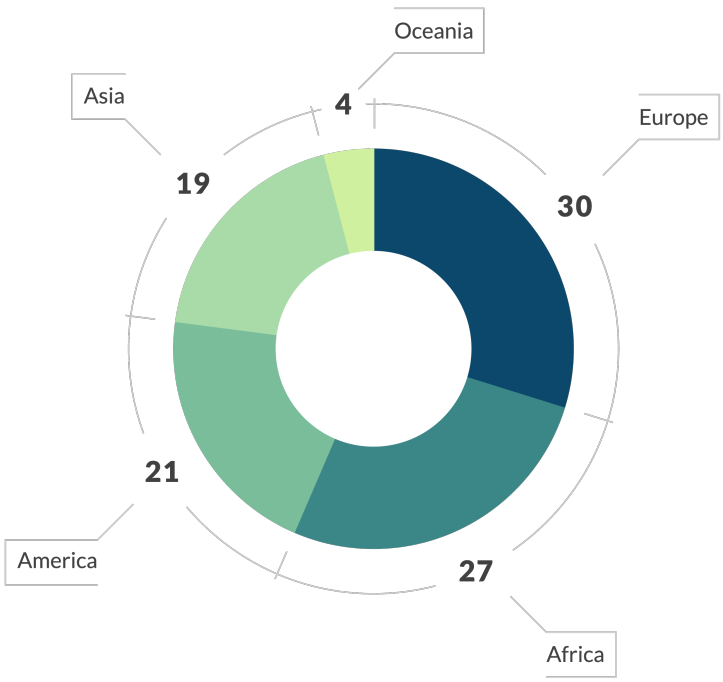
Serbia	Thailand	United Arab Emirates
Singapore	The Gambia	United Kingdom
Slovakia	Timor-Leste	United States of America
Somalia	Tunisia	Uruguay
South Africa	Turkey	Venezuela
Spain	Uganda	
Sweden	Ukraine	
Switzerland		

The total number of countries is one hundred and one. Table 2 and Chart 1, below, organize each of the countries under their respective regions and provide a simplified account of the occasions in which they have been litigants before the ICJ.

Table 2.

Region	Number of Countries
Europe	**30**
Africa	**27**
America	**21**
Asia	**19**
Oceania	**4**
Total	**101**

Chart 1.



This data does not provide ground-breaking information, but summarizes the available data and confirms what is already well-known, *i.e.* the ICJ is indeed a World Court that has decided,

in accordance with international law, legal disputes between countries coming from all the corners of planet Earth. This corroborates that the ICJ has been used as a successful means to solve international legal disputes, and reflects the sovereign decision of the countries to bring their dispute before the Court. If anything, this expresses the trust that has been shown by the international community to the Court as the principal judicial organ of the United Nations.[6]

Additionally, the data demonstrates that since the establishment of the Court, the growth of the number of cases has been constant, if not exponential[7]. After analysing the data in more detail, it becomes evident that the proceedings involve not only neighbouring countries, but transcend geographical proximity[8]. One can also conclude that the merits of the cases have become more diverse over time, including, *inter alia*, cases concerning maritime and territorial delimitation, treaty interpretation, international environmental law, immunities, state responsibility, use of force, territorial and insular claims, genocide, and so on. Demonstrating once again, that the ICJ is the leading standing forum with a general competence for inter-state disputes involving issues of international law.

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The second step of the analysis is intended to identify the countries that have been litigants in a considerable majority of the total number of the cases that have been entered in the General List of Cases.[9] According to the data, out of the one hundred and one countries identified in Table 1, the USA, the UK, France, Nicaragua, Germany, Belgium, Colombia and the Democratic Republic of the Congo have appeared before the Court on 95 occasions[10].

Table 3.

Country	Number of cases
United States of America	25
The United Kingdom	14
France	14
Nicaragua	14
Germany	7
Belgium	7
Colombia	7
Democratic Republic of the Congo	7

[6] This is without prejudice to other permanent international courts and tribunals, such as the International Tribunal for the Law of Sea ('ITLOS').

[7] For more details on the cases and the dates of the Applications see the Handbook of the International Court of Justice available at https://www.icj-cij.org/files/publications/handbook-of-the-court-en.pdf

[8] One clear example is the recent case filed by The Gambia against Myanmar. One can also refer to landmark cases such as *LaGrand* case, filed by Germany against the United States of America.

[9] The full list is available at https://www.icj-cij.org/en/cases

[10] The list of countries does not include Serbia and Montenegro but takes into account the Legality of Use of Force cases when one of the eight countries listed here was one of the parties.

In order to avoid duplicity in numbers, I have cross-checked the cases, and if two or more of these eight countries have been involved in the same proceedings, I counted them as a single unit. The final result is eighty-four cases out of a total of one hundred and fifty-one, since ten of the ninety-five cases involved two, or more, of the eight countries indicated above. This alone represents 55.62 % of the total number of the cases that have been submitted to the Court since 1947. The selection of this sample is by no means in detriment of the wider list of litigants. However, due to the fact that these eight countries have been litigants in over 50% of the total cases, their role in international litigation before the ICJ is particularly relevant in statistical terms.

Other countries that have also been predominantly active, with up to six cases before the Court, are: Costa Rica, Iran, Libya, India and Honduras. I have not included these countries in the second step of the analysis because most of their cases have been against one of the countries already listed in Table 3. For example, all of Costa Rica's cases have been against Nicaragua; almost the same applies for the cases involving Honduras, four out of six involved Nicaragua; five of the Iranian cases involved the USA and one the UK; in the case of Libya, one involved the USA and one the UK, the other four cases involved Tunisia, Malta and Chad, with one Request for a Revision and Interpretation of a previous judgment. Perhaps one exception that deserves emphasis is India. India has been involved in six cases, four of them with Pakistan[11], one instituted by Portugal against it[12], and another one instituted by the Marshall Island against it[13].

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The third step of the analysis leads to the conclusion that the USA, the UK, France and Nicaragua are the countries that have been involved in most proceedings in the history of the ICJ. These four countries together have been litigants in sixty-seven cases[14]. After cross-

[11] Appeal relation to the Jurisdiction of the ICAO Council (India v. Pakistan) 1971-1972; Trial of Pakistani Prisoners of War (Pakistan v. India) 1973; Aerial Incident of 10 August 1999 (Pakistan v. India)1999-2000; Jadhav (India v. Pakistan) 2017-2019.

[12] Right of Passage over Indian Territory (Portugal v. India) 1955-1960.

[13] Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India) 2014-2016.

[14] The following cases were discontinued by France; Protection of French Nationals and Protected Persons in Egypt (France v. Egypt), Electricité de Beyrouth Company (France v. Lebanon) and Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon). The following cases were discontinued by the United States of America; Aerial Incident of 27 July 1955 (United States of America v. Bulgaria), and United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran).It is also important to note that the Court found that it did not have jurisdiction to deal with the six Aerial incident cases filed by the United States of America during the early years of the Court, and as such these cases were eventually

checking the cases, the final number is sixty-two out of one hundred and fifty-one cases. This reduction of the number corresponds to the fact that three cases involved two of the countries and one involved three[15].

In percentage terms, sixty-two cases constitute 41.05 % of the total number of the cases that have been submitted to the Court. Clearly, this percentage is significant, which to a certain extent could explain the particular expertise of the nationals of these countries in this field and their involvement with the ICJ in different capacities, such as Judges or Counsels.[16] The case law generated by these proceedings have contributed greatly to the development and clarification of 'a whole range of important procedural, jurisdictional and substantive legal issues'[17], which at the same time 'have inspired the jurisprudence of international and regional courts and tribunals and influenced the development of international law'.[18] These four countries have used, at certain point in time, a government's legal policy through which they have decided to entrust their legal conflicts with other countries to the ICJ. The use of a foreign legal policy by Governments is not unusual, to the contrary, it is normal for a State to use and rely on international law in dealing with their conflicts with other states, not only for the purposes of international litigation, but also for negotiation, mediation, conciliation and any other lawful means that fit their purposes. However, what is remarkable is their extensive use of the legitimate litigation path over other means available to peacefully resolve their legal disputes. This is a not a source of regret, on the contrary, one should celebrate the use of law as a mean to resolve dispute, rather than economic or political power interest to prevail.[19] As has been acknowledged by scholars, 'the various forms of settlement procedure […] are

removed them from the List. The following cases were discontinued by Nicaragua; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Border and Transborder Armed Actions (Nicaragua v. Costa Rica) and Border and Transborder Armed Actions (Nicaragua v. Honduras).

[15] Rights of Nationals of the United States of America in Morocco (France v. United States of America); Minquiers and Ecrehos (France/United Kingdom); Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America); Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

[16] Nicaragua is an exception among the list of four. Contrary to the USA, UK and France, no Nicaraguan citizen has served as a permanent Judge of the ICJ or Judge *ad hoc*. Similarly, nationals from Nicaragua have acted scarcely as advocates or counsel in proceedings before the Court, and very little scholarly literature has been published by Nicaraguan nationals. After a quick search in the Peace Palace Library, one can hardly find publications by Nicaraguan authors, among which those published by the author of this paper, Dr. Mauricio Herdocia Sacasa and Dr. Carlos Argüello G. stand out.

[17] E. Sobenes & B. Samson, Nicaragua Before the International Court of Justice (2018), back cover of the book (E. Sobenes & B. Samson (2018)).

[18] *Ibid.*

[19] Natalie Klein, Who litigates and Why, (2013) p.5, in Romano et al, The Oxford Handbook of International Adjudication 2014.

alternatives, from which the parties involved choose the procedure most likely to yield a satisfactory result'.[20]

To better understand the role of these countries, and their uses of the Court, it is necessary to differentiate between those cases in which they have been the Applicant and those in which they have been the Respondent. It has been suggested that 'with the exception of Nicaragua, the typical litigants before the ICJ are Northern and Western States, the top three being the US, the UK and France'[21]. Nonetheless, this data should be approached with caution. As reflected in Chart 2 and Chart 3, the US, the UK and France were the typical litigant during the first decades of the ICJ, at least as Applicants. Since the 1980's, their participation as Applicants in proceedings have dropped to nearly zero. Nicaragua's participation as a litigant, while being equal in numerical terms to that of the UK and France, differentiates in the sense that its more active participation as Applicant occurred between 1999 and 2013.

One explanation for this is that, as has been suggested by scholars and recurrent counsels, after the judgments in the Nicaragua v. United States case[22] and the Frontier Dispute between Burkina Faso and Mali case[23], some western European countries, and the United States, felt less comfortable in bringing their disputes before the Court as they did in earlier years[24]. As has been expressed before, the judgments in Nicaragua v. USA and the Frontier Dispute cases demonstrated that the Court was not an 'irresponsible' judicial body[25] relying on excuses to evade its responsibilities[26] or systematically taking the side of the strongest. This operated as a catalyst for many countries, including Nicaragua, to view the Court as an appropriate forum to solve their international legal disputes, with an opposite effect in those that were considered to be the earlier *typical litigants*.

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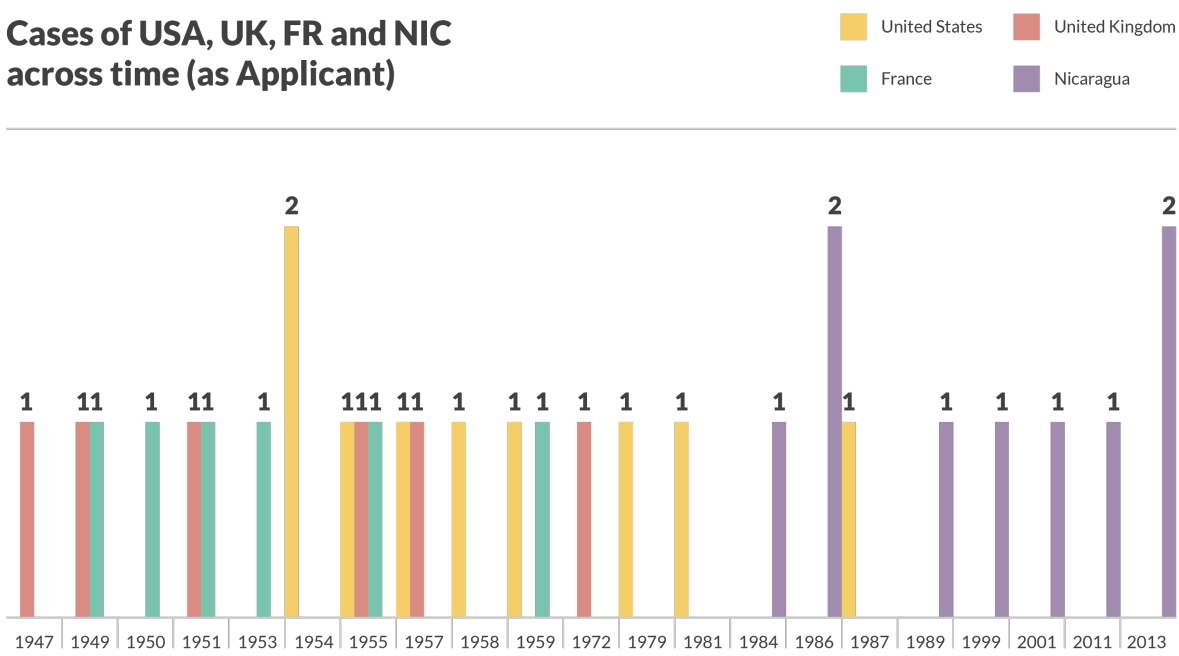
[20] J. Collier & V. Lowe, The Settlement of Disputes in international Law, Institutions and Procedures (1999), p.8.
[21] Margaret A. Young at al (2019), p.584.
[22] Nicaragua v. United States, Preliminary Objections, Judgment, ICJ Reports 1984, p. 392 (hereinafter 'Nicaragua v. United States (Jurisdiction)') and Merits, Judgment, ICJ Reports 1986, p. 14 (hereinafter 'Nicaragua v. United States (Merits)').
[23] Frontier Dispute, Judgment, ICJ Reports 1986, p. 554.
[24] LF Damrosch, The Impact of the Nicaragua case on the court and its role: harmful, helpful, or in between?, LJIL 25, 135-147 (2012), p. 142. See also A. Pellet, Introduction from the Podium (2018), in E. Sobenes & B. Samson (2018).
[25] Declaration of the Representative of Nigeria, General Assembly, 21st session, A/PV.14294 October 1966, paras 11–12.
[26] The President of Madagascar, Philibert Tsiranana, declared that the South West Africa Judgment used a 'grossier faux-fuyant permettant a la Cour d'e´chapper a ses responsabilites' ['a coarse red herring enabling the Court to escape its responsibilities'] (AFP, Bulletin d'Afrique, 22 July 1966).

Table 4.[27]

Country	Number of cases as Applicant	Number of cases as a Respondent	Number of cases as an Intervener
United States of America	10	15	
United Kingdom	8	6	
France	6	8	
Nicaragua	8	5	1

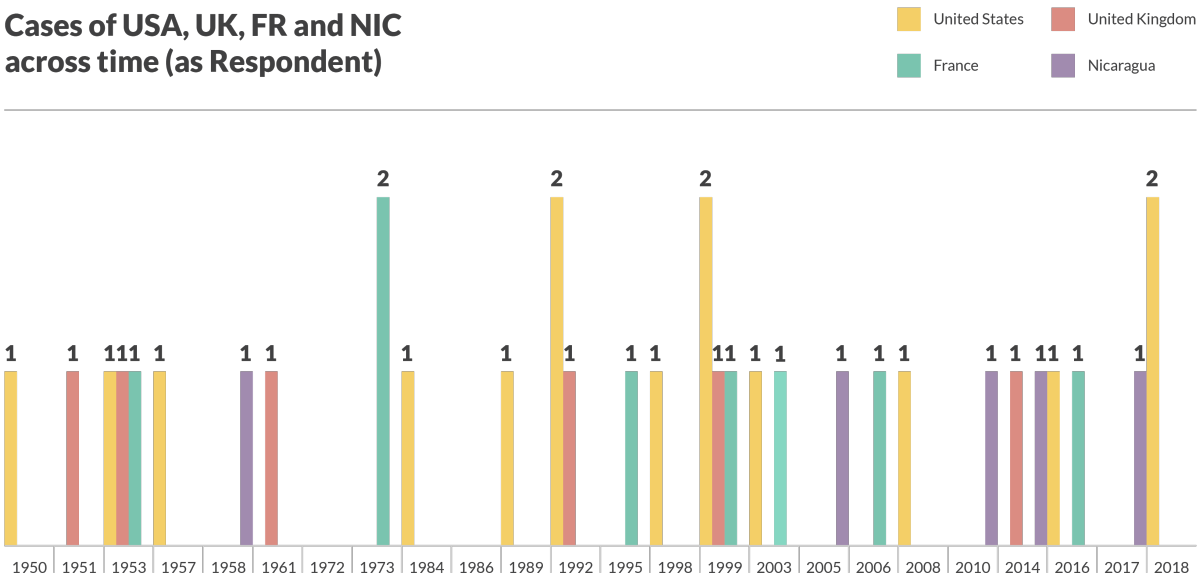
The following charts depict the years in which the cases where filed, either as an Applicant or Respondent.

Chart 2.



[27] The cases that have been brought before the Court by the notification of a special agreement have been included under the Applicant's column.

Chart 3.



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All of the above is not to say that the Court has exclusively 'become a forum in which the weak sue the strong, or the weak sue each other'[28]. Recent developments show that 'Western' states—at least some of them—have in fact not ceased to view the Court as an appropriate forum to solve their international legal disputes.[29] For example, since 1986, the following countries have filed Applications: Denmark, Portugal, Finland, Spain, Germany and Belgium, among others. If anything, after the 1980's the General List of Cases has more than doubled "with an average of three cases being filed per year'[30], leading to today's one hundred and fifty-one contentious cases and one hundred and one countries. Despites this factual observation, the role of the four[31] countries in shaping the jurisprudence of international law through their cases, and their influence in the definition of foreign legal policy and international litigation in itself, should not be underestimated. The legacy and the aftermath of each decision of the Court in the cases involving these countries has indeed contributed to the development of public international law as a whole.[32] One can take as a textbook example the Nicaragua v. United States of America case, whose impact is felt in 'the numerous references to it in

[28] LF Damrosch, The Impact of the Nicaragua case on the court and its role: harmful, helpful, or in between? LJIL 25, 135-147 (2012), p. 142.
[29] A. Pellet, Introduction from the Podium (2018), in E. Sobenes & B. Samson (2018), p.18.
[30] Ibid, p.17. See also J. Saltzer, Explaining the decreased use of International Courts- the case of the ICJ. Rev Law Econ, 3,11-36
[31] The USA, the UK, France and Nicaragua.
[32] This is without detriment to many other landmark cases.

subsequent judgments [of the Court and others international courts and tribunals[33]] and in the work of the International Law Commission [...], [as well as is reflected in its] leading role in the teaching of the sources of international law, State responsibility, the use of force […] international dispute settlement'[34] and evidentiary issues.

Not all of the cases have had the same level of richness in terms of litigation. In this sense it is important to clarify that more cases does not necessarily correspond to richness in litigation. Other litigants with less cases have produced case law that created points of inflection in the shaping and development of international law. Among the landmark cases are, *inter alia*, the South West Africa cases[35], North Sea Continental Shelf cases[36], Gabčikovo-Nagymaros[37] case and LaGrand case.[38]

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From the outset, the importance of the data contained in this short paper is self-evident. It provides information of the cases of the Court and the litigants. Yet, one should see beyond the surface of the data and use it as a starting point to ask relevant questions. One could, indeed, replicate the same exercise that I have produced with any other country or countries, in order to clarify how many times and against who have these other countries litigated before the ICJ, and in which capacity they have appeared before the Court. These answers together with the year in which they have litigated also allows one to put into context the conflicts and the foreign legal policies adopted by each of the Administration at that time, which is not only relevant for

[33] In accordance to the database provided by *Jus Mundi*, different international courts and tribunals have referred to the Judgments of 1984 (Nicaragua v. United States (Jurisdiction)) and 1986 (Nicaragua v. United States (Merits)) in 81 of their Judgments, Orders, Advisory Opinions, Decisions and Awards. For more see https://jusmundi.com/en/citemap/decision/en-military-and-paramilitary-activities-in-and-against-nicaragua-nicaragua-v-united-states-of-america-judgment-jurisdiction-of-the-court-and-admissibility-of-the-application-monday-26th-november-1984?f_t[]=case%20%%20p&p=2 and https://jusmundi.com/en/citemap/decision/en-military-and-paramilitary-activities-in-and-against-nicaragua-nicaragua-v-united-states-of-america-judgment-merits-friday-27th-june-1986?f_t[]=case%20%.

[34] F.L. Bordin, The Nicaragua v. United States case: An overview of the Epochal Judgments (2018), in E. Sobenes & B. Samson (2018), p.61.

[35] See International status of South-West Africa, Advisory Opinion, [1950] ICJ Rep. 1950, p.128; South-West Africa-Voting Procedure, Advisory Opinion, [1955] ICJ Rep. 1955, p.67; Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, [1956] ICJ Rep. 1956, p.23; South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962, ICJ Rep. 1962, p. 319; South West Africa, Second Phase, Judgment, [1966] ICJ Rep. 1966, p. 6; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, [1971] ICJ Rep. 1971, p. 16.

[36] North Sea Continental Shelf (Federal Republic of Germany/Netherlands; Federal Republic of Germany/Denmark), [1969] ICJ Rep. 1969, p. 3.

[37] Case Concerning the Gabčikovo-Nagymaros Project (Hungary/Slovakia), [1997] ICJ Rep. 1997, p.7.

[38] LaGrand (Germany v. United States of America), Judgment, [2001] ICJ Rep. 2001, p. 466. For more on Landmark cases see E. Bjorge and C. Miles, Landmark Cases in Public International Law (2017).

international lawyers, but also for political analysts and other professionals in related social sciences.

Clearly, the typical litigants and actors are revolving in nature, and a data-driven analysis provides an insider's view and a clarification of new factual realities. This type of research not only helps in clarifying the regions that have become more, or less, active in international proceedings before the Court, but also reveals the nature of the legal disputes and the geopolitical situations that catalyze international litigations.

Finally, if one combines the data provided in this paper, the data contained on the web page of the Court, the scholarly literature and *Jus Mundi's* database, one can actually venture to other relevant questions, such as: Who are the Judges and Judges *ad hoc* of the ICJ?; Who is behind inter-state litigation? Governments? Agents?; What is their influence in the development of international law as a whole? The database provided by *Jus Mundi* makes this possible by offering complementary data on the different judges, judges *ad hoc* and others actors involved in international proceedings.

The list of questions provided herein is preliminary, and much more could and should be added. This is my invitation for the readers; go back to basics, enlarge the scope of the analysis, reflect on these issues, ask new questions and provide new answers.