United Nations

Report of the International Court of Justice

1 August 1991–31 July 1992

General Assembly

Official Records • Forty-seventh Session
Supplement No. 4 (A/47/4)

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I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows: President: Sir Robert Yewdall Jennings; Vice-President: Shigeru Oda; Judges: Manfred Lachs, Roberto Ago, Stephen M. Schwebel, Mohammed Bedjaoui, Ni Zhengyu, Jens Evensen, Nikolai K. Tarassov, Gilbert Guillaume, Mohamed Shahabuddeen, Andrés Aguilar Mawdsley, Christopher G. Weeramantry, Raymond Ranjeva and Bola A. Ajibola.

2. The Court records with deep sorrow the death in office, on 14 August 1991, of Judge and former President Taslim Olawale Elias.

3. On 5 December 1991, the General Assembly and the Security Council, to fill the vacancy left by the death of Judge Elias, elected Prince Bola A. Ajibola as a Member of the Court for a term ending 5 February 1994. At a public sitting of the Court on 26 March 1992, Judge Ajibola made the solemn declaration provided for in Article 20 of the Statute.

4. The Registrar of the Court is Mr. Eduardo Valencia-Ospina. The Deputy-Registrar is Mr. Bernard Noble.

5. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure. This Chamber is composed as follows:

Members

President, Sir Robert Jennings;

Vice-President, S. Oda;

Judges S. M. Schwebel, Ni Zhengyu and J. Evensen.

Substitute Members

Judges N. Tarassov and A. Aguilar Mawdsley.

6. The composition of the Chamber formed by the Court on 8 May 1987 for the purpose of dealing with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras) is at present as follows: Judges José Sette-Camara (President of the Chamber), Sir Robert Jennings, President of the Court, and Shigeru Oda, Vice-President of the Court; Judges ad hoc Nicolas Valticos and Santiago Torres Bernárdez.

7. In the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Denmark has chosen Mr. Paul Henning Fischer to sit as judge ad hoc.

8. In the case concerning the Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America), Iran has chosen Mr. Mohsen Aghahosseini to sit as judge ad hoc.

9. In the case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Guinea-Bissau chose Mr. Hubert Thierry and Senegal Mr. Kéba Mbaye to sit as judges ad hoc.

10. In the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), Chad has chosen Mr. Georges M. Abi-Saab and Libya Mr. José Sette-Camara to sit as judges ad hoc.

11. In the case concerning East Timor (Portugal v. Australia), Portugal has chosen Mr. António de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges ad hoc.

12. In the case concerning Passage through the Great Belt (Finland v. Denmark), Denmark has chosen Mr. Paul Henning Fischer and Finland Mr. Bengt Broms to sit as judges ad hoc.

13. In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Qatar has chosen Mr. José Maria Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc.

14. In the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States of America), Libya has chosen Mr. Ahmed Sadek El-Kosheri to sit as judge ad hoc.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

15. On 31 July 1992, the 178 States Members of the United Nations, together with Nauru and Switzerland, were parties to the Statute of the Court.

16. Fifty-six States have now made declarations (a number of them with reservations) recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Canada, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, Gambia, Guinea-Bissau, Haiti, Honduras, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, the Philippines, Poland, Portugal, Senegal, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay and Zaire. The texts of the declarations filed by those States appear in Chapter IV, Section II, of the I.C.J. Yearbook 1991-1992. The declarations of Estonia, Bulgaria and Madagascar were deposited with the Secretary-General of the United Nations during the 12 months under review, on 21 October 1991, 24 June 1992 and 2 July 19[illegible], respectively.

17. Since 1 August 1991, one treaty providing for the jurisdiction of the Court in contentious cases and registered with the Secretariat of the United Nations has been brought to the knowledge of the Court: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 10 December 1984 (Art. 30).

18. Lists of treaties and conventions which provide for the jurisdiction of the Court appear in Chapter IV, Section III, of the I.C.J. Yearbook 1991-1992. In addition, the jurisdiction of the Court extends to treaties or conventions in force providing for reference to the Permanent Court of International Justice (Statute, Art. 37).

B. Jurisdiction of the Court in advisory proceedings

19. In addition to the United Nations (General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly, Committee on Applications for Review of Administrative Tribunal Judgements), the following organizations are at present authorized to request advisory opinions of the Court on legal questions:

International Labour Organisation;

Food and Agriculture Organization of the United Nations;

United Nations Educational, Scientific and Cultural Organization;

International Civil Aviation Organization;

World Health Organization;

World Bank;

International Finance Corporation;

International Development Association;

International Monetary Fund;

International Telecommunication Union;

World Meteorological Organization;

International Maritime Organization;

World Intellectual Property Organization;

International Fund for Agricultural Development;

United Nations Industrial Development Organization;

International Atomic Energy Agency.

20. The international instruments which make provision for the advisory jurisdiction of the Court are listed in Chapter IV, Section I, of the I.C.J. Yearbook 1991-1992.

III. JUDICIAL WORK OF THE COURT

21. During the period under review the Court was seised of two new contentious cases: Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United Kingdom) and Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America). A request for the indication of provisional measures was submitted in each. Preliminary objections were filed in the case concerning East Timor (Portugal v. Australia). In the cases concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) and Border and Transborder Armed Actions (Nicaragua v. Honduras), the proceedings were discontinued at Nicaragua's request.

22. The Court held 17 public sittings and 25 private meetings. It delivered a Judgment on the merits in the case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) (I.C.J. Reports 1991, p. 53), and a Judgment on the preliminary objections filed by Australia in the case concerning Certain Phosphate Lands in Nauru (Nauru v. Australia) (I.C.J. Reports 1992, p. 240). It made an Order on the Libyan request for the indication of provisional measures in each of the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (I.C.J. Reports 1992, p. 3) and (Libyan Arab Jamahiriya v. United States of America) (I.C.J. Reports 1992, p. 114). The Court also made an Order removing the case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras) from the list (I.C.J. Reports 1992, p. 222). It further made Orders fixing time-limits in the cases concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad) (I.C.J. Reports 1992, p. 219), East Timor (Portugal v. Australia) (I.C.J. Reports 1992, p. 228), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (I.C.J. Reports 1992, p. 231) and (Libyan Arab Jamahiriya v. United States of America) (I.C.J. Reports 1992, p. 234) and Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (I.C.J. Reports 1992, p. 237).

The President of the Court made an Order in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (I.C.J. Reports 1991, p. 47), removing that case from the list. He further made Orders fixing time-limits in the cases concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad) (I.C.J. Reports 1992, p. 219), Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (I.C.J. Reports 1992, p. 237), the Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America) (I.C.J. Reports 1992, p. 225), and Certain Phosphate Lands in Nauru (Nauru v. Australia) (I.C.J. Reports 1991, p. 345).

23. The Chamber constituted to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) held 27 private meetings.

A. Contentious cases before the full Court

1. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

24. By its Judgment of 27 June 1986 on the merits of this case, the Court found, inter alia, that the United States of America was under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by certain breaches of obligations under international law committed by the United States (I.C.J. Reports 1986, p. 14). It further decided "that the form and amount of such reparation, failing agreement between the Parties, [would] be settled by the Court", reserving for that purpose the subsequent procedure.

25. In a letter of 7 September 1987, the Agent of Nicaragua stated that no agreement had been reached between the Parties as to the form and amount of the reparation and that Nicaragua requested the Court to make the necessary orders for the further conduct of the case.

26. By a letter dated 13 November 1987, the Deputy-Agent of the United States informed the Registrar that the United States remained of the view that the Court was without jurisdiction to entertain the dispute and that the Nicaraguan Application was inadmissible. Accordingly, the United States would not be represented at a meeting, to be held in accordance with Article 31 of the Rules of Court, for the purpose of ascertaining the views of the Parties on the procedure to be followed.

27. Having ascertained the views of the Government of Nicaragua and having afforded the Government of the United States of America an opportunity to state its views, the Court, by an Order of 18 November 1987 (I.C.J. Reports 1987, p. 188), fixed 29 March 1988 as the time-limit for a Memorial of the Republic of Nicaragua and 29 July 1988 as the time-limit for a Counter-Memorial of the United States of America.

28. The Memorial of the Republic of Nicaragua was duly filed on 29 March 1988. The United States of America did not file a Counter-Memorial within the prescribed time-limit.

29. At a meeting on 22 June 1990 called by the President of the Court to ascertain the views of Nicaragua and the United States of America on the date for opening of the oral proceedings on compensation, the Agent of Nicaragua informed the President of the position of his Government, already set out in a letter dated 20 June 1990 from the Agent to the Registrar of the Court. He indicated that the new Government of Nicaragua was carefully studying the different matters it had pending before the Court; that the instant case was very complex and that, added to the many difficult tasks facing the Government, there were special circumstances that would make it extremely inconvenient for it to take a decision on what procedure should be followed during the coming months. The President stated that he would inform the Court of the position of the Government of Nicaragua and would in the meantime take no action to fix a date for hearings.

30. By a letter dated 12 September 1991, the Agent of Nicaragua informed the Court that his Government had decided to renounce all further right of action based on the case and requested that an Order be made officially recording the discontinuance of the proceedings and directing the removal of the case from the list.

31. As required by Article 89 of the Rules of Court, the President of the Court then fixed 25 September 1991 as the time-limit within which the United States of America might state whether it opposed the discontinuance. On that date a letter welcoming the discontinuance was received from the Legal Adviser of the United States Department of State, writing on behalf of his Government.

32. Consequently, on 26 September 1991, the President of the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list (I.C.J. Reports 1991, p. 47).

2. Border and Transborder Armed Actions (Nicaragua v. Honduras)

33. On 28 July 1986 the Government of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Republic of Honduras. The Application included allegations that contras stationed in Honduras were engaged in border and transborder armed actions on Nicaraguan territory, that the armed forces of Honduras were giving assistance to the contras, that the armed forces of Honduras were participating directly in attacks against Nicaragua, and that the Government of Honduras had issued threats of force against Nicaragua. It requested the Court to adjudge and declare:

> "(a) that the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Honduras bears legal responsibility;
>
> (b) that Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;
>
> (c) that Honduras is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions."

Nicaragua cited as bases of the Court's jurisdiction Article XXXI of the American Treaty on Pacific Settlement and the declarations of the Parties under Article 36, paragraph 2, of the Statute.

34. Honduras challenged the Court's jurisdiction over the matters raised by the Application and its admissibility. The Court decided that the first round of pleadings would deal exclusively with the issues of jurisdiction and admissibility. When these pleadings had been filed and the oral arguments of the Parties on these issues had been heard, the

Court, by a Judgment delivered on 20 December 1988 (I.C.J. Reports 1988, p. 69), found that it had jurisdiction to entertain the Application of Nicaragua and that that Application was admissible.

35. On 21 April 1989 (I.C.J. Reports 1989, p. 6), the President of the Court fixed the following time-limits for the written proceedings on the merits: 19 September 1989 for the Memorial of Nicaragua and 19 February 1990 for the Counter-Memorial of Honduras.

36. On 31 August 1989 the President of the Court made an Order (I.C.J. Reports 1989, p. 123), extending to 8 December 1989 the time-limit for the Memorial and reserving the question of extension of the time-limit for the filing of the Counter-Memorial of Honduras. The Memorial of Nicaragua was filed within the prescribed time-limit.

37. By letters dated 13 December 1989 the Agents of both Parties transmitted to the Court the text of an agreement reached by the Presidents of the Central American countries on 12 December 1989 in San Isidro de Coronado, Costa Rica. They referred in particular to paragraph 13 thereof, which recorded the agreement of the President of Nicaragua and the President of Honduras, in the context of arrangements aimed at achieving an extra-judicial settlement of the dispute before the Court, to instruct their Agents in the case to communicate immediately, either jointly or separately, the agreement to the Court, and to request the postponement of the date for the fixing of the time-limit for the presentation of the Counter-Memorial of Honduras until 11 June 1990.

38. By an Order of 14 December 1989 (I.C.J. Reports 1989, p. 174), the Court extended the time-limit for the filing by Honduras of a Counter-Memorial on the merits from 19 February 1990 to a date to be fixed by an Order to be made after 11 June 1990.

39. The President of the Court, having subsequently consulted the Parties, was informed that they did not desire the new time-limit for the Counter-Memorial to be fixed for the time being, and told them that he would so advise the Court.

40. By a letter dated 11 May 1992, the Agent of Nicaragua informed the Court that, because the Parties had reached an out-of-court agreement aimed at enhancing their good neighbourly relations, the Government of Nicaragua had decided to renounce all further right of action based on the case, and did not wish to go on with the proceedings.

41. As required by Article 89 of the Rules of Court, the President of the Court fixed 25 May 1992 as the time-limit within which Honduras might state whether it opposed the discontinuance. By a letter dated 14 May 1992, transmitted to the Registry of the Court by facsimile on 18 May 1992 (the original was subsequently transmitted on 27 May 1992), the Co-Agent of Honduras informed the Court that his Government did not oppose discontinuance of the proceedings.

42. Consequently, on 27 May 1992, the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list (I.C.J. Reports 1992, p. 222).

3. Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)

43. On 16 August 1988, the Government of Denmark filed in the Registry of the Court an Application instituting proceedings against Norway, citing as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

44. In its Application, Denmark explained that, despite negotiations conducted since 1980, it had not been possible to find an agreed solution to a dispute concerning the delimitation of Denmark's and Norway's fishing zones and continental shelf areas in the waters between the east coast of Greenland and the Norwegian island of Jan Mayen, where there is an area of some 72,000 square kilometres to which both Parties lay claim.

45. It therefore requested the Court:

> "to decide, in accordance with international law, where a single line of delimitation shall be drawn between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen".

46. Denmark chose Mr. Paul Henning Fischer to sit as judge ad hoc.

47. On 14 October 1988, the Court, taking into account the views expressed by the Parties, fixed 1 August 1989 as the time-limit for the Memorial of Denmark and 15 May 1990 for the Counter-Memorial of Norway (I.C.J. Reports 1988, p. 66). Both the Memorial and Counter-Memorial were filed within the prescribed time-limits.

48. Taking into account an agreement between the Parties that there should be a Reply and a Rejoinder, the President of the Court, by an Order of 21 June 1990 (I.C.J. Reports 1990, p. 89), fixed 1 February 1991 as the time-limit for the Reply of Denmark and 1 October 1991 as the time-limit for the Rejoinder of Norway. The Reply and the Rejoinder were filed within the prescribed time-limits.

49. Public sittings to hear the oral arguments of the Parties are to open on 11 January 1993.

4. Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)

50. On 17 May 1989, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America, citing as bases for the Court's jurisdiction provisions of the 1944 Chicago Convention on International Civil Aviation and the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

51. In its Application, the Islamic Republic of Iran referred to:

> "The destruction of an Iranian aircraft, Iran Air Airbus A-300B, flight 655, and the killing of its 290 passengers and crew by two surface-to-air missiles launched from the USS Vincennes, a guided-missile cruiser on duty with the United States Persian Gulf/Middle East Force in the Iranian airspace over the Islamic Republic's territorial waters in the Persian Gulf on 3 July 1988".

It contended that,

> "by its destruction of Iran Air flight 655 and taking 290 lives, its refusal to compensate the Islamic Republic for damages arising from the loss of the aircraft and individuals on board and its continuous interference with the Persian Gulf aviation",

the Government of the United States had violated certain provisions of the Chicago Convention on International Civil Aviation (7 December 1944), as amended, and of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (23 September 1971), and that the Council of the International Civil Aviation Organization (ICAO) had erred in its decision of 17 March 1989 concerning the incident.

52. In its Application, the Government of the Islamic Republic of Iran requested the Court to adjudge and declare:

> "(a) that the ICAO Council decision is erroneous in that the Government of the United States has violated the Chicago Convention, including the Preamble, Articles 1, 2, 3 bis and 44 (a) and (h) and Annex 15 of the Chicago Convention as well as Recommendation 2.6/1 of the Third Middle East Regional Air Navigation Meeting of ICAO;
>
> (b) that the Government of the United States has violated Articles 1, 3 and 10 (1) of the Montreal Convention; and
>
> (c) that the Government of the United States is responsible to pay compensation to the Islamic Republic, in the amount to be determined by the Court, as measured by the injuries suffered by the Islamic Republic and the bereaved families as a result of these violations, including additional financial losses which Iran Air and the bereaved families have suffered for the disruption of their activities."

53. On 13 December 1989, the Court, having taken into account the views expressed by each of the Parties, fixed 12 June 1990 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran and 10 December 1990 for the filing of the Counter-Memorial of the United States of America (I.C.J. Reports 1989, p. 132). Judge Oda appended a declaration to the Order of the Court (ibid., p. 135); Judges Schwebel and Shahabuddeen appended separate opinions (ibid., pp. 136-144 and 145-160).

54. By an Order of 12 June 1990, made in response to a request by the Islamic Republic of Iran and after the views of the United States of America had been ascertained, the President of the Court extended to 24 July 1990 the time-limit for the filing of the Memorial of the Islamic Republic of Iran and to 4 March 1991 the time-limit for the Counter-Memorial of the United States of America (I.C.J. Reports 1990, p. 86). The Memorial was filed within the prescribed time-limit.

55. On 4 March 1991, within the time-limit fixed for the filing of its Counter-Memorial, the United States of America filed certain preliminary objections to the jurisdiction of the Court. By virtue of the provisions of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended and a time-limit had to be fixed for the presentation by the other Party of a written statement of its observations and submissions on the preliminary objections. By an Order of 9 April 1991, the Court, having ascertained the views of the Parties, fixed 9 December 1991 as the time-limit within which the Islamic Republic of Iran might present such observations and submissions (I.C.J. Reports 1991, p. 6).

56. The Islamic Republic of Iran chose Mr. Mohsen Aghahosseini to sit as judge ad hoc.

57. By Orders of 18 December 1991 (I.C.J. Reports 1991, p. 187) and 5 June 1992 (I.C.J. Reports 1992, p. 225), made in response to successive requests by Iran and after the views of the United States had been ascertained, the President of the Court extended the above-mentioned time-limit for the written observations and submissions of Iran on the preliminary objections to 9 June and 9 September 1992, respectively.

5. Certain Phosphate Lands in Nauru (Nauru v. Australia)

58. On 19 May 1989, the Republic of Nauru filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in respect of a dispute concerning the rehabilitation of certain phosphate lands in Nauru worked out before Nauruan independence. Nauru cited as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

59. In its Application, Nauru claimed that Australia had breached the trusteeship obligations it had accepted under Article 76 of the Charter of the United Nations and under Articles 3 and 5 of the Trusteeship Agreement for Nauru of 1 November 1947. Nauru further claimed that Australia had breached certain obligations towards Nauru under general international law.

60. The Republic of Nauru requested the Court to adjudge and declare:

> "that Australia has incurred an international legal responsibility and is bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered";

and further

"that the nature and amount of such restitution or reparation should, in the absence of agreement between the Parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings".

61. By an Order of 18 July 1989 (I.C.J. Reports 1989, p. 12), the Court, having ascertained the views of the Parties, fixed 20 April 1990 as the time-limit for the Memorial of Nauru and 21 January 1991 for the Counter-Memorial of Australia. The Memorial was filed within the prescribed time-limit.

62. On 16 January 1991, within the time-limit fixed for the filing of its Counter-Memorial, Australia filed certain preliminary objections whereby it asked the Court to adjudge and declare "that the Application by Nauru is inadmissible and that the Court lacks jurisdiction to hear the claims made by Nauru". In accordance with Article 79, paragraph 2, of the Rules of Court the proceedings on the merits were suspended and the Court, by an Order of 8 February 1991 (I.C.J. Reports 1991, p. 3), fixed 19 July 1991 as the time-limit within which Nauru might present a written statement of its observations and submissions on the objections. This written statement was filed within the prescribed time-limit.

63. Oral proceedings on the issues of jurisdiction and admissibility were held from 11 to 22 November 1991. During eight public sittings the Court heard statements made on behalf of Australia and Nauru. Members of the Court put questions to the Parties.

64. On 26 June 1992, at a public sitting, the Court delivered its Judgment on the Preliminary Objections (I.C.J. Reports 1992, p. 240), the operative paragraph of which reads as follows:

"THE COURT,

(1) (a) rejects, unanimously, the preliminary objection based on the reservation made by Australia in its declaration of acceptance of the compulsory jurisdiction of the Court;

(b) rejects, by twelve votes to one, the preliminary objection based on the alleged waiver by Nauru, prior to accession to independence, of all claims concerning the rehabilitation of the phosphate lands worked out prior to 1 July 1967;

IN FAVOUR: President Sir Robert Jennings; Judges Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: Vice-President Oda;

(c) rejects, by twelve votes to one, the preliminary objection based on the termination of the Trusteeship over Nauru by the United Nations;

IN FAVOUR: President Sir Robert Jennings; Judges Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: Vice-President Oda;

(d) rejects, by twelve votes to one, the preliminary objection based on the effect of the passage of time on the admissibility of Nauru's Application;

IN FAVOUR: President Sir Robert Jennings; Judges Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: Vice-President Oda;

(e) rejects, by twelve votes to one, the preliminary objection based on Nauru's alleged lack of good faith;

IN FAVOUR: President Sir Robert Jennings; Judges Lachs, Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: Vice-President Oda;

(f) rejects, by nine votes to four, the preliminary objection based on the fact that New Zealand and the United Kingdom are not parties to the proceedings;

IN FAVOUR: Judges Lachs, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schwebel;

(g) upholds, unanimously, the preliminary objection based on the claim concerning the overseas assets of the British Phosphate Commissioners being a new one;

(2) finds, by nine votes to four, that, on the basis of Article 36, paragraph 2, of the Statute of the Court, it has jurisdiction to entertain the Application filed by the Republic of Nauru on 19 May 1989 and that the said Application is admissible;

IN FAVOUR: Judges Lachs, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Ranjeva;

AGAINST: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schwebel;

(3) finds, unanimously, that the claim concerning the overseas assets of the British Phosphate Commissioners, made by Nauru in its Memorial of 20 April 1990, is inadmissible."

Judge Shahabuddeen appended a separate opinion to the Judgment; President Sir Robert Jennings, Vice-President Oda and Judges Ago and Schwebel appended dissenting opinions.

65. By an Order of 29 June 1992 (I.C.J. Reports 1992, p. 345), the President of the Court, having ascertained the views of the Parties, fixed 29 March 1993 as the time-limit for the filing of the Counter-Memorial of Australia.

6. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)

66. On 23 August 1989 the Republic of Guinea-Bissau filed in the Registry of the Court an Application instituting proceedings against the Republic of Senegal, citing as basis for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

67. The Application explained that, notwithstanding the negotiations carried on from 1977 onwards, the two States had been unable to reach a settlement of a dispute concerning the maritime delimitation to be effected between them. Consequently, they had jointly consented, by an Arbitration Agreement dated 12 March 1985, to submit that dispute to an Arbitration Tribunal composed of three members.

68. The Application further indicated that, according to the terms of Article 2 of the Agreement, the Tribunal was asked to rule on the following two-fold question:

> "1. Does the agreement concluded by an exchange of letters [between France and Portugal] on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?
>
> 2. In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"

69. The Application added that it had been specified, in Article 9 of the Agreement, that the Tribunal would inform the two Governments of its decision regarding the questions set forth in Article 2, and that that decision should include the drawing on a map of the frontier line. The Application emphasized that the Agreement used the word "line" in the singular.

70. According to the Application, the Tribunal communicated to the Parties on 31 July 1989 a "text that was supposed to serve as an award" but did not in fact amount to one.

71. Guinea-Bissau, contending that "[a] new dispute thus came into existence, relating to the applicability of the text issued by way of award on 31 July 1989", asked the Court to adjudge and declare:

"- that [the] so-called decision [of the Tribunal] is inexistent in view of the fact that one of the two arbitrators making up the appearance of a majority in favour of the text of the 'award', has, by a declaration appended to it, expressed a view in contradiction with the one apparently adopted by the vote;

- subsidiarily, that that so-called decision is null and void, as the Tribunal did not give a complete answer to the two-fold question raised by the Agreement and so did not arrive at a single delimitation line duly recorded on a map, and as it has not given the reasons for the restrictions thus improperly placed upon its jurisdiction;

- that the Government of Senegal is thus not justified in seeking to require the Government of Guinea-Bissau to apply the so-called award of 31 July 1989".

72. Guinea-Bissau chose Mr. Hubert Thierry to sit as judge ad hoc.

73. By an Order of 1 November 1989 (*I.C.J. Reports 1989*, p. 126), the Court, having ascertained the views of the Parties, fixed 2 May 1990 as the time-limit for the filing of the Memorial of Guinea-Bissau and 31 October 1990 for the filing of the Counter-Memorial of Senegal. Both the Memorial and the Counter-Memorial were filed within the prescribed time-limits.

74. On 18 January 1990 a request was filed in the Registry whereby Guinea-Bissau, on the ground of actions stated to have been taken by the Senegalese Navy in a maritime area which Guinea-Bissau regarded as an area disputed between the Parties, requested the Court to indicate the following provisional measures:

"In order to safeguard the rights of each of the Parties, they shall abstain in the disputed area from any act or action of any kind whatever, during the whole duration of the proceedings until the decision is given by the Court."

75. Having held public sittings on 12 February 1990 to hear the oral observations of both Parties on the request for provisional measures, the Court, by an Order of 2 March 1990 (I.C.J. Reports 1990, p. 64), dismissed the request. Judges Evensen (ibid., pp. 72-73) and Shahabuddeen (ibid., 74-78) appended separate opinions to the Order. Judge ad hoc Thierry appended a dissenting opinion (ibid., pp. 79-84).

76. Mr. Kéba Mbaye was chosen by Senegal to sit as judge ad hoc in the case following the expiration of his term of office as a Member of the Court.

77. Oral proceedings on the merits of the case were held from 3 to 11 April 1991. During seven public sittings, the Court heard statements made on behalf of Guinea-Bissau and of Senegal. Members of the Court put questions to the Parties.

78. On 12 November 1991, at a public sitting, the Court delivered its Judgment (I.C.J. Reports 1991, p. 53), the operative paragraph of which is as follows:

"THE COURT,

(1) Unanimously,

Rejects the submission of the Republic of Guinea-Bissau that the Arbitral Award given on 31 July 1989 by the Arbitration Tribunal established pursuant to the Agreement of 12 March 1985 between the Republic of Guinea-Bissau and the Republic of Senegal, is inexistent;

(2) By eleven votes to four,

Rejects the submission of the Republic of Guinea-Bissau that the Arbitral Award of 31 July 1989 is absolutely null and void;

FOR: President Sir Robert Jennings; Vice-President Oda; Judges Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen; Judge ad hoc Mbaye.

AGAINST: Judges Aguilar Mawdsley, Weeramantry, Ranjeva; Judge ad hoc Thierry.

(3) By twelve votes to three,

Rejects the submission of the Republic of Guinea-Bissau that the Government of Senegal is not justified in seeking to require the Government of Guinea-Bissau to apply the Arbitral Award of 31 July 1989; and, on the submission to that effect of the Republic of Senegal, finds that the Arbitral Award of 31 July 1989 is valid and binding for the Republic of Senegal and the Republic of Guinea-Bissau, which have the obligation to apply it.

FOR: President Sir Robert Jennings; Vice-President Oda; Judges Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Ranjeva; Judge ad hoc Mbaye.

AGAINST: Judges Aguilar Mawdsley, Weeramantry; Judge ad hoc Thierry."

Judge Tarassov and Judge ad hoc Mbaye each appended a declaration to the Judgment; Vice-President Oda and Judges Lachs, Ni and Shahabuddeen appended separate opinions; Judges Aguilar Mawdsley and Ranjeva a joint dissenting opinion and Judge Weeramantry and Judge ad hoc Thierry each a dissenting opinion.

7. Territorial Dispute (Libyan Arab Jamahiriya/Chad)

79. On 31 August 1990 the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court a notification of an agreement between that Government and the Government of the Republic of Chad, entitled "Framework Agreement on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad", concluded in Algiers on 31 August 1989.

80. The "Framework Agreement" provides, in Article 1, that

> "The two Parties undertake to settle first their territorial dispute by all political means, including conciliation, within a period of approximately one year, unless the Heads of State otherwise decide"

and in Article 2, that

> "In the absence of a political settlement of their territorial dispute, the two Parties undertake:
>
> (a) to submit the dispute to the International Court of Justice ...".

81. According to the notification, the Court would be required:

> "In further implementation of the Accord-Cadre [Framework Agreement], and taking into account the territorial dispute between the Parties, to decide upon the limits of their respective territories in accordance with the rules of international law applicable in the matter."

82. On 3 September 1990, the Republic of Chad filed in the Registry of the Court an Application instituting proceedings against the Socialist People's Libyan Arab Jamahiriya, based on Article 2 (a) of the "Framework Agreement" and subsidiarily on Article 8 of the Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955.

83. By that Application the Republic of Chad

> "respectfully requests the Court to determine the course of the frontier between the Republic of Chad and the Libyan Arab Jamahiriya, in accordance with the principles and rules of international law applicable in the matter as between the Parties".

84. Subsequently, the Agent of Chad, by a letter of 28 September 1990, informed the Court, inter alia, that his Government had noted that

> "its claim coincides with that contained in the notification addressed to the Court on 31 August 1990 by the Libyan Arab Jamahiriya",

and considered that

> "those two notifications relate to one single case, referred to the Court in application of the Algiers Agreement, which constitutes the Special Agreement, the principal basis of the Court's jurisdiction to deal with the matter".

85. At a meeting between the President of the Court and the representatives of the Parties held on 24 October 1990 it was agreed between the Agents of the Parties that the proceedings in the present case had in effect been instituted by two successive notifications of the Special Agreement constituted by the "Framework Agreement" of 31 August 1989 - that filed by the Libyan Arab Jamahiriya on 31 August 1990, and the communication from the Republic of Chad filed on 3 September 1990 read in conjunction with the letter from the Agent of Chad of 28 September 1990 - and that the Court should determine the procedure in the case on that basis, pursuant to Article 46, paragraph 2, of the Rules of Court.

86. Having ascertained the views of the Parties, the Court decided by an Order of 26 October 1990 (I.C.J. Reports 1990, p. 149), that, as provided in Article 46, paragraph 2, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same time-limit, and fixed 26 August 1991 as the time-limit for the Memorials. Both Memorials were filed within the prescribed time-limit.

87. Chad chose Mr. Georges M. Abi-Saab and Libya Mr. José Sette-Camara to sit as judges ad hoc.

88. On 26 August 1991 (I.C.J. Reports 1991, p. 44), the President of the Court, having ascertained the views of the Parties, fixed 27 March 1992 as the time-limit for the filing of the Counter-Memorials. Both Counter-Memorials were duly filed within that time-limit.

89. By an Order of 14 April 1992 (I.C.J. Reports 1992, p. 219), the Court, having ascertained the views of the Parties, decided to authorize the presentation by each Party of a Reply within the same time-limit, and fixed 14 September 1992 as the time-limit for these Replies.

8. East Timor (Portugal v. Australia)

90. On 22 February 1991 the Government of the Portuguese Republic filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in a dispute concerning "certain activities of Australia with respect to East Timor".

91. In order to establish the basis of the Court's jurisdiction, Portugal referred in its Application to the Declarations made by the two States under Article 36, paragraph 2, of the Statute of the Court.

92. The Application claimed that Australia, by negotiating, with Indonesia, an "agreement relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap'", signed on 11 December 1989, by the "ratification, and the initiation of the performance" of that agreement, by the "related internal legislation", by the "negotiation of the delimitation of that shelf", and by the

"exclusion of any negotiation on those matters with Portugal", had caused "particularly serious legal and moral damage to the people of East Timor and to Portugal, which will become material damage also if the exploitation of hydrocarbon resources begins".

93. In its Application, Portugal requested the Court:

"(1) To adjudge and declare that, first, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paragraphs 5 and 6 of the present Application) and to permanent sovereignty over its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the administering Power of the Territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them.

(2) To adjudge and declare that Australia, inasmuch as in the first place it has negotiated, concluded and initiated performance of the agreement referred to in paragraph 18 of the statement of facts, has taken internal legislative measures for the application thereof, and is continuing to negotiate, with the State party to that agreement, the delimitation of the continental shelf in the area of the 'Timor Gap'; and inasmuch as it has furthermore excluded any negotiation with the administering Power with respect to the exploration and exploitation of the continental shelf in that same area; and, finally, inasmuch as it contemplates exploring and exploiting the subsoil of the sea in the 'Timor Gap' on the basis of a plurilateral title to which Portugal is not a party (each of these facts sufficing on its own):

(a) has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, and is in breach of the obligation not to disregard but to respect that right, that integrity and that sovereignty;

(b) has infringed and is infringing the powers of Portugal as the administering Power of the Territory of East Timor, is impeding the fulfilment of its duties to the people of East Timor and to the international community, is infringing the right of Portugal to fulfil its responsibilities and is in breach of the obligation not to disregard but to respect those powers and duties and that right;

(c) is contravening Security Council resolutions 384 and 389 and, as a consequence, is in breach of the obligation to accept and carry out Security Council resolutions laid down by Article 25 of the Charter of the United Nations and, more generally, is in breach of the obligation incumbent on member States to co-operate in good faith with the United Nations;

(3) To adjudge and declare that, inasmuch as it has excluded and is excluding any negotiation with Portugal as the administering Power of the Territory of East Timor, with respect to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap', Australia has failed and is failing in its duty to negotiate in order to harmonize the respective rights in the event of a conflict of rights or of claims over maritime areas.

(4) To adjudge and declare that, by the breaches indicated in paragraphs 2 and 3 of the present submissions, Australia has incurred international responsibility and has caused damage, for which it owes reparation to the people of East Timor and to Portugal, in such form and manner as may be indicated by the Court.

(5) To adjudge and declare that Australia is bound, in relation to the people of East Timor, to Portugal and to the international community, to cease from all breaches of the rights and international norms referred to in paragraphs 1, 2 and 3 of the present submissions and in particular, until such time as the people of East Timor shall have exercised its right to self-determination, under the conditions laid down by the United Nations:

(a) to refrain from any negotiation, signature or ratification of any agreement with a State other than the administering Power concerning the delimitation, and the exploration and exploitation, of the continental shelf, or the exercise of jurisdiction over that shelf, in the area of the 'Timor Gap';

(b) to refrain from any act relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap' or to the exercise of jurisdiction over that shelf, on the basis of any plurilateral title to which Portugal, as the administering Power of the Territory of East Timor, is not a party."

94. By an Order of 3 May 1991 (I.C.J. Reports 1991, p. 9), the President of the Court, having ascertained the views of the Parties at a meeting with their Agents held on 2 May 1991, fixed the following time-limits: 18 November 1991 for the filing of the Portuguese Memorial and 1 June 1992 for the Australian Counter-Memorial. Both the Memorial and the Counter-Memorial were filed within the prescribed time-limits.

95. Portugal chose Mr. António de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges ad hoc.

96. By an Order of 19 June 1992 (I.C.J. Reports 1992, p. 228), the Court, having ascertained the views of the Parties, fixed 1 December 1992 as the time-limit for the filing of a Reply by Portugal and 1 June 1993 for the filing of a Rejoinder by Australia.

9. Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)

97. On 12 March 1991, the Government of the Republic of Guinea-Bissau filed in the Registry of the Court an Application instituting proceedings against the Republic of Senegal in a dispute concerning the delimitation of all the maritime territories between the two States. Guinea-Bissau cited as basis for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

98. In its Application, Guinea-Bissau recalled that, by an Application dated 23 August 1989, it had referred to the Court a dispute concerning the existence and validity of the Arbitral Award made on 31 July 1989 by the Arbitration Tribunal formed to determine the maritime boundary between the two States.

99. Guinea-Bissau claimed that the objective of the request laid before the Arbitration Tribunal was the delimitation of the maritime territories appertaining respectively to one and the other State. According to Guinea-Bissau, the decision of the Arbitration Tribunal of 31 July 1989, however, did not make it possible to draw a definitive delimitation of all the maritime areas over which the Parties had rights. Moreover, whatever the outcome of the proceedings pending before the Court, a real and definitive delimitation of all the maritime territories between the two States would still not be realized.

100. The Government of Guinea-Bissau asked the Court to adjudge and declare:

> "What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future decision of the Court in the case concerning the Arbitral 'award' of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

101. In its Judgment of 12 November 1991 in the case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) (see above, p. 15) the Court took note of the filing of a second Application but added:

> "67. ... It has also taken note of the declaration made by the Agent of Senegal in the present proceedings, according to which one solution
>
> > 'would be to negotiate with Senegal, which has no objection to this, a boundary for the exclusive economic zone or, should it prove impossible to reach an agreement, to bring the matter before the Court'.
>
> 68. Having regard to that Application and that declaration, and at the close of a long and difficult arbitral procedure and of these proceedings before the Court, the Court considers it highly desirable that the elements of the dispute that were not settled by the Arbitral Award of 31 July 1989 be resolved as soon as possible, as both Parties desire."

102. At the request of the Parties, no dates have yet been fixed as time-limits for the written proceedings.

10. Passage through the Great Belt (Finland v. Denmark)

103. On 17 May 1991 the Republic of Finland filed in the Registry of the Court an Application instituting proceedings against the Kingdom of Denmark in respect of a dispute concerning the question of passage of oil-rigs through the Great Belt (Store Baelt - one of the three straits linking the Baltic to the Kattegat and thence to the North Sea). Finland cited as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

104. In its Application, Finland contended that there is no foundation in international law for the unilateral exclusion by Denmark, through the projected construction of a "high-level bridge ... 65 metres above mean sea level", of the passage between the Baltic and the North Sea by vessels such as drill ships and oil rigs or other existing or reasonably foreseeable ships with a height of 65 metres or above to and from Finnish shipyards and ports. Such exclusion allegedly violated Finland's rights in respect of free passage through the Great Belt as established by the relevant conventions and customary international law. Finland recognized that Denmark is fully entitled, as the territorial sovereign, to take measures to improve its internal and international traffic connections, but contended that Denmark's entitlement to take such measures is necessarily limited by the established rights and interests of all States, and of Finland in particular, in the maintenance of the legal régime of free passage through the Danish straits. In Finland's view, these rights had been ignored by Denmark's refusal to enter into negotiations with Finland in order to find a solution and by its insistence that the planned bridge project be completed without modification.

105. Accordingly, the Republic of Finland, reserving its right to modify or to add to its submissions and in particular its right to claim compensation for any damage or loss arising from the bridge project, asked the Court to adjudge and declare:

"(a) that there is a right of free passage through the Great Belt which applies to all ships entering and leaving Finnish ports and shipyards;

(b) that this right extends to drill ships, oil rigs and reasonably foreseeable ships;

(c) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs (a) and (b) above;

(d) that Denmark and Finland should start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs (a) to (c) above, shall be guaranteed."

106. On 23 May 1991 Finland filed in the Registry a request for the indication of provisional measures, contending that "construction work for the East Channel bridge would prejudice the very outcome of the dispute"; that "the object of the Application relates precisely to the right of passage which the completion of the bridge project in its planned form will effectively deny"; and that "in particular, the continuation of the construction work prejudices the negotiating result which the Finnish submissions in the Application aim to attain".

Finland accordingly requested the Court to indicate the following provisional measures:

> "(1) Denmark should, pending the decision by the Court on the merits of the present case, refrain from continuing or otherwise proceeding with such construction works in connection with the planned bridge project over the East Channel of the Great Belt as would impede the passage of ships, including drill ships and oil rigs, to and from Finnish ports and shipyards;"

and

> "(2) Denmark should refrain from any other action that might prejudice the outcome of the present proceedings."

107. Finland chose Mr. Bengt Broms and Denmark Mr. Paul Henning Fischer to sit as judges ad hoc.

108. Between 1 and 5 July 1991, the Court, at six public sittings, heard the oral observations of both Parties on the request for provisional measures.

109. At a public sitting held on 29 July 1991, the Court read the Order (I.C.J. Reports 1991, p. 12), on the request for provisional measures made by Finland, in which it found that "the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures". Judge Tarassov appended a declaration, and Vice-President Oda, Judge Shahabuddeen and Judge ad hoc Broms appended separate opinions to the Order.

110. By an Order of 29 July 1991 (I.C.J. Reports 1991, p. 41), the President of the Court, having ascertained the views of the Parties at a meeting with their Agents held on the same day, fixed the following time-limits: 30 December 1991 for the filing of the Memorial of Finland and 1 June 1992 for the filing of the Counter-Memorial of Denmark. Both the Memorial and the Counter-Memorial were filed within the prescribed time-limits.

111. Public sittings to hear the oral arguments of the Parties are to open on 14 September 1992.

11. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)

112. On 8 July 1991, the Government of the State of Qatar filed in the Registry of the Court an Application instituting proceedings against the Government of the State of Bahrain

> "in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States".

113. Qatar claimed that its sovereignty over the Hawar islands was well founded on the basis of customary international law and applicable local practices and customs. It had therefore continuously opposed a decision announced by the British Government in 1939, during the time of the British presence in Bahrain and Qatar (which came to an end in 1971), that the islands belonged to Bahrain. This decision was, in the view of Qatar, invalid, beyond the power of the British Government in relation to the two States, and not binding on Qatar.

114. With regard to the shoals of Dibal and Qit'at Jaradah, a further decision of the British Government in 1947 to delimit the sea-bed boundary between Bahrain and Qatar purported to recognize that Bahrain had "sovereign rights" in the areas of those shoals. In that decision the view was expressed that the shoals should not be considered to be islands having territorial waters. Qatar had claimed and continued to claim that such sovereign rights as existed over the shoals belonged to Qatar; it agreed, however, that these were shoals and not islands. Bahrain claimed in 1964 that Dibal and Qit'at Jaradah were islands possessing territorial waters and belonged to Bahrain, a claim rejected by Qatar.

115. With regard to the delimitation of the maritime areas of the two States, in the letter informing the Rulers of Qatar and Bahrain of the 1947 decision, the British Government considered that the line divided "in accordance with equitable principles" the sea-bed between Qatar and Bahrain, and that it was a median line based generally on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar. The letter further specified two exceptions. One concerned the status of the shoals; the other that of the Hawar islands.

116. Qatar stated that it did not oppose that part of the delimitation line which the British Government stated was based on the configuration of the coastlines of the two States and was determined in accordance with equitable principles. It had rejected and still rejected the claim made in 1964 by Bahrain (which had refused to accept the above-mentioned delimitation by the British Government) of a new line delimiting the sea-bed boundary of the two States. Qatar based its claims with respect to delimitation on customary international law and applicable local practices and customs.

117. The State of Qatar therefore requested the Court:

"I. To adjudge and declare in accordance with international law

(A) that the State of Qatar has sovereignty over the Hawar islands; and

(B) that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals;

and

II. With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain."

118. In its Application, Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990. According to Qatar, the subject and scope of the commitment to jurisdiction was determined by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990.

119. By letters addressed to the Registrar of the Court on 14 July 1991 and 18 August 1991 Bahrain contested the basis of jurisdiction invoked by Qatar.

120. At a meeting beween the President of the Court and the representatives of the Parties held on 2 October 1991, it was agreed that questions of jurisdiction and admissibility in this case should be determined before any proceedings on the merits.

121. By an Order of 11 October 1991 (I.C.J. Reports 1991, p. 50) the President of the Court, taking into account the agreement concerning the procedure expressed by the Parties, whom he had consulted under Article 31 of the Rules of Court, decided that the written proceedings should first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application. The President fixed 10 February 1992 as the time-limit for the Memorial of Qatar and 11 June 1992 for the Counter-Memorial of Bahrain. The Memorial and Counter-Memorial were filed within the prescribed time-limits.

122. By an Order of 26 June 1992 (I.C.J. Reports 1992, p. 237), the Court, having ascertained the views of the Parties, directed that a Reply by the Applicant and a Rejoinder by the Respondent be filed on the questions of jurisdiction and admissibility. It fixed 28 September 1992 as the time-limit for the Reply of Qatar and 29 December 1992 for the Rejoinder of Bahrain.

123. Qatar has chosen Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc.

12. 13. Cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States of America)

124. On 3 March 1992 the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United Kingdom of Great Britain and Northern Ireland and against the United States of America in respect of a dispute over the interpretation and application of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988.

125. In the Applications, Libya referred to the charging and indictment of two Libyan nationals by the Lord Advocate of Scotland and by a Grand Jury of the United States, respectively, with having caused a bomb to be placed aboard Pan-Am flight 103. The bomb subsequently exploded, causing the aeroplane to crash, and all persons aboard were killed.

126. Libya pointed out that the acts alleged constituted an offence within the meaning of Article 1 of the Montreal Convention, which it claimed to be the only appropriate convention in force between the Parties, and claimed that it had fully complied with its own obligations under that instrument, Article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; there was no extradition treaty between Libya and the respective other Parties, and Libya was obliged under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution.

127. Libya contended that the United Kingdom and the United States were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial.

128. According to the Applications, it had not been possible to settle by negotiation the disputes that had thus arisen, neither had the Parties been able to agree upon the organization of an arbitration to hear the matter. The Libyan Arab Jamahiriya therefore submitted the disputes to the Court on the basis of Article 14, paragraph 1, of the Montreal Convention.

129. Libya requested the Court to adjudge and declare as follows:

(a) that Libya has fully complied with all of its obligations under the Montreal Convention;

(b) that the United Kingdom and the United States respectively have breached, and are continuing to breach, their legal obligations to Libya under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and

(c) that the United Kingdom and the United States respectively are under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.

130. Later the same day, Libya made two separate requests to the Court to indicate forthwith the following provisional measures:

(a) to enjoin the United Kingdom and the United States respectively from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya; and

(b) to ensure that no steps are taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that are the subject of Libya's Applications.

131. In those requests Libya also requested the President, pending the meeting of the Court, to exercise the power conferred on him by Article 74, paragraph 4, of the Rules of Court, to call upon the Parties to act in such a way as to enable any Order the Court might make on Libya's request for provisional measures to have its appropriate effects.

132. By a letter of 6 March 1992, the Legal Adviser of the United States Department of State, referring to the specific request made by Libya under Article 74, paragraph 4, of the Rules of Court, in its request for the indication of provisional measures, stated inter alia that

> "taking into account both the absence of any concrete showing of urgency relating to the request and developments in the ongoing action by the Security Council and the Secretary-General in this matter ... the action requested by Libya ... is unnecessary and could be misconstrued".

133. Libya chose Mr. Ahmed S. El-Kosheri to sit as judge ad hoc. He made the solemn declaration required by the Statute and Rules of Court on 26 March 1992, at the opening of the hearings on the request for the indication of provisional measures.

134. At that opening, the Vice-President of the Court, exercising the functions of the presidency in the case, referred to the request made by Libya under Article 74, paragraph 4, of the Rules of Court and stated that, after the most careful consideration of all the circumstances then known to him, he had come to the conclusion that it would not be appropriate for him to exercise the discretionary power conferred on the President by that provision.

135. At five public sittings held on 26, 27 and 28 March 1992, both Parties in each of the two cases presented oral arguments on the request for the indication of provisional measures. A Member of the Court put questions to both Agents in each of the two cases and the Judge ad hoc put a question to the Agent of Libya.

136. By two Orders of 14 April 1992 (I.C.J. Reports 1992, pp. 3 and 114), the Court found, by eleven votes to five, "that the circumstances of the case are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures". Acting President Oda (ibid., pp. 17 and 129) and Judge Ni (ibid., pp. 20 and 132) each appended a declaration to the Order of the Court; Judges Evensen, Tarassov, Guillaume and Aguilar Mawdsley appended a joint declaration (ibid., pp. 24 and 136). Judges Lachs (ibid. pp. 26 and 138) and Shahabuddeen (ibid. pp. 28 and 140) appended separate opinions; and Judges Bedjaoui (ibid., pp. 33 and 143), Weeramantry (ibid., pp. 50 and 160), Ranjeva (ibid., pp. 72 and 182), Ajibola (ibid., pp. 78 and 183) and Judge ad hoc El-Kosheri (ibid., pp. 94 and 199) appended dissenting opinions to the Orders.

137. By Orders of 19 June 1992 (I.C.J. Reports 1992, pp. 231 and 234), the Court, taking into account that the time-limits set out below were agreed on by the Parties at a meeting held on 5 June 1992 with the Vice-President of the Court, exercising the functions of the presidency in the two cases, fixed 20 December 1993 as the time-limit for the filing of the Memorial of Libya and 20 June 1995 for the filing of the Counter-Memorials of the United Kingdom and the United States of America, respectively.

B. Contentious case before a Chamber

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)

138. On 11 December 1986 El Salvador and Honduras jointly notified to the Court a Special Agreement concluded between them on 24 May 1986, whereby a dispute referred to as the land, island and maritime frontier dispute would be submitted for decision to a chamber which the Parties would request the Court to form under Article 26, paragraph 2, of the Statute, to consist of three Members of the Court and two judges ad hoc chosen by each Party.

139. By an Order of 8 May 1987 (I.C.J. Reports 1987, p. 10), the Court, after having received such a request, constituted a Chamber with the following composition: Judges Shigeru Oda, José Sette-Camara and Sir Robert Jennings; Judges ad hoc Nicolas Valticos and Michel Virally, chosen by El Salvador and Honduras, respectively. The Chamber elected Judge José Sette-Camara to be its President.

140. By an Order of 13 December 1989 (I.C.J. Reports 1989, p. 162), adopted unanimously, the Court took note of the death of Judge ad hoc Virally, of the nomination on 9 February 1989 by Honduras of Mr. Santiago Torres Bernárdez to replace him and of a number of communications from the Parties, noted that it appeared that El Salvador had no objection to the choice of Mr. Torres Bernárdez, and that no objection appeared to the Court itself, and declared the Chamber to be composed as follows: Judges José Sette-Camara (President of the Chamber), Shigeru Oda and Sir Robert Jennings; Judges ad hoc Nicolas Valticos and Santiago Torres Bernárdez. Judge Shahabuddeen appended a separate opinion to the Order.

141. The written proceedings in the case have taken the following course: each Party filed a Memorial within the time-limit of 1 June 1988 which had been fixed therefor by the Court after ascertainment of the Parties' views. By virtue of their Special Agreement, the Parties requested that the written proceedings also consist of Counter-Memorials and Replies and the Chamber authorized the filing of such pleadings and fixed time-limits therefor. At the successive requests of the Parties, the President of the Chamber, by Orders made on 12 January 1989 (I.C.J. Reports 1989, p. 3) and 13 December 1989 (I.C.J. Reports 1989, p. 129), extended those time-limits to 10 February 1989 for the Counter-Memorials and 12 January 1990 for the Replies. Each Party's Counter-Memorial and Reply were filed within the prescribed time-limits.

142. On 17 November 1989 the Republic of Nicaragua addressed to the Court an Application under Article 62 of the Statute for permission to intervene in the case. Nicaragua stated that it had no intention of intervening in respect of the dispute concerning the land boundary between El Salvador and Honduras, its object being:

"First, generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.

Secondly, to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative purpose of seeking to ensure that the determinations of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua, and Nicaragua intends to subject itself to the binding effect of the decision to be given."

Nicaragua further expressed the view that its request for permission to intervene was a matter exclusively within the procedural mandate of the full Court.

143. By an Order of 28 February 1990 (I.C.J. Reports 1990, p. 3), adopted by twelve votes to three, the Court, having considered the observations submitted by the Parties on that last point and the Applicant's comments thereon, concluded that it was sufficiently informed of the views of the States concerned, without there being any need for oral proceedings, and found that it was for the Chamber formed to deal with the case to decide whether the Application for permission to intervene should be granted. Judge Oda appended a declaration, and Judges Elias, Tarassov and Shahabuddeen dissenting opinions to the Order.

144. Between 5 and 8 June 1990 the Chamber, at five public sittings, heard oral arguments on the Nicaraguan Application for permission to intervene, presented on behalf of Nicaragua, El Salvador and Honduras.

145. At a public sitting held on 13 September 1990 (I.C.J. Reports 1990, p. 92), the Chamber delivered its Judgment on the Application by Nicaragua for permission to intervene in which it found, unanimously, that the Republic of Nicaragua had shown that it had an interest of a legal nature which might be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal régime of the waters of the Gulf of Fonseca, but had not shown such an interest which might be affected by any decision which the Chamber might be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf. Accordingly, the Chamber decided that the Republic of Nicaragua was permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the Judgment, but not further or otherwise. Judge Oda appended a separate opinion to the Judgment (I.C.J. Reports 1990, p. 138).

146. By an Order of 14 September 1990 (I.C.J. Reports 1990, p. 146), the President of the Chamber, having ascertained the views of the Parties and of the intervening State, fixed 14 December 1990 as the time-limit for the submission by Nicaragua of a written statement and 14 March 1991 as the time-limit within which the Parties might, if they so desired, furnish their written observations on the written statement of Nicaragua. Both the written statement by Nicaragua and the written observations thereon by the two Parties were filed within the prescribed time-limits.

147. At 50 public sittings, held between 15 April and 14 June 1991, the Chamber heard oral arguments by the two Parties, as well as Nicaragua's observations with respect to the subject-matter of its intervention and the two Parties' observations thereon. It also heard a witness, presented by El Salvador.

148. At the time of preparation of this Report, the Chamber is deliberating on its Judgment.

IV. THE ROLE OF THE COURT

149. At the 44th meeting of the 46th Session of the General Assembly, held on 8 November 1991, at which the Assembly took note of the preceding Report of the Court, the President of the Court, Sir Robert Yewdall Jennings, addressed the General Assembly on the role and functioning of the Court (A/46/PV. 44).

150. At the United Nations Conference on Environment and Development (UNCED), which took place in Rio de Janeiro from 3 to 14 June 1992, the Registrar of the Court, Mr. Eduardo Valencia-Ospina, read a statement on behalf of the President of the Court.

151. The Court has taken note of the report entitled "An Agenda for Peace - Preventive Diplomacy, Peacemaking and Peace-keeping" (A/47/277; S 24111), prepared by the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992. The passage of the report concerning the Court reads as follows:

> "The docket of the International Court of Justice has grown fuller but it remains an under-used resource for the peaceful adjudication of disputes. Greater reliance on the Court would be an important contribution to United Nations peacemaking. In this connection, I call attention to the power of the Security Council under Articles 36 and 37 of the Charter to recommend to Member States the submission of a dispute to the International Court of Justice, arbitration or other dispute-settlement mechanisms. I recommend that the Secretary-General be authorized, pursuant to Article 96, paragraph 2, of the Charter, to take advantage of the advisory competence of the Court and that other United Nations organs that already enjoy such authorization turn to the Court more frequently for advisory opinons.
>
> I recommend the following steps to reinforce the role of the International Court of Justice:
>
> (a) All Member States should accept the general jurisdiction of the International Court under Article 36 of its Statute, without any reservation, before the end of the United Nations Decade of International Law in the year 2000. In instances where domestic structures prevent this, States should agree bilaterally or multilaterally to a comprehensive list of matters they are willing to submit to the Court and should withdraw their reservations to its jurisdiction in the dispute settlement clauses of multilateral treaties;

(b) When submission of a dispute to the full Court is not practical, the Chambers jurisdiction should be used;

(c) States should support the Trust Fund established to assist countries unable to afford the cost involved in bringing a dispute to the Court, and such countries should take full advantage of the Fund in order to resolve their disputes."

V. LECTURES ON THE WORK OF THE COURT

152. Many talks and lectures on the Court, both at the seat of the Court and elsewhere, were given by the President, Members of the Court, the Registrar and officials of the Court in order to improve public understanding of the judicial settlement of international disputes, the jurisdiction of the Court and its function in advisory cases. During the period under review the Court received 91 groups including scholars and academics, judges and representatives of judicial authorities, lawyers and legal professionals as well as others, amounting to some 3,000 persons in all.

VI. COMMITTEES OF THE COURT

153. The committees constituted by the Court to facilitate the performance of its administrative tasks, which met several times during the period under review, were composed as follows as from 7 February 1992:

(a) The Budgetary and Administrative Committee: the President, the Vice-President and Judges Schwebel, Bedjaoui, Tarassov, Guillaume and Shahabuddeen;

(b) The Committee on Relations: Judges Bedjaoui, Ni and Aguilar Mawdsley;

(c) The Library Committee: Judges Ago, Weeramantry and Ranjeva.

154. The Rules Committee, constituted by the Court in 1979 as a standing body, is composed of Judges Lachs, Ago, Bedjaoui, Ni, Evensen, and Tarassov.

VII. PUBLICATIONS AND DOCUMENTS OF THE COURT

155. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the major law libraries of the world. The sale of those publications is organized by the Sales Sections of the United Nations Secretariat, which are in touch with specialized booksellers and distributors throughout the world. A catalogue (latest edition: 1988) is, with its annual addenda, distributed free of charge.

156. The publications of the Court include at present three annual series: Reports of Judgments, Advisory Opinions and Orders (also published in separate fascicles), a Bibliography of works and documents relating to the Court, and a Yearbook (in the French version: Annuaire). The most recent publication in the first series is I.C.J. Reports 1990. Bibliography No. 44 (1990) has been published during the period covered by this report.

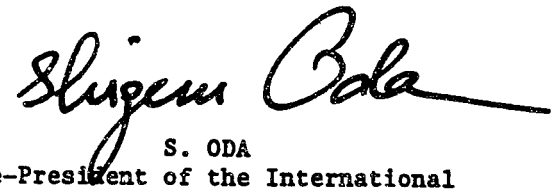
157. Even before the termination of a case, the Court may, pursuant to Article 53 of the Rules of Court, and after ascertaining the views of the Parties, make the pleadings and documents available on request to the Government of any State entitled to appear before the Court. The Court may also, having ascertained the views of the Parties, make them accessible to the public on or after the opening of the oral proceedings. The documentation of each case is published by the Court after the end of the proceedings, under the title Pleadings, Oral Arguments, Documents. In that series, the volume in the case concerning Border and Transborder Armed Actions (Nicaragua v. Costa Rica) has been published during the period under review.

158. In the series Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. A new but little-changed edition (No. 5) was published in 1989 to replace No. 4 in the series, which was issued after the revision of the Rules adopted by the Court on 14 April 1978 and is now out of print.

159. An offprint of the Rules of Court is available in French and English. Unofficial Arabic, Chinese, German, Russian and Spanish translations of the Rules are also available.

160. The Court distributes press communiqués, background notes and a handbook in order to keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction. The third edition of the handbook appeared at the end of 1986, on the occasion of the Court's 40th anniversary, in English and French. Arabic, Chinese, Russian and Spanish translations of that edition have been published in 1990. A German version of the first edition is still available.

161. More comprehensive information on the work of the Court during the period under review will be found in the I.C.J. Yearbook 1991-1992, to be issued in due course.



S. ODA
Vice-President of the International
Court of Justice

The Hague, 18 August 1992
