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Report of the International Court of Justice

1 August 1995 - 31 July 1996

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Supplement No. 4 (A/51/4)

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I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows: President: Mohammed Bedjaoui; Vice-President: Stephen M. Schwebel; Judges: Shigeru Oda, Gilbert Guillaume, Mohamed Shahabuddeen, Christopher G. Weeramantry, Raymond Ranjeva, Géza Herczegh, Shi Jiuyong, Carl-August Fleischhauer, Abdul G. Koroma, Vladlen S. Vereshchetin, Luigi Ferrari Bravo, Rosalyn Higgins and Gonzalo Parra-Aranguren.

2. The Court records with deep sorrow the death, on 24 October 1995, of Judge Andrés Aguilar Mawdsley, a Member of the Court since 1991, to whose memory Judge Bedjaoui, President of the Court, paid tribute at a public sitting of 13 November 1995. On 28 February 1996, the General Assembly and the Security Council, to fill the vacancy left by the death of Judge Aguilar Mawdsley, elected Mr. Gonzalo Parra-Aranguren as a member of the Court for a term ending 5 February 2000. At a public sitting of 5 March 1996, Judge Parra Aranguren made the solemn declaration provided for in Article 20 of the Statute.

3. The Registrar of the Court is Mr. Eduardo Valencia-Ospina. The Deputy-Registrar is Mr. Jean-Jacques Arnaldez.

4. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure, which is constituted as follows:

Members

President, M. Bedjaoui
Vice-President, S. M. Schwebel
Judges, M. Shahabuddeen, Shi Jiuyong and V. S. Vereshchetin

Substitute Members

Judges A. G. Koroma and R. Higgins.

5. The Court has extended until 5 February 1997 the mandate of the Members of the Chamber for Environmental Matters, which the Court established in July 1993. The present composition of the Chamber is as follows:

Judges M. Bedjaoui (President of the Court)
S. M. Schwebel (Vice-President of the Court)
M. Shahabuddeen
C. G. Weeramantry
R. Ranjeva
G. Herczegh
C. A. Fleischhauer

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

7. In the case concerning East Timor (Portugal v. Australia), Portugal had chosen Mr. Antonio de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges ad hoc. Following Mr. Ferrer-Correia's resignation, Portugal chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

8. In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Qatar had chosen Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc. Following Mr. Ruda's death, Qatar has chosen Mr. Santiago Torres Bernárdez to sit as judge ad hoc. Mr. Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings.

9. 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), the Libyan Arab Jamahiriya has chosen Mr. Ahmed Sadek El-Kosheri to sit as judge ad hoc.

10. In the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America), the Islamic Republic of Iran has chosen Mr. François Rigaux to sit as judge ad hoc.

11. In the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Bosnia and Herzegovina has chosen Mr. Elihu Lauterpacht and Yugoslavia Mr. Milenko Kreća to sit as judges ad hoc.

12. In the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Slovakia has chosen Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

13. In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Cameroon has chosen Mr. Kéba Mbaye and Nigeria Prince Bola A. Ajibola to sit as judges ad hoc.

14. In the case concerning Fisheries Jurisdiction (Spain v. Canada), Spain has chosen Mr. Santiago Torres Bernárdez and Canada the Honourable Marc Lalonde to sit as judges ad hoc.

15. In the Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case, New Zealand has chosen Sir Geoffrey Palmer to sit as judge ad hoc.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

16. On 31 July 1996, the 185 States Members of the United Nations, together with Nauru and Switzerland, were parties to the Statute of the Court.

17. Fifty-nine 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, Cameroon, Canada, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Greece, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, 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 Yearbook 1995-1996. On 25 March 1996, Poland deposited with the Secretary-General of the United Nations a new declaration replacing and terminating its previous declaration, deposited on 25 September 1990.

18. Since 1 August 1995, one treaty providing for the jurisdiction of the Court in contentious proceedings and registered with the Secretariat of the United Nations has come to the attention of the Registry of the Court: the Treaty of Permanent Friendship, signed between Costa Rica and Spain on 9 January 1953 (article VI).

19. Lists of treaties and conventions which provide for the jurisdiction of the Court appear in chapter IV, section III, of the Yearbook 1995-1996. 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, Article 37).

B. Jurisdiction of the Court in advisory proceedings

20. 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 Organization

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

21. The international instruments which make provision for the advisory jurisdiction of the Court are listed in chapter IV, section I, of the Yearbook 1995-1996.

III. JUDICIAL WORK OF THE COURT

22. During the period under review, two cases were brought to the Court: the Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case and the case concerning Kasikili/Sedudu Island (Botswana/Namibia). Two requests for the indication of provisional measures were made: one in the above-mentioned Request made by New Zealand and one in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria). In that case also, preliminary objections were raised by Nigeria. Two cases were discontinued: the case concerning Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal) was discontinued by Guinea-Bissau; and the case concerning the Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America) by agreement of the two Parties.

23. The Court held 31 public sittings and a number of private meetings. It rendered an advisory opinion in the case concerning the Legality of the Use by a State of Nuclear Weapons in Armed Conflict and another one in the case concerning the Legality of the Threat or Use of Nuclear Weapons. It delivered a judgment on jurisdiction and admissibility in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia); and made an Order in which it dismissed the Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case, as well as the request for provisional measures and the applications for permission to intervene in that case. The Court further made an Order indicating provisional measures in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria). It also made Orders recording the discontinuance and directing the removal of the case from the list in the cases concerning Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal) and the Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America). By another Order, in the case concerning Fisheries Jurisdiction (Spain v. Canada), it decided not to authorize the filing of a second round of written pleadings on the question of its jurisdiction. Finally, the Court made Orders concerning time limits 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 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) and Kasikili/Sedudu Island (Botswana/Namibia).

24. The President of the Court made Orders concerning time limits in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) and in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia).

A. Contentious cases

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

25. 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.

26. 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.

27. 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."

28. By an Order of 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 (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 and 145).

29. By an Order of 12 June 1990 (Reports 1990, p. 86), 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. The Memorial was filed within the prescribed time limit.

30. 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 (Reports 1991, p. 6), 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.

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

32. By Orders of 18 December 1991 (Reports 1991, p. 187) and 5 June 1992 (Reports 1992, p. 225), made in response to successive requests by the Islamic Republic of 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 the Islamic Republic of Iran on the preliminary objections to 9 June and 9 September 1992 respectively. Those observations and submissions were filed within the prescribed time limit and were communicated to the Secretary-General of the International Civil Aviation Organization, together with the written pleadings previously filed, pursuant to Article 34, paragraph 3, of the Statute of the Court and Article 69, paragraph 3, of the Rules of Court. The President of the Court, acting under the same provisions, fixed 9 December 1992 as the time limit for the eventual submission of written observations by the Council of ICAO. ICAO's observations were duly filed within that time limit.

33. The public sittings to hear the oral arguments of the Parties, scheduled to open on 12 September 1994, were postponed sine die at the joint request of the Parties.

34. By a letter of 22 February 1996, the Agents of the two Parties jointly notified the Court that their Governments had agreed to discontinue the case because they had entered into "an agreement in full and final settlement of all disputes, differences, claims, counterclaims and matters directly or indirectly raised by or capable of arising out of, or directly or indirectly related to or connected with, this case". By an Order of the same day (Reports 1996, p. 9), the Court placed on record the discontinuance and directed that the case be removed from the list.

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

35. 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 bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

36. 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.

37. 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.

38. 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."

39. In its Judgment of 12 November 1991 in the case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) (Reports 1991, p. 53) 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."

40. After the two Governments concerned had had time to study that Judgment, the President of the Court convened a meeting with the representatives of the Parties on 28 February 1992, at which however they requested that no time limit be fixed for the initial pleadings in the case, pending the outcome of negotiations on the question of maritime delimitation; those negotiations were

to continue for six months in the first instance, after which, if they had not been successful, a further meeting would be held with the President.

41. No indications having been received from the Parties as to the state of their negotiations, the President convened a further meeting with the Agents on 6 October 1992. The Agents stated that some progress had been made towards an agreement, and a joint request was made by the two Parties that a further period of three months, with a possible further extension of three months, be allowed for continuation of the negotiations. The President agreed to this, and expressed satisfaction at the efforts being made by the Parties to resolve their dispute by negotiation, in the spirit of the recommendation made in the Judgment of 12 November 1991.

42. After several exchanges of letters regarding extended time limits, the President again convened the Agents of the Parties on 10 March 1994. At that meeting the Agents handed the President the text of an agreement entitled "Management and Cooperation Agreement between the Government of the Republic of Guinea-Bissau and the Government of the Republic of Senegal", done at Dakar on 14 October 1993 and signed by the two Heads of State. The Agreement, which provides, inter alia, for the joint exploitation, by the two Parties, of a "maritime zone situated between the 268° and 220° azimuths drawn from Cape Roxo" (article 1), and the establishment of an "International Agency for the exploitation of the zone" (article 4), will enter into force, according to the terms of its article 7, "upon conclusion of the agreement concerning the establishment and functioning of the International Agency and with the exchange of the instruments of ratification of both agreements by both States".

43. In letters dated 16 March 1994 addressed to the Presidents of both States, the President of the Court expressed his satisfaction and informed them that the case would be removed from the list, in accordance with the terms of the Rules of Court, as soon as the Parties had notified him of their decision to discontinue the proceedings.

44. At a meeting held by the President with the representatives of the Parties on 1 November 1995, the latter furnished him with an additional copy of the above-mentioned agreement as well as the text of a "Protocol on the establishment and functioning of the Agency for Management and Cooperation between the Republic of Senegal and the Republic of Guinea-Bissau instituted by the agreement of 14 October 1993", done at Bissau on 12 June 1995 and signed by the two Heads of State. The representatives at the same time notified him of the decisions of their Governments to discontinue the proceedings and the President asked them to confirm that decision in writing to the Court in whatever manner they deemed most appropriate.

45. By a letter of 2 November 1995, the Agent of Guinea-Bissau confirmed that his Government, by virtue of the agreement reached by the two Parties on the disputed zone, had decided to discontinue the proceedings instituted by its Application dated 12 March 1991; after the Agent of Senegal, by a letter dated 6 November 1995, had confirmed that his Government "agreed to the discontinuance of proceedings", the Court, by an Order of 8 November 1995 (Reports 1995, p. 423), placed on record the discontinuance and directed that the case be removed from the list.

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

46. 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".

47. 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 in relation to the two States and not binding on Qatar.

48. With regard to the shoals of Dibal and Qit'at Jaradah, a further decision of the British Government in 1947 to delimit the seabed 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 also considered 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.

49. 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, it was stated that the British Government considered that the line divided "in accordance with equitable principles" the seabed 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.

50. 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 been rejecting 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 seabed boundary of the two States. Qatar based its claims with respect to delimitation on customary international law and applicable local practices and customs.

51. 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 seabed 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 seabed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain."

52. In the 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, the subject and scope of the commitment to jurisdiction being determined, according to Qatar, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990.

53. 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.

54. At a meeting held on 2 October 1991 to enable the President of the Court to ascertain their views, the Parties reached agreement as to the desirability of the proceedings being initially devoted to the questions of the Court's jurisdiction to entertain the dispute and the admissibility of the Application. The President accordingly made, on 11 October 1991, an Order (Reports 1991, p. 50) deciding that the written proceedings should first be addressed to those questions; in the same Order he fixed the following time limits in accordance with a further agreement reached between the Parties at the meeting of 2 October: 10 February 1992 for the Memorial of Qatar, and 11 June 1992 for the Counter-Memorial of Bahrain. The Memorial and the Counter-Memorial were filed within the prescribed time limits.

55. By an Order of 26 June 1992 (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. Both the Reply and the Rejoinder were filed within the prescribed time limits.

56. Qatar chose Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc. Following Mr. Ruda's death, Qatar chose Mr. Santiago Torres Bernárdez to sit as judge ad hoc.

57. Oral proceedings were held from 28 February to 11 March 1994. In the course of eight public sittings, the Court heard statements on behalf of Qatar and Bahrain. The Vice-President of the Court put questions to both Parties.

58. At a public sitting held on 1 July 1994, the Court delivered a Judgment (Reports 1994, p. 112) by which it found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the Parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only

an Application from Qatar setting out that State's specific claims in connection with that formula, the Court decided to afford the Parties the opportunity to submit to it the whole of the dispute. It fixed 30 November 1994 as the time limit within which the Parties were jointly or separately to take action to that end and reserved any other matters for subsequent decision.

59. Judge Shahabuddeen appended a declaration to the Judgment (Reports 1994, p. 129); Vice-President Schwebel and Judge ad hoc Valticos appended separate opinions (ibid., pp. 130 and 132); and Judge Oda appended his dissenting opinion (ibid., p. 133).

60. On 30 November 1994, the date fixed in the Judgment of 1 July, the Court received from the Agent of Qatar a letter transmitting an "Act to comply with paragraphs (3) and (4) of the operative paragraph 41 of the Judgment of the Court dated 1 July 1994". On the same day, the Court received a communication from the Agent of Bahrain, transmitting the text of a document entitled "Report of the State of Bahrain to the International Court of Justice on the Attempt by the Parties to Implement the Court's Judgment of 1 July 1994".

61. In view of those communications, the Court resumed dealing with the case.

62. At a public sitting held on 15 February 1995, the Court delivered a Judgment on jurisdiction and admissibility (Reports 1995, p. 6) by which it found that it had jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain and that the Application of the State of Qatar as formulated on 30 November 1994 was admissible.

63. Vice-President Schwebel, Judges Oda, Shahabuddeen and Koroma, and Judge ad hoc Valticos appended dissenting opinions to the Judgment (Reports 1995, pp. 27, 40, 51, 67 and 74).

64. Judge ad hoc Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings.

65. By an Order of 28 April 1995 (Reports 1995, p. 83), the Court, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, fixed 29 February 1996 as the time limit for the filing by each of the Parties of a Memorial on the merits. On the request of Bahrain, and after the views of Qatar had been ascertained, the Court, by an Order of 1 February 1996 (Reports 1996, p. 6), extended that time limit to 30 September 1996.

4, 5. 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)

66. 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 of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988.

67. In the Applications, the Libyan Arab Jamahiriya 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 airplane to crash, and all persons aboard were killed.

68. 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.

69. 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.

70. According to the Applications, it had not been possible to settle by negotiation the disputes that had thus arisen, nor 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.

71. 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 political independence of Libya.

72. 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.

73. 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.

74. 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".

75. Libya chose Mr. Ahmed S. El-Kosheri to sit as judge ad hoc.

76. At the opening of the hearings on the request for the indication of provisional measures on 26 March 1992, 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. 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.

77. At a public sitting held on 14 April 1992, the Court read the two Orders on the requests for indication of provisional measures filed by Libya (Reports 1992, pp. 3 and 114), in which it found that the circumstances of the case were not such as to require the exercise of its power to indicate such measures.

78. Acting President Oda (ibid., pp. 17 and 129) and Judge Ni (ibid., pp. 20 and 132) each appended a declaration to the Orders 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.

79. By Orders of 19 June 1992 (Reports 1992, pp. 231 and 234), the Court, taking into account that the length of time limits had been agreed by the Parties at a meeting held on 5 June 1992 with the Vice-President of the Court, exercising the function 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. The Memorial was filed within the prescribed time limit.

80. On 16 and on 20 June 1995 respectively, the United Kingdom and the United States of America filed preliminary objections to the jurisdiction of the Court to entertain the Applications of the Libyan Arab Jamahiriya.

81. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed;

proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that Article.

82. After a meeting had been held, on 9 September 1995, between the President of the Court and the Agents of the Parties to ascertain the views of the latter, the Court, by Orders of 22 September 1995 (Reports 1995, pp. 282 and 285), fixed, in each case, 22 December 1995 as the time limit within which the Libyan Arab Jamahiriya might present a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom and the United States of America respectively. The Libyan Arab Jamahiriya filed such statements within the prescribed time limits.

6. Oil Platforms (Islamic Republic of Iran v. United States of America)

83. On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America with respect to the destruction of Iranian oil platforms.

84. The Islamic Republic founded the jurisdiction of the Court for the purposes of these proceedings on article XXI (2) of the Iran/United States Treaty of Amity, Economic Relations and Consular Rights, signed at Tehran on 15 August 1955.

85. In its Application, the Islamic Republic of Iran alleged that the destruction caused by several warships of the United States Navy, on 19 October 1987 and 18 April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. In that connection, Iran referred in particular to articles I and X (1) of the Treaty which provide, respectively: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran", and "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

86. The Islamic Republic accordingly requested the Court to adjudge and declare as follows:

> "(a) That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;
>
> "(b) That in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, inter alia, under articles I and X (1) of the Treaty of Amity and international law;
>
> "(c) That in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including articles I and X (1), and international law;
>
> "(d) That the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent

stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

"(e) Any other remedy the Court may deem appropriate."

87. By an Order of 4 December 1992 (Reports 1992, p. 763), the President of the Court, taking into account an agreement of the Parties, fixed 31 May 1993 as the time limit for the filing of the Memorial of Iran and 30 November 1993 for the filing of the Counter-Memorial of the United States.

88. By an Order of 3 June 1993 (Reports 1993, p. 35), the President of the Court, upon the request of Iran and after the United States had indicated that it had no objection, extended those time limits to 8 June and 16 December 1993, respectively. The Memorial was filed within the prescribed time limit.

89. On 16 December 1993, within the extended time limit for filing the Counter-Memorial, the United States of America filed certain preliminary objections to the Court's jurisdiction. In accordance with the terms of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended; by an Order of 18 January 1994 (Reports 1994, p. 3), the Court fixed 1 July 1994 as the time limit within which Iran could present a written statement of its observations and submissions on the objections. That written statement was filed within the prescribed time limit.

90. The public sittings to hear the oral arguments of the Parties on the preliminary objections filed by the United States of America will open on 16 September 1996.

7. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))

91. On 20 March 1993, the Republic of Bosnia and Herzegovina filed in the Registry of the International Court of Justice an Application instituting proceedings against the Federal Republic of Yugoslavia "for violating the Genocide Convention".

92. The Application referred to several provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, as well as of the Charter of the United Nations, which Bosnia and Herzegovina alleged were violated by Yugoslavia. It also referred in this respect to the four Geneva Conventions of 1949 and their Additional Protocol I of 1977, to The Hague Regulations on Land Warfare of 1907, and to the Universal Declaration of Human Rights.

93. The Application referred to article IX of the Genocide Convention as the basis for the jurisdiction of the Court.

94. In the Application, Bosnia and Herzegovina requested the Court to adjudge and declare:

"(a) That Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations towards the people and State of Bosnia and Herzegovina under articles I, II (a), II (b), II (c), II (d),

III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;

"(b) That Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations towards the people and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including The Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

"(c) That Yugoslavia (Serbia and Montenegro) has violated and continues to violate articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina;

"(d) That Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;

"(e) That in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles 1 (3), 55 and 56 of the Charter of the United Nations;

"(f) That Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4) and 33 (1), of the Charter of the United Nations;

"(g) That Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

"(h) That Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

"- armed attacks against Bosnia and Herzegovina by air and land;

"- aerial trespass into Bosnian airspace;

"- efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

"(i) That Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;

"(j) That Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty

obligations under Article 2 (4) of the Charter of the United Nations, as well as its obligations under general and customary international law;

"(k) That under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its people under Article 51 of the Charter of the United Nations and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

"(l) That under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under Article 51 of the Charter of the United Nations and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment supplies, troops, etc.);

"(m) That Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of Article 51 of the Charter of the United Nations and the rules of customary international law;

"(n) That all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of Article 51 of the Charter of the United Nations and the rules of customary international law;

"(o) That Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24 (1) and 51 of the Charter of the United Nations and in accordance with the customary doctrine of ultra vires;

"(p) That, pursuant to the right of collective self-defence recognized by Article 51 of the Charter of the United Nations, all other States Parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing it with weapons, military equipment and supplies, and armed forces (soldiers, sailors, aviators, etc.);

"(q) That Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

"- from its systematic practice of so-called 'ethnic cleansing' of the citizens and sovereign territory of Bosnia and Herzegovina;

"- from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;

"- from the wanton devastation of villages, towns, districts, cities and religious institutions in Bosnia and Herzegovina;

"- from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

"- from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

"- from the starvation of the civilian population in Bosnia and Herzegovina;

"- from the interruption of, interference with or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;

"- from all use of force - whether direct or indirect, overt or covert - against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;

"- from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;

"- from all support of any kind - including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support - to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;

"(r) That Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)."

95. On the same day, the Government of Bosnia and Herzegovina, stating that:

"The overriding objective of this Request is to prevent further loss of human life in Bosnia and Herzegovina",

and that:

"The very lives, well-being, health, safety, physical, mental and bodily integrity, homes, property and personal possessions of hundreds of thousands of people in Bosnia and Herzegovina are right now at stake, hanging in the balance, awaiting the order of this Court",

filed a request for the indication of provisional measures under Article 41 of the Statute of the Court.

96. The provisional measures requested were as follows:

"1. That Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, must immediately cease and desist from all acts of genocide and genocidal acts against the people and State of Bosnia and Herzegovina, including but not limited to murder; summary executions; torture; rape; mayhem; so-called 'ethnic cleansing'; the wanton devastation of villages, towns, districts and cities; the siege of

villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with or harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or otherwise.

"2. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support - including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support - to any nation, group, organization, movement, militia or individual engaged in or planning to engage in military or paramilitary activities in or against the people, State and Government of Bosnia and Herzegovina.

"3. That Yugoslavia (Serbia and Montenegro) itself must immediately cease and desist from any and all types of military or paramilitary activities by its own officials, agents, surrogates or forces in or against the people, State and Government of Bosnia and Herzegovina, and from any other use or threat of force in its relations with Bosnia and Herzegovina.

"4. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to seek and receive support from other States in order to defend itself and its people, including by means of immediately obtaining military weapons, equipment and supplies.

"5. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to request the immediate assistance of any State to come to its defence, including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, aviators, etc.).

"6. That under the current circumstances, any State has the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors and aviators, etc.)."

97. Hearings on the request for the indication of provisional measures were held on 1 and 2 April 1993. At two public sittings the Court heard the oral observations of each of the Parties. A Member of the Court put a question to both Agents.

98. At a public sitting held on 8 April 1993, the President of the Court read out the Order on the request for provisional measures made by Bosnia and Herzegovina (Reports 1993, p. 3), by which the Court indicated, pending its final decision in the proceedings instituted on 20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia (Serbia and Montenegro), the following provisional measures:

(a) The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide; and the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence do not commit any acts of genocide, of conspiracy to

commit genocide, of direct and public incitement to commit genocide or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnic, racial or religious group;

(b) The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution.

99. Judge Tarassov appended a declaration to the Order (ibid., pp. 26-27).

100. By an Order of 16 April 1993 (Reports 1993, p. 29), the President of the Court, taking into account an agreement of the Parties, fixed 15 October 1993 as the time limit for the filing of the Memorial of Bosnia and Herzegovina and 15 April 1994 for the filing of the Counter-Memorial of Yugoslavia.

101. Bosnia and Herzegovina chose Mr. Elihu Lauterpacht and Yugoslavia Mr. Milenko Kreća to sit as judges ad hoc.

102. On 27 July 1993 the Republic of Bosnia and Herzegovina filed a second request for the indication of provisional measures, stating that:

> "This extraordinary step is being taken because the Respondent has violated each and every one of the three measures of protection on behalf of Bosnia and Herzegovina that were indicated by this Court on 8 April 1993, to the grave detriment of both the people and the State of Bosnia and Herzegovina. In addition to continuing its campaign of genocide against the Bosnian people - whether Muslim, Christian, Jew, Croat or Serb - the Respondent is now planning, preparing, conspiring to, proposing and negotiating the partition, dismemberment, annexation and incorporation of the sovereign State of Bosnia and Herzegovina - a Member of the United Nations Organization - by means of genocide."

103. The provisional measures then requested were as follows:

> "1. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support - including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support - to any nation, group, organization, movement, military, militia or paramilitary force, irregular armed unit or individual in Bosnia and Herzegovina for any reason or purpose whatsoever.
>
> "2. That Yugoslavia (Serbia and Montenegro) and all of its public officials - including and especially the President of Serbia, Mr. Slobodan Milošević - must immediately cease and desist from any and all efforts, plans, plots, schemes, proposals or negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia and Herzegovina.
>
> "3. That the annexation or incorporation of any sovereign territory of the Republic of Bosnia and Herzegovina by Yugoslavia (Serbia and Montenegro) by any means or for any reason shall be deemed illegal, null and void ab initio.

"4. That the Government of Bosnia and Herzegovina must have the means 'to prevent' the commission of acts of genocide against its own people as required by article I of the Genocide Convention.

"5. That all Contracting Parties to the Genocide Convention are obliged by article I thereof 'to prevent' the commission of acts of genocide against the people and State of Bosnia and Herzegovina.

"6. That the Government of Bosnia and Herzegovina must have the means to defend the people and State of Bosnia and Herzegovina from acts of genocide and partition and dismemberment by means of genocide.

"7. That all Contracting Parties to the Genocide Convention have the obligation thereunder 'to prevent' acts of genocide, and partition and dismemberment by means of genocide, against the people and State of Bosnia and Herzegovina.

"8. That in order to fulfil its obligations under the Genocide Convention under the current circumstances, the Government of Bosnia and Herzegovina must have the ability to obtain military weapons, equipment and supplies from other Contracting Parties.

"9. That in order to fulfil their obligations under the Genocide Convention under the current circumstances, all Contracting Parties thereto must have the ability to provide military weapons, equipment, supplies and armed forces (soldiers, sailors, aviators) to the Government of Bosnia and Herzegovina at its request.

"10. That United Nations Peacekeeping Forces in Bosnia and Herzegovina (i.e., UNPROFOR) must do all in their power to ensure the flow of humanitarian relief supplies to the Bosnian people through the Bosnian city of Tuzla."

104. On 5 August 1993, the President of the Court addressed a message to both Parties, referring to article 74, paragraph 4, of the Rules of Court, which enables him, pending the meeting of the Court, "to call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects", and stating:

"I do now call upon the Parties so to act, and I stress that the provisional measures already indicated in the Order which the Court made after hearing the Parties, on 8 April 1993, still apply.

"Accordingly I call upon the Parties to take renewed note of the Court's Order and to take all and any measures that may be within their power to prevent any commission, continuance or encouragement of the heinous international crime of genocide."

105. On 10 August 1993, Yugoslavia filed a request, dated 9 August 1993, for the indication of provisional measures, whereby it requested the Court to indicate the following provisional measure:

"The Government of the so-called Republic of Bosnia and Herzegovina should immediately, in pursuance of its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group."

106. The hearings concerning the requests for the indication of provisional measures were held on 25 and 26 August 1993. In the course of two public sittings, the Court heard statements from each of the Parties. Judges put questions to both Parties.

107. At a public sitting held on 13 September 1993, the President of the Court read out the Order concerning requests for the indication of provisional measures (Reports 1993, p. 325), by which the Court reaffirmed the provisional measures indicated in its Order of 8 April 1993, which measures, the Court stated, should be immediately and effectively implemented.

108. Judge Oda appended a declaration to the Order (Reports 1993, p. 351); Judges Shahabuddeen, Weeramantry and Ajibola and Judge ad hoc Lauterpacht appended their individual opinions (ibid., pp. 353, 370, 390 and 407); and Judge Tarassov and Judge ad hoc Kreća appended their dissenting opinions (ibid., pp. 449 and 453).

109. By an Order of 7 October 1993 (Reports 1993, p. 470), the Vice-President of the Court, at the request of Bosnia and Herzegovina and after Yugoslavia had expressed its opinion, extended to 15 April 1994 the time limit for the filing of the Memorial of Bosnia and Herzegovina, and to 15 April 1995 the time limit for the filing of the Counter-Memorial of Yugoslavia. The Memorial was filed within the prescribed time limit.

110. By an order of 21 March 1995 (Reports 1995, p. 80), the President of the Court, upon a request of the Agent of Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, extended to 30 June 1995 the time limit for the filing of the Counter-Memorial of Yugoslavia.

111. On 26 June 1995, within the extended time limit for the filing of its Counter-Memorial, Yugoslavia filed certain preliminary objections in the above case. The objections related, firstly, to the admissibility of the Application and, secondly, to the jurisdiction of the Court to deal with the case.

112. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that article.

113. By an Order of 14 July 1995, the President of the Court, taking into account the views expressed by the Parties, fixed 14 November 1995 as the time limit within which the Republic of Bosnia and Herzegovina might present a written statement of its observations and submissions on the preliminary objections raised by the Federal Republic of Yugoslavia. Bosnia and Herzegovina filed such a statement within the prescribed time limit.

114. Public sittings to hear the oral arguments of the Parties on the preliminary objection raised by Yugoslavia were held between 29 April and 3 May 1996.

115. At a public sitting held on 11 July 1996, the Court delivered its Judgment on the preliminary objections, the operative paragraph of which reads as follows:

"THE COURT,

"(1) Having taken note of the withdrawal of the fourth preliminary objection raised by the Federal Republic of Yugoslavia,

"Rejects

"(a) By 14 votes to 1, the first, second and third preliminary objections;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

"Against: Judge ad hoc Kreća;

"(b) By 11 votes to 4, the fifth preliminary objection;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Koroma, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

"Against: Judges Oda, Shi, Vereshchetin; Judge ad hoc Kreća;

"(c) By 14 votes to 1, the sixth and seventh preliminary objections;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

"Against: Judge ad hoc Kreća;

"(2) (a) By 13 votes to 2,

"Finds that, on the basis of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it has jurisdiction to adjudicate upon the dispute;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

"Against: Judge Oda; Judge ad hoc Kreća;

"(b) By 14 votes to 1,

"Dismisses the additional bases of jurisdiction invoked by the Republic of Bosnia-Herzegovina;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Kreća;

"Against: Judge ad hoc Lauterpacht;

"(c) By 13 votes to 2,

"Finds that the Application filed by the Republic of Bosnia-Herzegovina on 20 March 1993 is admissible.

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

"Against: Judge Oda; Judge ad hoc Kreća."

116. Judge Oda appended a declaration to the Judgment of the Court; Judges Shi and Vereshchetin appended a joint declaration; Judge ad hoc Lauterpacht also appended a declaration. Judges Shahabuddeen, Weeramantry and Parra-Aranguren appended separate opinions to the Judgment; Judge ad hoc Kreća appended a dissenting opinion.

117. By an Order of 23 July 1996, the President of the Court, taking into account the views expressed by the Parties, fixed 23 July 1997 as the time limit for the filing of the Counter-Memorial of Yugoslavia.

8. Gabčíkovo-Nagymaros Project (Hungary/Slovakia)

118. On 23 October 1992, the Ambassador of the Republic of Hungary to the Netherlands filed in the Registry of the International Court of Justice an Application instituting proceedings against the Czech and Slovak Federal Republic in a dispute concerning the projected diversion of the Danube. In that document the Hungarian Government, before detailing its case, invited the Czech and Slovak Federal Republic to accept the jurisdiction of the Court.

119. A copy of the Application was transmitted to the Government of the Czech and Slovak Federal Republic in accordance with Article 38, paragraph 5, of the Rules of Court, which reads as follows:

"When the Applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case."

120. Following negotiations under the aegis of the European Communities between Hungary and the Czech and Slovak Federal Republic, which dissolved into two separate States on 1 January 1993, the Governments of the Republic of Hungary and of the Slovak Republic notified jointly, on 2 July 1993, to the Registrar of the Court a Special Agreement, signed at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic, regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the "provisional solution". The Special Agreement records that the Slovak Republic

is in this respect the sole successor State of the Czech and Slovak Federal Republic.

121. In article 2 of the Special Agreement:

> "(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,
>
> "(a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;
>
> "(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system, described in the report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course);
>
> "(c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.
>
> "(2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph (1) of this article."

122. By an Order of 14 July 1993 (Reports 1993, p. 319), the Court decided that, as provided in article 3, paragraph 2, of the Special Agreement and Article 46, paragraph 1, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same time limit, and fixed 2 May 1994 and 5 December 1994 as the time limits for the filing of the Memorial and Counter-Memorial, respectively. The Memorials and Counter-Memorials were filed within the prescribed time limits.

123. Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

124. By an Order of 20 December 1994 (Reports 1994, p. 151), the President of the Court, taking into account the views of the Parties, fixed 20 June 1995 as the time limit for the filing of a Reply by each of the Parties. Those Replies were filed within the prescribed time limit.

9. Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)

125. On 29 March 1994 the Republic of Cameroon filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Nigeria in a dispute concerning the question of sovereignty over the peninsula of Bakassi, and requesting the Court to determine the course of the maritime frontier between the two States insofar as that frontier had not already been established in 1975.

126. As a basis for the jurisdiction of the Court, the Application refers to the declarations made by Cameroon and Nigeria under Article 36, paragraph 2, of the Statute of the Court, by which they accept that jurisdiction as compulsory.

127. In the Application, Cameroon refers to "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities on the Bakassi peninsula", resulting "in great prejudice to the Republic of Cameroon", and requests the Court to adjudge and declare:

> "(a) that sovereignty over the peninsula of Bakassi is Cameroonian, by virtue of international law, and that that peninsula is an integral part of the territory of Cameroon;
>
> "(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris);
>
> "(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;
>
> "(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;
>
> "(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian peninsula of Bakassi;
>
> "(e') that the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involve the responsibility of the Federal Republic of Nigeria;
>
> "(e") that, consequently, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] the precise assessment of the damage caused by the Federal Republic of Nigeria;
>
> "(f) in order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions."

128. On 6 June 1994, Cameroon filed in the Registry of the Court an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described as relating essentially "to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad", while also asking the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. Cameroon requested the Court to adjudge and declare:

"(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

"(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris) and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

"(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

"(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

"(e) that the internationally unlawful acts referred to under (a), (b) and (d) above involve the responsibility of the Federal Republic of Nigeria;

"(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria;

"(f) that in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea."

129. Cameroon further requested the Court to join the two Applications "and to examine the whole in a single case".

130. At a meeting between the President of the Court and the representatives of the Parties held on 14 June 1994, the Agent of Nigeria indicated that his Government had no objection to the Additional Application being treated as an amendment to the initial Application, so that the Court could deal with the whole as one case.

131. Cameroon chose Mr. Kéba Mbaye and Nigeria Prince Bola A. Ajibola to sit as judges ad hoc.

132. By an Order of 16 June 1994, the Court, seeing no objection to the suggested procedure, fixed 16 March 1995 as the time limit for filing the Memorial of Cameroon, and 18 December 1995 as the time limit for filing the Counter-Memorial of Nigeria. The Memorial was filed within the prescribed time limit.

133. On 13 December 1995, within the time limit for the filing of its Counter-Memorial, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the claims of Cameroon.

134. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

135. By an Order of 10 January 1996, the President of the Court, taking into account the views expressed by the Parties at a meeting between the President and the Agents of the Parties held on 10 January 1996, fixed 15 May 1996 as the time limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections raised by Nigeria. Cameroon filed such a statement within the prescribed time limit.

136. On 12 February 1996, the Registry of the International Court of Justice received from Cameroon a request for the indication of provisional measures, with reference to "serious armed incidents" which had taken place between Cameroonian and Nigerian forces in the Bakassi peninsula beginning on 3 February 1996.

137. In its request, Cameroon referred to the submissions made in its Application of 29 May 1994, supplemented by an Additional Application of 6 June of that year, as also summed up in its Memorial of 16 March 1995, and requested the Court to indicate the following provisional measures:

> "(a) the armed forces of the Parties shall withdraw to the position they were occupying before the Nigerian armed attack of 3 February 1996;
>
> "(b) the Parties shall abstain from all military activity along the entire boundary until the judgment of the Court is given;
>
> "(c) the Parties shall abstain from any act or action which might hamper the gathering of evidence in the present case."

138. Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held between 5 and 8 March 1996.

139. At a public sitting held on 15 March 1996, the President of the Court read the Order on the request for provisional measures made by Cameroon (Reports 1996, p. 13), the operative paragraph of which reads as follows:

> "(1) Unanimously,
>
> "Both Parties should ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before it;
>
> "(2) By 16 votes to 1,
>
> "Both Parties should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo, on 17 February 1996, for the cessation of all hostilities in the Bakassi Peninsula;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge ad hoc Mbaye;

"Against: Judge ad hoc Ajibola.

"(3) By 12 votes to 5,

"Both Parties should ensure that the presence of any armed forces in the Bakassi Peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Fleischhauer, Koroma, Ferrari Bravo, Higgins, Parra-Aranguren; Judge ad hoc Mbaye;

"Against: Judges Shahabuddeen, Weeramantry, Shi, Vereshchetin; Judge ad hoc Ajibola.

"(4) By 16 votes to 1,

"Both Parties should take all necessary steps to conserve evidence relevant to the present case within the disputed area;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge ad hoc Mbaye;

"Against: Judge ad hoc Ajibola.

"(5) By 16 votes to 1,

"Both Parties should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge ad hoc Mbaye;

"Against: Judge ad hoc Ajibola."

140. Judges Oda, Shahabuddeen, Ranjeva and Koroma appended declarations to the Order of the Court; Judges Weeramantry, Shi and Vereshchetin appended a joint declaration; Judge ad hoc Mbaye also appended a declaration. Judge ad hoc Ajibola appended a separate opinion to the Order.

10. Fisheries Jurisdiction (Spain v. Canada)

141. On 28 March 1995, the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the implementing regulations of that Act, as well as to

certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the Estai, sailing under the Spanish flag.

142. The Application indicated, inter alia, that by the amended Act "an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the Regulatory Area of the Northwest Atlantic Fisheries Organization (NAFO), that is, on the high seas, outside Canada's exclusive economic zone"; that the Act "expressly permits (article 8) the use of force against foreign fishing boats in the zones that article 2.1 unambiguously terms the 'high seas'"; that the implementing regulations of 25 May 1994 provided, in particular, for "the use of force by fishery protection vessels against the foreign fishing boats covered by those rules ... which infringe their mandates in the zone of the high seas within the scope of those regulations"; and that the implementing regulations of 3 March 1995 "expressly permit [...] such conduct as regards Spanish and Portuguese ships on the high seas".

143. The Application alleged the violation of various principles and norms of international law and stated that there was a dispute between Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain.

144. As a basis of the Court's jurisdiction, the Applicant referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

145. In that regard, the Application specified that:

> "The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2 (d), introduced as recently as 10 May 1994, two days prior to the amendment of the Coastal Fisheries Protection Act) does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title asserted to justify the Canadian measures and their actions to enforce them, a piece of legislation which, going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of international law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own Declaration (para. 2 (c) thereof). Moreover, only as from 3 March 1995 has an attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious offences against international law set forth above."

146. While expressly reserving the right to modify and extend the terms of the Application, as well as the grounds invoked, and the right to request the appropriate provisional measures, the Kingdom of Spain requested:

> "(a) that the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on

the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;

"(b) that the Court adjudge and declare that Canada is bound to refrain from any repetition of the complained-of acts, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and

"(c) that, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship Estai flying the flag of Spain and the measures of coercion and the exercise of jurisdiction over that ship and over its captain constitute a concrete violation of the aforementioned principles and norms of international law;".

147. By a letter dated 21 April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in the view of his Government, the Court manifestly lacked jurisdiction to deal with the Application filed by Spain by reason of paragraph 2 (d) of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court.

148. Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995, decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time limit for the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time limits.

149. Spain chose Mr. Santiago Torres Bernárdez and Canada the Honourable March Lalonde to sit as judges ad hoc.

150. The Spanish Government subsequently expressed its wish to be authorized to file a Reply; the Canadian Government opposed this. By an Order of 8 May 1996, (Reports 1996, p. 58) the Court, considering that it was "sufficiently informed, at this stage, of the contentions of fact and law on which the Parties rely with respect to its jurisdiction in the case and whereas the presentation by them of other written pleadings on that question therefore does not appear necessary", decided, by 15 votes to 2, not to authorize the filing of a Reply by the Applicant and a Rejoinder by the Respondent on the question of jurisdiction.

151. Judge Vereshchetin and Judge ad hoc Torres Bernárdez voted against; the latter appended a dissenting opinion to the Order.

152. The written proceedings in this case were thus concluded.

11. Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case

153. On 21 August 1995, New Zealand submitted to the Court a Request for an examination of the situation "arising out of a proposed action announced by France which will, if carried out, affect the basis of the Judgment rendered by the Court on 20 December 1974 in the Nuclear Tests Case (New Zealand v. France)". The request referred to a media statement of 13 June 1995 by

President Chirac "which said that France would conduct a final series of eight nuclear weapons tests in the South Pacific starting in September 1995". New Zealand stated that the request was made "under the right granted to New Zealand in paragraph 63 of the Judgment of 20 December 1974".

154. Paragraph 63 reads as follows:

> "Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it. However, the Court observes that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot constitute by itself an obstacle to the presentation of such a request."

155. New Zealand asserted that the rights for which it sought protection "all fall within the scope of the rights invoked by New Zealand in paragraph 28 of the 1973 Application" in the above-mentioned case, but that at the present time New Zealand sought:

> "recognition only of those rights that would be adversely affected by entry into the marine environment of radioactive material in consequence of the further tests to be carried out at Mururoa or Fangataufa atolls, and of its entitlement to the protection and benefit of a properly conducted environmental impact assessment".

New Zealand asked the Court to adjudge and declare:

> "(a) that the conduct of the proposed nuclear tests will constitute a violation of the rights under international law of New Zealand, as well as of other States; further or in the alternative;
>
> "(b) that it is unlawful for France to conduct such nuclear tests before it has undertaken an environmental impact assessment according to accepted international standards. Unless such an assessment establishes that the tests will not give rise, directly or indirectly, to radioactive contamination of the marine environment the rights under international law of New Zealand, as well as the rights of other States, will be violated."

156. On the same day, New Zealand, referring to the Court's Order of 22 June 1973 indicating interim measures of protection and to the Court's Judgment of 20 December 1974 in the above-mentioned case, requested the Court, in accordance with article 33, paragraph 1, of the General Act for the Pacific Settlement of Disputes, 1928 and Article 41 of the Statute of the Court, to indicate the following further provisional measures:

> "(a) that France refrain from conducting any further nuclear tests at Mururoa and Fangataufa atolls;
>
> "(b) that France undertake an environmental impact assessment of the proposed nuclear tests according to accepted international standards and that, unless the assessment establishes that the tests will not give rise to radioactive contamination of the marine environment, France refrain from conducting the tests;

"(c) that France and New Zealand ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court or prejudice the rights of the other Party in respect of the carrying out of whatever decisions the Court may give in this case."

157. New Zealand chose Sir Geoffrey Palmer to sit as judge ad hoc.

158. Applications for permission to intervene were submitted by Australia, Samoa, Solomon Islands, the Marshall Islands and the Federated States of Micronesia, while the last four States also made declarations on intervention.

159. At the invitation of the President of the Court, informal aides-mémoires were presented by New Zealand and France. Public sittings to hear the oral arguments of the two Parties were held on 11 and 12 September 1996.

160. At a public sitting held on 22 September 1995, the President of the Court read the Order (Reports 1995, p. 288), the operative paragraph of which is as follows:

"68. Accordingly,

"THE COURT,

"(1) By 12 votes to 3,

"Finds that the 'Request for an Examination of the Situation' in accordance with paragraph 63 of the Judgment of the Court of 20 December 1974 in the Nuclear Tests Case (New Zealand v. France), submitted by New Zealand on 21 August 1995, does not fall within the provisions of the said paragraph 63 and must consequently be dismissed;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

"Against: Judges Weeramantry, Koroma; Judge ad hoc Sir Geoffrey Palmer;

"(2) By 12 votes to 3,

"Finds that the 'Further Request for the Indication of Provisional Measures' submitted by New Zealand on the same date must be dismissed;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

"Against: Judges Weeramantry, Koroma; Judge ad hoc Sir Geoffrey Palmer;

"(3) By 12 votes to 3,

"Finds that the 'Application for Permission to Intervene' submitted by Australia on 23 August 1995, and the 'Applications for Permission to Intervene' and 'Declarations of Intervention' submitted by Samoa and Solomon Islands on 24 August 1995, and by the Marshall Islands and the

Federated States of Micronesia on 25 August 1995, must likewise be dismissed.

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

"Against: Judges Weeramantry, Koroma; Judge ad hoc Sir Geoffrey Palmer."

161. Vice-President Schwebel and Judges Oda and Ranjeva appended declarations to the Order; Judge Shahabuddeen a separate opinion; Judges Weeramantry and Koroma and Judge ad hoc Sir Geoffrey Palmer appended dissenting opinions.

12. Kasikili/Sedudu Island (Botswana/Namibia)

162. On 29 May 1996, the Government of the Republic of Botswana and the Government of the Republic of Namibia notified jointly to the Registrar of the Court a Special Agreement between the two States which was signed at Gaborone on 15 February 1996 and entered into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu island and the legal status of that island.

163. The Special Agreement refers to a Treaty between the United Kingdom and Germany respecting the spheres of influence of the two countries signed on 1 July 1890 and to the appointment, on 24 May 1992, of a Joint Team of Technical Experts "to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island" on the basis of that Treaty and of the applicable principles of international law. Unable to reach a conclusion on the question, the Joint Team of Technical Experts recommended "recourse to the peaceful settlement of the dispute on the basis of the applicable rules and principles of international law". At the summit meeting held at Harare on 15 February 1995, President Masire of Botswana and President Nujoma of Namibia agreed "to submit the dispute to the International Court of Justice for a final and binding determination".

164. Under the terms of the Special Agreement, the Parties ask the Court to:

"determine, on the basis of the Anglo-Germany Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island".

165. By an Order of 24 June 1996, the Court fixed 28 February and 28 November 1997 respectively as the time limits for the filing by each of the Parties of a Memorial and a Counter-Memorial.

B. Requests for advisory opinion

1. Legality of the Use by a State of Nuclear Weapons in Armed Conflict

166. On 14 May 1993, the World Health Assembly of the World Health Organization (WHO) adopted resolution WHA 46.40, by which the Assembly requested the International Court of Justice to give an advisory opinion on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

167. The letter of the Director-General of WHO transmitting to the Court the request for an advisory opinion, together with certified true copies of the English and French texts of the aforesaid resolution, dated 27 August 1993, was received in the Registry on 3 September 1993.

168. By an Order of 13 September 1993 (Reports 1993, p. 467), the Court fixed 10 June 1994 as the time limit within which written statements might be submitted to the Court by the World Health Organization and by those of its member States which were entitled to appear before the Court, in accordance with Article 66, paragraph 2, of the Statute of the Court.

169. By an Order of 20 June 1994 (Reports 1994, p. 109), the President of the Court, following requests from several of the aforesaid States, extended that time limit to 20 September 1994.

170. By the same Order, the President fixed 20 June 1995 as the time limit within which States and organizations having presented written statements might submit written comments on the other written statements (Article 66, para. 4, of the Statute of the Court).

171. Written statements were filed by Australia, Azerbaijan, Colombia, Costa Rica, the Democratic People's Republic of Korea, Finland, France, Germany, India, Ireland, the Islamic Republic of Iran, Italy, Japan, Kazakstan, Lithuania, Malaysia, Mexico, Nauru, the Netherlands, New Zealand, Norway, Papua New Guinea, the Philippines, the Republic of Moldova, the Russian Federation, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Sri Lanka, Sweden, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

172. Written comments were filed by Costa Rica, France, India, Malaysia, Nauru, the Russian Federation, Solomon Islands, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

173. Public sittings to hear oral statements or comments on the request for an advisory opinion made by the World Health Organization were held between 30 October and 15 November 1995. Those oral proceedings also covered the request for an advisory opinion submitted by the General Assembly of the United Nations on the question of the Legality of the Threat or Use of Nuclear Weapons. During the hearings statements were made by WHO, Australia, Egypt, France, Germany, Indonesia, Mexico, Iran (Islamic Republic of), Italy, Japan, Malaysia, New Zealand, the Philippines, the Russian Federation, Samoa, the Marshall Islands, Solomon Islands, Costa Rica, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe.

174. At a public sitting held on 8 July 1996, the Court delivered its Advisory Opinion, the final paragraph of which reads as follows:

"32. For these reasons,

"THE COURT,

"By 11 votes to 3,

"Finds that it is not able to give the advisory opinion which was requested of it under World Health Assembly resolution WHA 46.40 dated 14 May 1993.

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins.

"Against: Judges Shahabuddeen, Weeramantry, Koroma."

175. Judges Ranjeva and Ferrari Bravo appended declarations to the Advisory Opinion; Judge Oda appended a separate opinion; Judges Shahabuddeen, Weeramantry and Koroma appended dissenting opinions.

2. Legality of the Threat or Use of Nuclear Weapons

176. On 15 December 1994, the General Assembly of the United Nations adopted resolution 49/75 K, entitled "Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons", by which, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, it requested the Court:

"urgently to render its advisory opinion on the following question: 'Is the threat or use of nuclear weapons in any circumstance permitted under international law?'".

177. The request was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 19 December 1994, received in the Registry by facsimile on 20 December 1994 and filed in the original on 6 January 1995.

178. By an Order of 1 February 1995, the Court decided that States entitled to appear before the Court and the United Nations might furnish information on the question submitted to the Court and fixed 20 June 1995 as the time limit within which written statements might be submitted (Article 66, para. 2, of the Statute of the Court) and 20 September 1995 as the time limit within which States and organizations having presented written statements might present written comments on the other written statements (Article 66, para. 4, of the Statute).

179. Written statements were filed by Bosnia and Herzegovina, Burundi, the Democratic People's Republic of Korea, Ecuador, Egypt, Finland, France, Germany, India, Ireland, the Islamic Republic of Iran, Italy, Japan, Lesotho, Malaysia, the Marshall Islands, Mexico, Nauru, the Netherlands, New Zealand, Qatar, the Russian Federation, Samoa, San Marino, Solomon Islands, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

180. Written comments were filed by Egypt, Nauru and Solomon Islands. Nauru subsequently withdrew its comments.

181. Public sittings to hear oral statements or comments on the request for an advisory opinion submitted by the General Assembly were held between 30 October and 15 November 1995. The oral proceedings also covered the request for an advisory opinion submitted by the World Health Organization on the question of the Legality of the Use by a State of Nuclear Weapons in Armed Conflict. During the hearings, statements were made by Australia, Costa Rica, Egypt, France, Germany, Indonesia, Mexico, the Islamic Republic of Iran, Italy, Japan, Malaysia, New Zealand, the Philippines, Qatar, the Russian Federation, San

Marino, Samoa, the Marshall Islands, Solomon Islands, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe.

182. At a public sitting held on 8 July 1996, the Court delivered its Advisory Opinion, the final paragraph of which reads as follows:

"For these reasons,

"THE COURT

"(1) By 13 votes to 1,

"Decides to comply with the request for an advisory opinion;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins;

"Against: Judge Oda.

"(2) Replies in the following manner to the question put by the General Assembly:

"(a) Unanimously,

"There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

"(b) By 11 votes to 3,

"There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

"In favour: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

"Against: Judges Shahabuddeen, Weeramantry, Koroma.

"(c) Unanimously,

"A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the Charter of the United Nations and that fails to meet all the requirements of Article 51, is unlawful;

"(d) Unanimously,

"A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

"(e) By seven votes to seven, by the President’s casting vote

"It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

"However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

"In favour: President Bedjaoui; Judges Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;

"Against: Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins.

"(f) Unanimously,

"There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

183. President Bedjaoui, Judges Herczegh, Shi, Vereshchetin and Ferrari Bravo appended declarations to the Advisory Opinion of the Court; Judges Guillaume, Ranjeva and Fleischhauer appended separate opinions; Vice-President Schwebel, Judges Oda, Shahabuddeen, Weeramantry, Koroma and Higgins appended dissenting opinions.

IV. PRESENT DIFFICULTIES OF THE COURT

184. In recent years, the Court has been busier than ever before, as recounted more fully elsewhere in the present report. Its calendar in the year under review has been crowded and demanding. On 21 August 1995, New Zealand, in response to France's resumption of nuclear testing, filed a Request for an Examination of the Situation in accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case. The Court, after hearings on whether the request submitted by New Zealand fell within paragraph 63 of the 1974 Judgment, found, in an Order of 22 September 1995, that it did not. It then held three weeks of hearings in October and November conjointly on two requests for advisory opinions, one filed by the World Health Assembly on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict, the other filed by the General Assembly on the Legality of the Threat or Use of Nuclear Weapons. An unprecedented number of States submitted written statements and written comments on these statements and took part in the hearings on what may be the most important questions ever put to the Court in advisory proceedings. The Opinions, which required consideration of problems of exceptional difficulty, were rendered on 8 July 1996. In the midst of that consideration, the Court was required to deal with a request for the indication of provisional measures in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria); an Order indicating provisional measures was issued on 15 March 1996. The Court also held hearings between 29 April and 3 May on issues of jurisdiction and admissibility raised by Yugoslavia in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia); it handed down a Judgment on 11 July 1996.

185. It will thus be seen that the Court has been deliberating on three cases simultaneously, in contrast with its traditional practice of taking one case, or one phase of a case, at a time. The Court has accordingly been placed under exceptional strain in a period in which the staff and resources of its Registry have been subjected to severe cuts. At a time of substantial recourse to the Court by States and international organizations, staff and budgetary reductions required of it inevitably are beginning to curtail its established levels of judicial service. Yet the Court, unlike other bodies, cannot eliminate programmes; it is bound by its Statute to deal with the cases and advisory opinions brought before it.

186. The financial crisis of the Organization in fact is seriously prejudicing the work of the Court. The Court is informing the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions of the dimensions and details of the financial difficulties with which the Court is beset. However, the situation is grave enough to be brought to the attention of the General Assembly in the present annual report.

187. In 1995, the Court submitted to the General Assembly through the Secretary-General tightly drawn budgetary proposals, fashioned to respond to the high level of recourse to the Court by States and international organizations. The Court's limited budgetary proposals were reduced by the General Assembly when it approved, by its resolution 50/215 A of 23 December 1995, the programme budget of the Organization for the biennium 1996-1997, which among other cuts eliminated four of the total of 61 positions which the Registrar had had during the previous biennium. An additional reduction of 4.1 per cent in that already reduced budget was imposed pursuant to part IV of General Assembly resolution

50/216 of the same date. In addition, three of the total of 54 permanent posts in the Registry which became vacant in 1996 have been frozen pursuant to United Nations directives. The result is that, in a period of months, the Court's small staff has sustained an effective reduction of 11.5 per cent, and Professional staff has been cut by 16.7 per cent.

188. The impact of these budgetary restrictions and staff reductions is particularly preoccupying for conference services, in particular translation services, which can no longer be supplied as required. The shortfall in translation services - a problem not easily appreciated or even perceived by the outside world - jeopardizes the functioning of the Court in accordance with its Statute, which provides that its official languages shall be French and English. (It may be observed that the fact that the Court operates in two rather than six official languages results in great savings as compared with other United Nations organs.) There are perceived - and real - problems of delay by the Court in discharging its duties, but such delay will ineluctably increase if the Court continues to be deprived of sufficient staff and funds to meet its translation requirements.

189. The reality is that the funding of the Court falls considerably short of what is required for it to fulfil its functions. Current budget allocations take insufficient account of the extraordinary and sustained increase of recent years in the number of cases on the Court's General List and in the increase in the volume of pleadings filed by parties to those cases.

190. The costs to the Court of ensuring that a case is fairly and impartially heard may not be sufficiently appreciated. Among the many burdens are the translating and publication not only of the pleadings themselves but also of their annexes. The current budget of the Court as revised and reduced by the General Assembly and by the Secretary-General acting in pursuance of its decisions affords the Court neither the staff nor the financial resources properly to carry out these tasks. Yet it has always been recognized that the Court cannot render justice without performing those tasks and that it falls to the United Nations to provide it with the requisite means.

191. States submitting documentary annexes to support their written arguments are entitled to expect that they will be fully understood by all Members of the Court and that the judges will be able to study them in their working language, whether French or English. The problem of underfunding of the Court is graphically illustrated by the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) case. This case, concerning a dam project on the Danube, is of critical importance to the Parties. It is also likely to contribute significantly to the clarification and development of international treaty and environmental law. Some 3,351 pages of documentary annexes have been submitted to the Court. There is simply not the staff or funds to do the work of translating all of the pages not already available in both languages. Using the traditional means of free-lance translation of written pleadings submitted by parties before the Court, the confidential nature of which require them to be translated within the premises of the Court, the estimated costs are of the order of $530,000. That sum exceeds the balance available to the Court for translation for the 1996-1997 biennium. This situation will doubtless occasion serious difficulties, not only for adjudication of the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) case but also for other pending cases, not to speak of other such cases as may be brought to the Court.

192. Mindful of its obligations under its Statute, the Court nevertheless has ordered, insofar as its resources permit, the translation of the documentation

in preparation for the hearings to be held in early 1997 in the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia).

193. Restoration of the cuts in the Court's budget and staff is urgently required if the Court is to regain the traditional pace of its proceedings, not to speak of accelerating them. The budget of the Court even before these cuts was a smaller percentage of the budget of the United Nations in 1995 than it was 50 years earlier in 1946. If the total budget of the Court - some $10,000,000 a year - is compared not only with that of the other principal organs of the United Nations, but with lesser organs (including that of a subsidiary organ of the Security Council, the International Tribunal for the former Yugoslavia), the modesty of its resources is clear. If the Court is to operate more expeditiously, there are steps that could be taken to enhance its productivity, which will require increased funding. For example, Judges of the Court unlike the members of that International Tribunal or the Court of the European Communities or some national courts have no clerks and no research assistance. The case-law of the Court has not been computerized in the Court and the Court has no access to such beginnings as have been made in this regard outside of the Court, nor does it have access to the vast and readily retrievable body of information that is available via computer in much of the world. Introduction of clerks and computerization would materially expedite the work of the Court.

194. A great restraint on the size of the Registry - lack of physical space - is about to be overcome. With the completion of the extension and renovation of its facilities in the Peace Palace by the end of 1996, the Court, for the first time in its history, will have adequate space, not only for judges and judges ad hoc (of which there are currently 11) but for an expanded Registry. Apart from other constraints, before 1997 the Court would have lacked the office space in which clerks could work. In its next budget request, the Court will seek funds for the appointment of an initial contingent of clerks, to be internationally recruited and appointed by the Court for two-year terms, who as a pool will collectively assist the judges. It will also submit a request for funds to computerize both its case-law and current caseload, and other data, and to afford it access to the world of computerized information.

195. The Court is gratified that, in recent years, States have increasingly submitted international legal disputes to the Court for resolution, a development long sought by the General Assembly which promises to be sustained. At the same time, the Court is conscious of the fact that its List is long and that the possibilities of its expeditiously disposing of the cases brought to it are hobbled by the inadequacy of its material resources. Although it is to be kept in mind that some of the lengthiest cases, e.g. the South West Africa cases and the Barcelona Traction case, were before the Court in the 1960s, it may still be said that over the last years the length of time elapsing between the filing of an application and the rendering of a judgment has been growing. Parties to a case are generally accorded the time they request for preparation of pleadings, in the course of which they may seek extensions. But the problem of particular concern is that, when written pleadings are complete - pleadings which may require the Members of the Court to study many thousands of pages - and when the case is ready for hearing, the disposition of prior cases on the List may lead to considerable delay in the holding of hearings. This recent but serious development has occasioned criticism within and outside the Court.

196. The procedures for the Court's deliberations are described in its Resolution concerning the Internal Judicial Practice of the Court of 12 April 1976. Those procedures were subjected to searching evaluation at the Colloquium convened by the Court with the assistance of the United Nations

Institute for Training and Research (UNITAR) in celebration of the fiftieth anniversary of the Court in April 1996. The theme chosen by the Court for its Colloquium evidenced its appreciation of the position: "Increasing the Effectiveness of the International Court of Justice". The Colloquium was attended by the Legal Advisers of the Foreign Ministries of some 45 States, by leading counsel in the Court and by scholars, as well as all judges of the Court and the Registrar and his colleagues.

197. The Court's internal procedures, devised when the Court had few cases on its List, currently are the subject of reconsideration by the Court's Rules Committee. While on the one hand they ensure scrupulous consideration of the plenitude of issues raised by a case by every Member of the Court and enable every Member to influence the content and drafting of the Court's decisions - great advantages in a court of universal composition and mission - on the other hand they take a great deal of time. The Rules Committee is reconsidering their utility in the light of these competing considerations.

198. In 1996, the Court has taken steps to avoid gaps in its work occasioned by the settlement of cases, by forward planning of oral hearings. Hearings are scheduled in Oil Platforms (Islamic Republic of Iran v. United States of America) for September 1996, and in the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) for February 1997. It is to be hoped that, with the practice of forward planning in place, States parties will be in a position in future to accelerate their appearance in Court at the Court's request when an earlier scheduled set of hearings is cancelled by reason of settlement of the prior case.

199. In its report of 12 December 1995 (A/50/7/Add.11), the Advisory Committee on Administrative and Budgetary Questions raised questions about the practice of the Court in permitting its Members to engage in occasional activities outside of the Court that may be remunerated: acting as arbitrators in inter-State and private international arbitrations, serving in administrative tribunals or quasi-judicial organs of specialized agencies, lecturing, writing. That occasional practice goes back to the origins of the Permanent Court of International Justice. Not only is it in conformity with the Statute of the Court; the repeated endorsement by the international organs and by the States that have appointed Members of the Court as arbitrators shows their awareness of the contribution that the Members of the Court may, by this function, make to the development of international law, and of the benefits deriving therefrom for all institutions concerned. The practice, which involves a very limited number of judges for very limited periods, has no adverse effect on the pace of the work of the Court or the total precedence given to that work by its Members. The Court has recently considered the questions respecting that practice which the Advisory Committee has raised, and has adopted new guidelines governing the matter.

V. FIFTIETH ANNIVERSARY OF THE COURT AND OF THE UNITED NATIONS

200. In April the Court celebrated its fiftieth anniversary. On 18 April, the anniversary of its inaugural sitting in 1946, a ceremonial sitting was held in the presence of Her Majesty Queen Beatrix of the Netherlands. Addresses were given by Mr. Diogo Freitas do Amaral, President of the General Assembly, Mr. Hans van Mierlo, Minister for Foreign Affairs of the Netherlands, and Judge Mohammed Bedjaoui, the President of the Court. The Prime Minister and the Minister of Justice of the Netherlands also attended the sitting, as well as former Members of the Court and judges ad hoc, members of the diplomatic corps, special emissaries of States (including a great many legal advisers), representatives of United Nations organs, many authorities of the host country and representation of the press. Prior to the sitting, a two-day colloquium had been organized in cooperation with UNITAR on the theme "Increasing the Effectiveness of the International Court of Justice". During the whole of the week of the ceremonial sitting combined sessions of the Telders Moot Court Competition/Concours Rousseau (for students) were held.

201. On the occasion of the fiftieth anniversary of the United Nations, an open day was organized at the seat of the Court, in cooperation with the Netherlands National Committee for the Fiftieth Anniversary of the United Nations. The 1,200 visitors were addressed in the morning on the work of the International Court of Justice, the Permanent Court of Arbitration and the Carnegie Foundation. In the afternoon a panel discussion was held on the future of the United Nations, presided over by the Chairman of the First Chamber of the Dutch States General. Visitors were further able to visit information stands of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children’s Fund (UNICEF), the Food and Agriculture Organization of the United Nations (FAO) and the Office of the United Nations High Commissioner for Refugees (UNHCR); an exhibition of photographs put together by the Roosevelt Study Center, Middelburg, and entitled "Fifty Years of the United Nations: A Dream of One World"; a youth postage stamp exhibition (UNOPHILEX 95) with, in particular, a "Senior Citizens Collection"; a series of slides on the United Nations in postage stamps; as well as the specially developed multimedia Exhibit for the Fiftieth Anniversary.

VI. THE ROLE OF THE COURT

202. At the 30th meeting of the fiftieth session of the General Assembly, held on 12 October 1995, at which the Assembly took note of the report of the Court for the period from 1 August 1994 to 31 July 1995, the President of the Court, Judge Mohammed Bedjaoui, addressed the General Assembly on the role and functioning of the Court (A/50/PV.30).

203. On the same day, the President addressed the sixth informal meeting of Legal Advisers to Ministries of Foreign Affairs of States Members of the United Nations on their role in international judicial settlement.

204. On 16 October 1995, the President also addressed the Sixth Committee of the General Assembly on the jurisdiction of the Court.

205. On 19 October 1995, President Bedjaoui addressed the Asian-African Legal Consultative Committee, meeting in New York, on the topic "Africa and Asia respond to the International Court of Justice".

VII. VISIT OF A HEAD OF STATE

206. On 4 March 1996, the President of the Republic of Costa Rica, Mr. José Maria Figueres Olsen, was received by the Court at a formal sitting in the Great Hall of Justice of the Peace Palace. At the sitting, which was attended by the diplomatic corps authorities from the host country and representatives of the press, the President of the Court made a welcoming speech, to which the President of Costa Rica responded.

VIII. LECTURES ON THE WORK OF THE COURT

207. Many talks and lectures on the Court, both at the seat of the Court and elsewhere, were given by the President, the 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 a great number of groups, including diplomats, scholars and academics, judges and representatives of judicial authorities, lawyers and legal professionals as well as others, amounting to some 3,500 persons in all.

IX. COMMITTEES OF THE COURT

208. The committees constituted by the Court to facilitate the performance of its administrative tasks, which met several times during the period under review, are composed as follows:

(a) The Budgetary and Administrative Committee: the President, the Vice-President and Judges Guillaume, Shahabuddeen, Ranjeva, Shi and Fleischhauer;

(b) The Committee on Relations: Judges Weeramantry, Herczegh and Vereshchetin;

(c) The Library Committee: Judges Weeramantry, Ranjeva, Herczegh, Shi and Koroma.

209. The Rules Committee, constituted by the Court in 1979 as a standing body, is composed of Judges Oda, Guillaume, Fleischhauer, Koroma, Ferrari Bravo and Higgins.

X. PUBLICATIONS AND DOCUMENTS OF THE COURT

210. 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 published in English (latest edition: December 1995) and French (latest edition: 1994; latest addenda: December 1995) is distributed free of charge.

211. The publications of the Court consist of several series, three of which are published annually: Reports of Judgments, Advisory Opinions and Orders (published in separate fascicles and as a bound volume), a Bibliography of works and documents relating to the Court, and a Yearbook (in the French version: Annuaire). In the first series, Reports 1993 and Reports 1994 are in press, while the most recent fascicles, the Advisory Opinion of 8 July 1996 on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict, rendered at the request of the World Health Organization, and the Advisory Opinion of the same date on the Legality of the Threat or Use of Nuclear Weapons, rendered at the request of the General Assembly, as well as the Judgment of 11 July 1996 concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) (Preliminary Objections), will bear the sales numbers 678, 679 and 680 respectively. Bibliography No. 48 (1994) has been published during the period covered by the present report. The Court further publishes the instruments instituting proceedings in a case before it: an Application instituting proceedings, a Special Agreement or a Request for an Advisory Opinion. The latest of these publications is the Special Agreement between Botswana and Namibia whereby they submitted to the Court, on 29 May 1996, their dispute concerning the boundary around Kasikili/Sedudu Island and the legal status of the island.

212. 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 copies of the pleadings 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, several volumes are in preparation, regarding the cases concerning the Frontier Dispute (Burkina Faso/Republic of Mali), Border and Transborder Armed Actions (Nicaragua v. Honduras) and Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America); the printing of some of these volumes is planned for 1997.

213. In the series Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. The latest edition (No. 5) was published in 1989 and is regularly reprinted (latest reprint: early 1996).

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

215. 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 fortieth anniversary, in English and French. Arabic, Chinese, Russian and Spanish translations of that edition were published in 1990. Copies of the latest edition of the handbook in the above-mentioned languages, as well as of a German version of the first edition, are available. A new edition, completely reworked, is in preparation and will appear at the end of 1996.

216. More comprehensive information on the work of the Court during the period under review will be found in the Yearbook 1995-1996, to be issued in due course.

Mohammed BEDJAOUI
President of the International
Court of Justice

The Hague, 5 August 1996

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