United Nations

Report of the International Court of Justice

1 August 2010-31 July 2011

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Chapter I

Summary

Composition of the Court

1. The International Court of Justice, the principal judicial organ of the United Nations, consists of 15 judges elected for a term of nine years by the General Assembly and the Security Council. Every three years one third of the seats falls vacant. The next elections to fill such vacancies will be held in the last quarter of 2011.

2. It should however be noted that in the period under review Judge Thomas Buergenthal resigned with effect from 6 September 2010. A seat thereby having fallen vacant, the General Assembly and the Security Council of the United Nations on 9 September 2010 elected Ms Joan E. Donoghue (United States of America) as Member of the Court with immediate effect. Pursuant to Article 15 of the Statute of the Court, Judge Donoghue will hold office for the remainder of Judge Buergenthal's term, which will expire on 5 February 2015.

3. At 31 July 2011, the composition of the Court was as follows: President: Hisashi Owada (Japan); Vice-President: Peter Tomka (Slovakia); Judges: Abdul G. Koroma (Sierra Leone), Awn Shawkat Al-Khasawneh (Jordan), Bruno Simma

(Germany), Ronny Abraham (France), Kenneth Keith (New Zealand), Bernardo Sepúlveda-Amor (Mexico), Mohamed Bennouna (Morocco), Leonid Skotnikov (Russian Federation), AntônioAugusto Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), Christopher Greenwood (United Kingdom), Xue Hanqin (China) and Joan E. Donoghue (United States of America).

4. The Registrar of the Court is Mr. Philippe Couvreur, of Belgian nationality. The Deputy-Registrar of the Court is Ms Thérèse de Saint Phalle, of American and French nationality.

5. The number of judges *ad hoc* chosen by States parties in cases during the period under review was 28, the associated duties being carried out by 18 individuals (the same person is on occasion appointed to sit as judge *ad hoc* in more than one case).

Role of the Court

6. The International Court of Justice is the only international court of a universal character with general jurisdiction. That jurisdiction is twofold.

7. In the first place, the Court has to decide upon disputes freely submitted to it by States in the exercise of their sovereignty. In this respect, it should be noted that, as at 31 July 2011, 193 States were parties to the Statute of the Court and that 66 of them had deposited with the Secretary-General a declaration of

acceptance of the Court's compulsory jurisdiction in accordance with Article 36, paragraph 2, of the Statute. Further, some 300 bilateral or multilateral treaties provide for the Court to have jurisdiction in the resolution of disputes arising out of their application or interpretation. The Court's jurisdiction can also be founded, in the case of a specific dispute, on a special agreement concluded between the States concerned. Finally, a State, when submitting a dispute to the Court, may propose to found the Court's jurisdiction upon a consent yet to be given or manifested by the State against which the application is made, in reliance on Article 38, paragraph 5, of the Rules of Court. If the latter State gives its consent, the Court's jurisdiction is established on the date that this consent is given (this situation is known as *forum prorogatum*).

8. Secondly, the Court may also be consulted on any legal question by the General Assembly or the Security Council and, on legal questions arising within the scope of their activities, by other organs of the United Nations and agencies so authorized by the General Assembly.

Cases referred to the Court

9. During the period under review, two new cases were initiated before the Court. At 31 July 2011 the number of contentious

cases on the Court's List stood at 14[1]. An advisory proceeding was also pending before the Court at that date. The above-mentioned contentious cases came from all over the world: four were between European States, four between Latin American States, three between African States, and one between Asian States, while the remaining two were intercontinental in character. This regional diversity once again illustrates the Court's universality.

10. The subject-matter of these cases is extremely varied: territorial and maritime delimitation, environmental concerns, jurisdictional immunities of the State, violation of territorial integrity, racial discrimination, violation of human rights, interpretation and application of international conventions and treaties, etc.

[1] The Court delivered its Judgment in the case concerning the *Gabčikovo-Nagymaros Project (Hungary/Slovakia)* on 25 September 1997. The case nevertheless technically remains pending, given that, in September 1998, Slovakia filed in the Registry of the Court a request for an additional judgment. Hungary filed a written statement of its position on the request for an additional judgment made by Slovakia within the time-limit of 7 December 1998 fixed by the President of the Court. The Parties have subsequently resumed negotiations over implementation of the 1997 Judgment and have informed the Court on a regular basis of the progress made.

The Court delivered its Judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* in December 2005. The case also technically remains pending, in the sense that the Parties could again turn to the Court, as they are entitled to do under the Judgment, to decide the question of reparation if they are unable to agree on this point.

Finally, the Court delivered its Judgment in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* on 30 November 2010. The case also remains on the Court's General List, in the sense that the Parties could again turn to the Court, as they are entitled to do under the Judgment, to decide the question of reparation owing by the Democratic Republic of the Congo if they are unable to agree on this point (see paras. 110 to 114 of the present report).

11. Cases referred to the Court are growing in factual and legal complexity. In addition, they frequently involve a number of phases, as a result of, for example: preliminary objections by respondents to jurisdiction or admissibility; the submission of requests for the indication of provisional measures, which have to be dealt with as a matter of urgency; and applications to intervene by third States.

Main judicial events (in chronological order)

12. During the year 2010-2011, the Court held public hearings in five contentious cases. It handed down four judgments and six orders. The President of the Court made three orders (see paras. 102 to 108 below).

13. By Order of 16 November 2010, further to a request to such effect from the Republic of the Congo, the Court removed from its General List the case concerning *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* (see paras. 145 to 146 below).

14. On 18 November 2010, the Republic of Costa Rica instituted proceedings before the Court against the Republic of Nicaragua on the basis of an "incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as breaches of Nicaragua's obligations towards Costa Rica" under a number of international conventions and treaties (case concerning

Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua)*). On the same day, Costa Rica also filed a request for the indication of provisional measures (see paras. 231 to 244 below).

15. On 30 November 2010, the Court delivered its Judgment in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*. It found that, in carrying out the arrest, detention and expulsion of Mr. Diallo in 1995-1996, the Democratic Republic of the Congo had violated his fundamental rights, but that it had not violated his direct rights as *associé* in the companies Africom-Zaire and Africontainers-Zaire (see paras. 110 to 114 below).

16. On 8 March 2011, the Court delivered its Order on the request for the indication of provisional measures submitted by Costa Rica in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*. In its Order, the Court indicated the following provisional measures: "(1) . . . Each Party shall refrain from sending to, or maintaining in the disputed territory, including the *caño*, any personnel, whether civilian, police or security; . . . (2) . . . Notwithstanding point (1) above, Costa Rica may dispatch civilian personnel charged with the protection of the environment to the disputed territory, including the *caño*, but only in so far as it is necessary to avoid irreparable prejudice

being caused to the part of the wetland where that territory is situated; Costa Rica shall consult with the Secretariat of the Ramsar Convention in regard to these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect; . . . (3) . . . Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve; . . . (4) . . . Each Party shall inform the Court as to its compliance with the above provisional measures" (see paras. 231 to 244 below).

17. On 1 April 2011, the Court delivered its Judgment on the preliminary objections raised by the Russian Federation in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*. The Court found that it had no jurisdiction to decide the dispute. In its Judgment, the Court "(1) *(a)* . . . *[r]eject[ed]* the first preliminary objection raised by the Russian Federation; *(b)* . . . *[u]ph[e]ld* the second preliminary objection raised by the Russian Federation; (2) . . . *[fou]nd* that it ha[d] no jurisdiction to entertain the Application filed by Georgia on 12 August 2008 (see paras. 160 to 172 below).

18. By Order of 5 April 2011, further to a request to thateffect from the Kingdom of Belgium, the Court removed from its General List the case concerning *Jurisdiction and Enforcement of*

Judgments in Civil and Commercial Matters (Belgium v. *Switzerland)* (see paras. 218 to 224 below).

19. On 28 April 2011, by Application filed in the Registry of the Court, the Kingdom of Cambodia made a request for interpretation of the Judgment rendered by the Court on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)*. Cambodia accompanied its request for interpretation with a request for the indication of provisional measures (see paras. 245 to 258 below).

20. On 4 May 2011, the Court delivered its Judgment on the admissibility of the Application for permission to intervene filed by Costa Rica in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*. In its Judgment, the Court "*[fou]nd* that the Application for permission to intervene in the proceedings filed by the Republic of Costa Rica under Article 62 of the Statute of the Court [could] not be granted" (see paras. 126 to 144 below).

21. On 4 May 2011, the Court delivered its Judgment on the admissibility of the Application for permission to intervene filed by Honduras in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*. In its Judgment, the Court "*[found]* that the Application for permission to intervene in the proceedings, either as a party or as a non-party, filed by the

Republic of Honduras under Article 62 of the Statute of the Court [could] not be granted" (see paras. 126 to 144 below).

22. By an Order of 4 July 2011, the Court granted Greece permission to intervene as a non-party in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)* (see paras. 184 to 206 below).

23. On 18 July 2011, the Court gave its decision on the request for the indication of provisional measures submitted by Cambodia in the case concerning *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*. In its Order, the Court first rejected Thailand's request that the case be removed from the List. It then indicated the following provisional measures: "(1) . . . Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone; . . . (2) . . . Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple; . . . (3) . . . Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the

provisional demilitarized zone; . . . (4) . . . Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve". Finally, the Court decided that each Party should inform the Court as to its compliance with the above provisional measures, and that, until the Court had rendered its judgment on the request for interpretation, it would remain seised of the matters which formed the subject of the Order (see paras. 245 to 258 below).

Perspectives on the sustained level of activity of the Court

24. Just as the judicial year 2010-2011 was a busy one, four cases having been under deliberation at the same time, so the judicial year 2011-2012 will also be very full, owing in particular to the referral to the Court, between 1 August 2010 and 31 July 2011, of two new contentious cases.

25. The sustained level of activity on the part of the Court has been made possible thanks to a significant number of steps it has taken over recent years to enhance its efficiency and thereby enable it to cope with the steady increase in its workload. The Court continually re-examines its procedures and working methods; it has regularly updated its Practice Directions (adopted in 2001) for use by States appearing before it. Moreover, it sets itself a particularly demanding schedule of hearings and deliberations, in order that the Court may consider

several cases at the same time and deal as promptly as possible with incidental proceedings, which are tending to grow in number (requests for the indication of provisional measures; counter-claims; applications for permission to intervene).

26. The Court has successfully cleared its backlog of cases, and States considering coming to the principal judicial organ of the United Nations can now be confident that, as soon as the written phase of the proceedings has come to a close, the Court will be able to move to the oral proceedings in a timely manner.

Human resources: establishment of posts

27. In its budget submission for the 2010-2011 biennium, following a security audit carried out in response to an increase in the anti-terrorism alert level in the Netherlands, the Court sought the establishment of four additional posts to strengthen its existing security team, currently comprising just two staff members in the General Service category. The Court thus requested the establishment of a P-3 Head of Security post and of three more security guard posts in the General Service category. At the end of 2009, the General Assembly approved the establishment of only one of the additional four posts considered necessary by the Secretariat's Department of Safety and Security (DSS): a security guard post (General Service category). While the Court is grateful to the General Assembly

for having approved the establishment of that post, it nevertheless reiterates the need for the additional posts requested in order to improve security. In its budget submission for the 2012-2013 biennium, the Court has renewed its request for the establishment of a security specialist's post P-3 and of an ICT Security Assistant post in the General Service category (Other Level). The establishment of these posts will in particular enable the Court to strengthen the security team in the performance of its traditional duties and to confront new technical challenges in the area of information systems security. The Court hopes that the General Assembly will give favourable consideration to those requests when it examines the Court's draft budget for the coming biennium in the second half of 2011.

28. In its budget submission for the biennium 2012-2013, the Court has also requested the establishment of an Associate Legal Officer post (P-2) within the Department of Legal Matters. This post has been made necessary by the growing complexity (both factual and legal) of the cases referred to the Court, the increase in the number of incidental proceedings (in the handling of which the Department of Legal Matters plays a very substantial role) and the fact that the Court now deliberates on several cases at the same time (meaning that some of the Drafting Committees, whose work requires assistance from the Department of Legal Matters, are sitting simultaneously). The

creation of this post would put the current members of the Department in a better position to cope with the increase in the Department's legal duties relating to cases before the Court, and enable them to provide the Court with timely assistance in its judicial activities. The incumbent of the new post would essentially concentrate on the other legal activities for which the Department is responsible, such as the drafting of diplomatic correspondence and minutes of Court meetings, the selection of documents for publication, and general legal assistance to the other departments and divisions of the Registry, in particular with regard to external contracts and to questions relating to the terms of employment of staff.

29. In its budget submission for the biennium 2012-2013, the Court has also sought the establishment of a post of Assistant (General Service, Other Level) within the Publications Division. This Division currently consists of three professional posts — a Head of Division (P-4) and two Proofreader/Copy Preparers (P-3 and P-2), one for each of the official languages of the Court. It has been clear for some time that, in order to ensure a better distribution of the workload and more efficient handling of the growing number of publication requests, there is a need for an administrative and editorial assistant in the General Services category. The incumbent of the new post would provide technical assistance to the professional staff, in particular by

preparing electronic versions of texts for publication according to established formats, making a typographical check of texts to ensure that they conform to the Court's house style and rules, and making sure that any additional changes to texts are incorporated into the final print-ready files, as well as compiling relevant statistical data for the Division.

Modernization of the Great Hall of Justice in the Peace Palace, where public hearings of the Court are held

30. The Court also requested and received from the General Assembly, at the end of 2009, an appropriation of a significant amount for the replacement and modernization of the audio-visual equipment in its historic courtroom (the Great Hall of Justice in the Peace Palace) and nearby rooms (including the Press Room), to be spent during the biennium 2010-2011. These areas are to be renovated in co-operation with the Carnegie Foundation, which owns the building. In particular, the appropriation from the General Assembly is intended to cover the costs of installing information technology resources on the judges' bench, resources which all of the international tribunals have adopted in recent years, but which are still lacking at the Court. All of the equipment whose funding was approved by the General Assembly will be purchased before the end of 2011.

“Promoting the rule of law”

31. The Court takes this opportunity afforded by the submission of its Annual Report to the General Assembly to comment “on [the Court’s] current role . . . in promoting the rule of law”, as it was invited to do once again in resolution 65/32 adopted by the Assembly on 6 December 2010. In February 2008, the Court completed the questionnaire received from the Codification Division of the United Nations Office of Legal Affairs to be used in preparing an inventory, and which remains current today. In this connection, it should be kept in mind that the Court, as a court of justice and, moreover, the principal judicial organ of the United Nations, occupies a special position. The Court would this year again recall that everything it does is aimed at promoting the rule of law: it hands down judgments and gives advisory opinions in accordance with its Statute, which is an integral part of the United Nations Charter, and thus contributes to promoting and clarifying international law. It also ensures the greatest possible global awareness of its decisions through its publications, its multimedia offerings and its website, which now includes its entire jurisprudence and that of its predecessor, the Permanent Court of International Justice.

32. Members of the Court and the Registrar, as well as the Information Department and the Department of Legal Matters, regularly give presentations on the functioning of the Court, its

procedure and its jurisprudence. What is more, the Court receives a very large number of visitors every year. Finally, it offers an internship programme enabling students from various backgrounds to familiarize themselves with the institution, as well as furthering their knowledge of international law.

33. In conclusion, the International Court of Justice welcomes the reaffirmed confidence that States have shown in the Court's ability to resolve their disputes. The Court will give the same meticulous and impartial attention to present and future cases coming before it in the 2011-2012 judicial year as it has during the year 2010-2011.

Chapter II
Organization of the Court

A. Composition

34. The present composition of the Court, as at 31 July 2011, is as follows: President: Hisashi Owada; Vice-President: Peter Tomka; Judges: Abdul G. Koroma, Awn Shawkat Al-Khasawneh, Bruno Simma, Ronny Abraham, Kenneth Keith, Bernardo Sepúlveda-Amor, Mohamed Bennouna, Leonid Skotnikov, Antônio Augusto Cançado Trindade, Abdulqawi Ahmed Yusuf, Christopher Greenwood, Xue Hanqin and Joan E. Donoghue.

35. The Registrar of the Court is Mr. Philippe Couvreur. The Deputy-Registrar is Ms Thérèse de Saint Phalle.

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

Members

President Owada

Vice-President Tomka

Judges Koroma, Simma and Sepúlveda-Amor

Substitute Members

Judges Skotnikov and Greenwood.

37. In the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judge Tomka having recused himself under Article 24 of the Statute of the Court, Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge *ad hoc*[2].

38. In the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, Guinea chose Mr. Ahmed Mahiou and the Democratic Republic of the Congo Mr. Auguste Mampuya Kanunk'a Tshiabo to sit as judges *ad hoc*.

39. In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Democratic Republic of the Congo chose Mr. Joe Verhoeven and Uganda Mr. James L. Kateka to sit as judges *ad hoc*.

40. In the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*, Croatia chose Mr. Budislav Vukas and Serbia Mr. Milenko Kreća to sit as judges *ad hoc*.

41. In the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Nicaragua chose Mr. Giorgio Gaja and Colombia Mr. Yves L. Fortier and, following the latter's resignation, Mr. Jean-Pierre Cot to sit as judges *ad hoc*.

[2] H.E. Professor Krzysztof Skubiszewski, President of the Iran-United States Claims Tribunal and judge *ad hoc* at the Court, passed away on 8 February 2010.

42. In the case concerning *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)*, the Republic of the Congo chose Mr. Jean-Yves de Cara to sit as judge *ad hoc*. Judge Abraham having recused himself under Article 24 of the Statute of the Court, France chose Mr. Gilbert Guillaume to sit as judge *ad hoc*.

43. In the case concerning *Maritime Dispute (Peru* v. *Chile)*, Peru chose Mr. Gilbert Guillaume and Chile Mr. Francisco Orrego Vicuña to sit as judges *ad hoc*.

44. In the case concerning *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*, Ecuador chose Mr. Raúl Emilio Vinuesa and Colombia Mr. Jean-Pierre Cot to sit as judges *ad hoc.*

45. In the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*, Georgia chose Mr. Giorgio Gaja to sit as judge *ad hoc*.

46. In the case concerning *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*, the former Yugoslav Republic of Macedonia chose Mr. Budislav Vukas and Greece Mr. Emmanuel Roucounas to sit as judges *ad hoc*.

47. In the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)*, Italy chose Mr. Giorgio Gaja to sit as judge *ad hoc*.

48. In the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, Belgium chose Mr. Philippe Kirsch and Senegal Mr. Serge Sur to sit as judges *ad hoc*.

49. In the case concerning *Whaling in the Antarctic (Australia* v. *Japan)*, Australia chose Ms Hilary Charlesworth to sit as judge *ad hoc*.

50. In the case concerning the *Frontier Dispute (Burkina Faso/Niger)*, Burkina Faso chose Mr. Jean-Pierre Cot and Niger Mr. Ahmed Mahiou to sit as judges *ad hoc*.

51. In the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, Costa Rica chose Mr. John Dugard and Nicaragua Mr. Gilbert Guillaume to sit as judges *ad hoc*.

52. In the case concerning *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*, Cambodia chose Mr. Gilbert Guillaume and Thailand Mr. Jean-Pierre Cot to sit as judges *ad hoc*.

B. Privileges and immunities

53. Article 19 of the Statute provides: "The Members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities."

54. In the Netherlands, pursuant to an exchange of letters of 26 June 1946 between the President of the Court and the Minister for Foreign Affairs, the Members of the Court enjoy, generally, the same privileges, immunities, facilities and prerogatives as Heads of Diplomatic Missions accredited to Her Majesty the Queen of the Netherlands (*I.C.J. Acts and Documents No. 6*, pp. 204-211 and pp. 214-217).

55. By resolution 90 (I) of 11 December 1946 (*ibid.*, pp. 210-215), the General Assembly approved the agreements concluded with the Government of the Netherlands in June 1946 and recommended the following: if a judge, for the purpose of holding himself permanently at the disposal of the Court, resides in some country other than his own, he should be accorded diplomatic privileges and immunities during the period of his residence there; and judges should be accorded every facility for leaving the country where they may happen to be, for entering the country where the Court is sitting, and again for leaving it. On journeys in connection with the exercise of their functions, they should, in all countries through which they may have to

pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys.

56. In the same resolution the General Assembly recommended that the authorities of Members of the United Nations recognize and accept United Nations laissez-passer issued to the judges by the Court. Such laissez-passer have been issued by the Court since 1950. They are similar in form to those issued by the Secretary-General.

57. Furthermore, Article 32, paragraph 8, of the Statute provides that the "salaries, allowances and compensation" received by judges and the Registrar "shall be free of all taxation".

Chapter III
Jurisdiction of the Court

A. Jurisdiction of the Court in contentious cases

58. As at 31 July 2011, 193 States were parties to the Statute of the Court (the 193 States Members of the United Nations).

59. Sixty-six States have now made a declaration (some 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, Costa Rica, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Slovakia, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland and Uruguay. The texts of the declarations filed by the above States can be found on the Court's website (www.icj-cij.org, under the heading "Jurisdiction").

60. Further, there are currently in force some 300 multilateral and bilateral conventions providing for the jurisdiction of the Court. A representative list of those treaties and conventions may also be found on the Court's website (under the heading "Jurisdiction").

B. Jurisdiction of the Court in advisory proceedings

61. In addition to United Nations organs (General Assembly and Security Council — which are authorized to request advisory opinions of the Court "on any legal question" — Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly), the following organizations are at present authorized to request advisory opinions of the Court on legal questions arising within the scope of their activities:

International Labour Organisation

Food and Agriculture Organization of the United Nations

United Nations Educational, Scientific and Cultural Organization

International Civil Aviation Organization

World Health Organization

World Bank

International Finance Corporation

International Development Association

International Monetary Fund

International Telecommunication Union

World Meteorological Organization

International Maritime Organization

World Intellectual Property Organization

International Fund for Agricultural Development

United Nations Industrial Development Organization

International Atomic Energy Agency

62. A list of the international instruments that make provision for the advisory jurisdiction of the Court is available on the Court's website (www.icj-cij.org, under the heading "Jurisdiction").

Chapter IV
Functioning of the Court

A. Committees constituted by the Court

63. The committees constituted by the Court to facilitate the performance of its administrative tasks met regularly a number of times during the period under review; they were composed, at 31 July 2011, as follows:

(a) Budgetary and Administrative Committee: President Owada (Chair), Vice-President Tomka, and Judges Keith, Sepúlveda-Amor, Bennouna, Yusuf and Greenwood;

(b) Library Committee: Judge Simma (Chair), and Judges Abraham, Bennouna and Cançado Trindade.

64. The Rules Committee, constituted by the Court in 1979 as a standing committee, also met a number of times during the period under review; at 31 July 2011, it was composed of Judge Al-Khasawneh (Chair), Judges Abraham, Keith, Skotnikov, Cançado Trindade and Greenwood.

B. Registry

65. The Court is the only principal organ of the United Nations to have its own administration (see Art. 98 of the Charter). The Registry is the permanent international secretariat of the Court.

Its role is defined by the Statute and the Rules of Court (in particular Arts. 22-29 of the Rules). Since the Court is both a judicial body and an international institution, the role of the Registry is both to provide judicial support and to act as a permanent administrative organ. The organization of the Registry is prescribed by the Court on proposals submitted by the Registrar and its duties are set out in detail out in instructions drawn up by the Registrar and approved by the Court (see Rules, Art. 28, paras. 2 and 3). The Instructions for the Registry were drawn up in October 1946; having become obsolete in many respects, they are in the process of being revised. An organizational chart of the Registry is annexed to this Report (see page 148).

66. Registry officials are appointed by the Court on proposals by the Registrar or, for General Service staff, by the Registrar with the approval of the President. Short-term staff are appointed by the Registrar. Working conditions are laid down in the Staff Regulations adopted by the Court (see Art. 28 of the Rules). Registry officials enjoy, generally, the same privileges and immunities as members of diplomatic missions in The Hague of comparable rank. They enjoy a status, remuneration and pension rights corresponding to those of Secretariat officials of the equivalent category or grade.

67. Over the last 20 years, the Registry's workload, notwithstanding the adoption of new technologies, has grown considerably on account of the substantial increase in the number of cases brought before the Court and their mounting complexity.

68. The total number of posts at the Registry is at present 114, namely 58 posts in the Professional category and above (of which 50 are permanent posts and 8 biennium posts), and 56 in the General Service category (of which 53 are permanent and three biennium posts).

69. On 17 March 2011, the Registrar promulgated a number of important amendments to the Staff Regulations for the Registry, so as to render applicable to Registry staff various rules and regulations of the United Nations Staff Regulations and Staff Rules which came into force within the United Nations Secretariat in July 2009. In addition, the Registrar submitted to the Court a draft revision of the Registry Staff Regulations relating to disciplinary measures, with a view to clarifying these and to ensuring greater legal security for the staff in that regard.

70. Further to the adoption by the United Nations of a new internal justice system, the specific appeals system for Registry staff members has had to be restructured slightly. In 1998, the Court recognized the jurisdiction of the United Nations Administrative Tribunal; this has been replaced in the new

system by the United Nations Appeals Tribunal. By means of an exchange of letters, over the period 20 April to 10 June 2011, between the President of the Court and the United Nations Secretary-General, the Court has provisionally recognized the jurisdiction of the Appeals Tribunal to rule on applications by Registry staff members in circumstances similar to those in which it had previously recognized the jurisdiction of the United Nations Administrative Tribunal (failure of conciliation proceedings).

1. The Registrar

71. The Registrar is the regular channel of communications to and from the Court and in particular is responsible for all communications, notifications and transmissions of documents required by the Statute or by the Rules. The Registrar performs, among others, the following tasks: *(a)* he keeps the General List of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry; *(b)* he is present in person, or represented by the Deputy-Registrar, at meetings of the Court, Chambers and various committees; he provides any assistance required and is responsible for the preparation of reports or minutes of such meetings; *(c)* he makes arrangements for such provision or verification of translations and interpretations into

the official languages of the Court (English and French) as the Court may require; *(d)* he signs all judgments, advisory opinions and orders of the Court, as well as minutes; *(e)* he is responsible for the administration of the Registry and for the work of all its departments and divisions, including the accounts and financial administration in accordance with the financial procedures of the United Nations; *(f)* he maintains relations with the parties to a case, has responsibility for the management of proceedings and, more generally, attends to all the Court's external relations, in particular with other organs of the United Nations and with other international organizations and States; he is responsible for information concerning the Court's activities and for the Court's publications; and *(g)* he has custody of the seals and stamps of the Court, of the archives of the Court, and of such other archives as may be entrusted to the Court (including the archives of the Nuremberg International Military Tribunal).

72. Pursuant to the exchange of letters and General Assembly Resolution 90 (I) as referred to in paragraphs 49 and 50 above, the Registrar is accorded the same privileges and immunities as Heads of Diplomatic Missions in The Hague and, on journeys to third States, all the privileges, immunities and facilities granted to diplomatic envoys.

2. The Deputy Registrar

73. The Deputy-Registrar assists the Registrar and acts as Registrar in the latter's absence. Since 1998 the Deputy-Registrar has been entrusted with wider administrative responsibilities, including direct supervision of the Archives and Information and Communications Technology Divisions.

3. Substantive divisions and units of the Registry

Department of Legal Matters

74. The Department of Legal Matters, composed of eight posts in the Professional category and one in the General Service category, is responsible, under the direct supervision of the Registrar, for all legal matters within the Registry. In particular, its task is to assist the Court in the exercise of its judicial functions. It acts as secretariat to the drafting committees, which prepare the Court's draft decisions. The Department of Legal Matters also acts as secretariat to the Rules Committee. It carries out research in international law, examining judicial and procedural precedents, and prepares studies and notes for the Court and the Registrar as required. It also prepares for signature by the Registrar all correspondence in pending cases and, more generally, diplomatic correspondence relating to the application of the Statute or the Rules of Court. It is also responsible for monitoring the Headquarters agreements with the host country.

Further, it draws up the minutes of the Court's meetings. Finally, the Department of Legal Matters may be consulted on any legal questions relating to external contracts and to the terms of employment of Registry staff.

75. In view of the increased workload of the Department of Legal Matters, for the biennium 2012-2013 the Court has requested the establishment of a post of Associate Legal Officer (grade P-2) within this Department (see para. 28 above).

Department of Linguistic Matters

76. The Department of Linguistic Matters, currently composed of 17 posts in the Professional category and one in the General Service category, is responsible for the translation of documents to and from the Court's two official languages and provides linguistic support to judges. The Court works equally in its two official languages at all stages of its activity. Documents translated include: case pleadings and other communications from States parties; verbatim records of hearings; draft judgments, advisory opinions and orders of the Court, together with their various working documents; judges' notes, and opinions and declarations appended to judgments, advisory opinions and orders; minutes of meetings of the Court and of its subsidiary bodies, including the Budgetary and Administrative Committee and other committees; internal reports, notes, studies,

memorandums and directives; speeches by the President and judges to outside bodies; reports and communications to the Secretariat, etc. The Department also provides interpretation at private and public meetings of the Court and, as required, at meetings held by the President and Members of the Court with agents of the parties and other official visitors.

77. Following the creation, in the year 2000, of 12 posts in the Department, there was initially a substantial decrease in recourse to outside translators. However, in view of the increase in the Court's workload, the need for external translators has begun to rise again. The Department has nevertheless done its best to make use of home translation (traditionally less expensive than bringing freelance translators in to work in the Registry) and remote translation (performed by other language services within the United Nations system). For Court hearings and deliberations, outside interpreters are used; however, in order to reduce costs, achieve greater flexibility in the event of changes to the Court's schedule and ensure more effective synergy between the various tasks of the Department, the Department has initiated a programme to train translators as interpreters; one English-to-French translator has already become capable of interpreting at the requisite professional level.

Information Department

78. The Information Department, composed of three posts in the Professional category and one in the General Service category, plays an important part in the Court's external relations. Its duties consist of replying to requests for information on the Court, preparing all documents containing general information on the Court (in particular the Annual Report of the Court to the General Assembly, the *Yearbook*, and handbooks for the general public), and encouraging and assisting the media to report on the work of the Court (for example, by preparing press releases and developing new communication products, particularly in the audio-visual field). The Department gives presentations on the Court to various interested audiences (diplomats, lawyers, students and others) and is responsible for keeping the Court's website up to date. Its duties also extend to internal communication.

79. The Information Department is also responsible for organizing the public sittings of the Court and all other official events, in particular a large number of visits, including those by distinguished guests. On those occasions it serves as a protocol office.

Administrative and Personnel Division

80. The Administrative and Personnel Division, currently composed of two posts in the Professional category and 12 in the General Service category, is responsible for various duties related to administration and staff management, including planning and implementation of staff recruitment, appointments, promotions, training and separation from service. In its staff management functions, it ensures observance of the Staff Regulations for the Registry and of those United Nations Staff Regulations and Rules which the Court has determined to be applicable. As part of its recruitment tasks, the Division prepares vacancy announcements, reviews applications, arranges interviews for the selection of candidates, prepares contracts for successful candidates, and handles the intake of new staff members. The Division also administers staff entitlements and various benefits, is responsible for follow-up of relevant administrative notices and liaises with the United Nations Office of Human Resources Management and Joint Staff Pension Fund.

81. The Administrative and Personnel Division is also responsible for procurement, inventory control and, in liaison with the Carnegie Foundation, which owns the Peace Palace building, building-related matters. It has certain security responsibilities and also oversees the General Assistance

Division, which, under the responsibility of a co-ordinator, provides general assistance to Members of the Court and Registry staff in regard to messenger, transport and reception services.

Finance Division

82. The Finance Division, composed of one post in the Professional category and two in the General Service category, is responsible for financial matters. Its duties include in particular preparing the draft budget, ensuring that the budget is properly implemented, keeping the financial accounting books, financial reporting, managing vendor payments and payroll, and carrying out payroll-related operations for Members of the Court and Registry staff (e.g., various allowances and expense reimbursements). The Finance Division is also responsible for paying the pensions of retired Members of the Court, for treasury and banking matters, and for maintaining regular contact with the tax authorities of the host country.

Publications Division

83. The Publications Division, composed of three posts in the Professional category, is responsible for the preparation of texts, proofreading and correction of proofs, study of estimates and choice of printing firms in relation to the following official

publications of the Court: *(a) Reports of Judgments, Advisory Opinions and Orders*; *(b) Pleadings, Oral Arguments, Documents*; *(c) Acts and Documents concerning the Organization of the Court*; *(d) Bibliographies*; and *(e) Yearbooks*. It is also responsible for various other publications as instructed by the Court or the Registrar. In addition, the Division is responsible for the preparation, conclusion and implementation of contracts with printers, including control of all invoices. In view of the increased workload of the Publications Division, for the biennium 2012-2013 the Court has requested the establishment of a post of Administrative and Editorial Assistant (General Service, Other Level) within this Division, which currently has no assistant posts (see para. 29 above). For more information on the Court's publications, see Chapter VII below.

Documents Division — Library of the Court

84. The Documents Division, composed of two posts in the Professional category and four in the General Service category, has as its main task acquiring, conserving, classifying and making available the leading works on international law, as well as a significant number of periodicals and other relevant documents. The Division prepares bibliographies on cases brought before the Court, and other bibliographies as required. It also assists the translators with their reference needs. The

Division provides access to an increasing number of databases and online resources in partnership with the United Nations System Electronic Information Acquisition Consortium (UNSEIAC), as well as to a comprehensive collection of electronic documents of relevance for the Court. The Division has acquired integrated software for managing its collection and operations, and will shortly launch an online catalogue accessible to all Members of the Court and Registry staff. The Division operates in close collaboration with the Peace Palace Library of the Carnegie Foundation.

85. The Documents Division is also responsible for the Archives of the Nuremberg International Military Tribunal (including paper documents, gramophone records, films and certain objects). A project to conserve and digitize these archives is currently under way.

Information and Communications Technology Division

86. The Information and Communications Technology Division, composed of two posts in the Professional category and four in the General Service category, is responsible for the efficient functioning of information and communications technology at the Court. Its mission is to support the judicial work of the Members of the Court and the various activities of the Registry by providing appropriate and effective IT resources. The

Information and Communications Technology Division offers personalized assistance to users and ensures information system security.

87. The Information and Communications Technology Division is charged in particular with the administration and functioning of the Court's servers, with the maintenance and inventory of equipment and with the management of the local and wide-area networks, including the communications systems. The Division implements mechanisms to monitor the security of its information system and systematically keeps abreast of technical developments enabling it to track developing risks. Finally, it advises and trains users in all aspects of information technology and fosters communication between itself and the various departments and divisions of the Registry.

Archives, Indexing and Distribution Division

88. The Archives, Indexing and Distribution Division, composed of one post in the Professional category and five in the General Service category, is responsible for indexing, classifying and storing all correspondence and documents received or sent by the Court, and for the subsequent retrieval of any such item on request. The duties of this Division include, in particular, the keeping of an up-to-date index of incoming and outgoing correspondence, as well as of all documents, both official and

otherwise, held on file. It is also responsible for checking, distributing and filing all internal documents, some of which are strictly confidential. The Division now has a computerized records management system for both internal and external documents.

89. The Archives, Indexing and Distribution Division also handles the dispatch of the Court's official publications to Members of the United Nations, as well as to numerous institutions and various individuals.

Text Processing and Reproduction Division

90. The Text Processing and Reproduction Division is composed of one post in the Professional category and nine in the General Service category. It carries out all the typing work of the Registry and, as necessary, the reproduction of documents.

91. In addition to correspondence proper, the Division is responsible in particular for the typing and reproduction of the Court's judgments, advisory opinions and orders. It is also responsible for the typing and reproduction of the following documents: translations of written pleadings and annexes; verbatim records of hearings and their translations; translations of judges' notes and judges' amendments to draft judgments; and translations of judges' opinions. In addition, it is responsible for checking documents and references, reviewing and page layout.

Law clerks and the Special Assistant to the President

92. The President of the Court is aided by a special assistant (grade P-3), who is administratively attached to the Department of Legal Matters. Since the approval by the General Assembly of six additional associate legal officer posts (grade P-2) for the year 2010-2011, the other Members of the Court are now each assisted by a law clerk. These 14 associate legal officers are also officially members of the Registry staff, administratively attached to the Department of Legal Matters.

93. The law clerks carry out research for the Members of the Court and the judges *ad hoc*, and work under their responsibility. Generally, the work of the law clerks is overseen by a Co-ordination and Training Committee made up of Members of the Court and senior Registry staff.

Judges' Secretaries

94. The 15 judges' secretaries, working under the authority of a Co-ordinator, undertake manifold duties. In general, the secretaries are responsible for the typing of notes, amendments and opinions, as well as all correspondence of judges and judges *ad hoc*. They assist the judges in the management of their work diary and in the preparation of relevant papers for meetings, as well as in dealing with visitors and enquiries.

Senior Medical Officer

95. Since 1 May 2009, the Registry has employed a senior medical officer (quarter-time contract), paid out of the temporary assistance appropriation. The medical officer conducts emergency and periodic medical examinations, and initial medical examinations for new staff. Between 1 August 2010 and 31 July 2011, 190 medical consultations were conducted by the Medical Unit, including 16 initial medical examinations for new staff and six periodic medical examinations (security guards and drivers). The senior medical officer advises the Registry administration on health and hygiene matters, work-station ergonomics and working conditions. In total, 19 ergonomic assessments were carried out on work-stations. Finally, the medical officer organizes information, screening, prevention and vaccination campaigns. In autumn 2010, 62 individuals received influenza vaccinations.

4 Staff Committee

96. The Registry Staff Committee was established in 1979 and is governed by Article 9 of the Staff Regulations for the Registry. During the period under review, the Committee, with the Registrar's support, organized an event at the Peace Palace on 18 April 2011, involving the entire Registry staff, to commemorate the sixty-fifth anniversary of the Court. It also

organized the first "Registry Staff Day" on 22 June 2011, aimed at promoting a sense of team spirit among staff. The Committee worked in constructive partnership with management, seeking to promote dialogue and a listening attitude within the Registry, and had fruitful exchanges with staff committees of other international organizations located in The Hague and in Geneva.

C. Seat

97. The seat of the Court is established at The Hague; this, however, does not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable to do so (Statute, Art. 22, para. 1; Rules, Art. 55). The Court has never held sittings outside The Hague so far.

98. The Court occupies premises in the Peace Palace at The Hague. An agreement of 21 February 1946 between the United Nations and the Carnegie Foundation, which is responsible for the administration of the Peace Palace, determines the conditions under which the Court uses these premises and provides, in exchange, for the payment to the Carnegie Foundation of an annual contribution. That contribution was increased pursuant to supplementary agreements approved by the General Assembly in 1951 and 1958, as well as subsequent amendments. The annual contribution by the United Nations to the Carnegie Foundation amounts to €1,236,334 for

2011. Negotiations are currently under way between the UN Headquarters and the Carnegie Foundation for a further amendment to the agreement, in particular concerning the extent and quality of the areas reserved for the Court, security of persons and property and the level of services provided by the Carnegie Foundation.

D. Museum

99. In 1999, the Secretary-General of the United Nations inaugurated the museum of the International Court of Justice in the south wing of the Peace Palace. Plans are currently being developed to refurbish and modernize the museum and to facilitate public access to the historical items exhibited inside.

Chapter V
Judicial work of the Court

A. General overview

100. During the period under review, 17 contentious cases and one advisory procedure were pending; 14 contentious cases and one advisory procedure remain so at 31 July 2011.

101. During this period, two new contentious cases were submitted to the Court in the following chronological order:

Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua)*; and

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*.

102. During 2010-2011, the Court held public hearings in the five following cases (in chronological order):

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. *Russian Federation)*, preliminary objections raised by the Russian Federation;

Territorial and Maritime Dispute (Nicaragua v. *Colombia)*: the Court held separate but consecutive hearings on the admission of Costa Rica's Application for permission to intervene and on the admission of Honduras's Application for permission to intervene;

Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua)*, request for the indication of provisional measures submitted by Costa Rica;

Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. *Greece)*; and

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*, request for the indication of provisional measures submitted by Cambodia.

103. During the period under review, the Court delivered four Judgments, in the following cases (in chronological order):

Ahmadou Sadio Diallo (Republic of Guinea v. *Democratic Republic of the Congo)*;

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. *Russian Federation)*, preliminary objections to jurisdiction raised by the Russian Federation;

Territorial and Maritime Dispute (Nicaragua v. *Colombia)*, Application by Honduras for permission to intervene; and

Territorial and Maritime Dispute (Nicaragua v. *Colombia)*, Application by Costa Rica for permission to intervene.

104. By an Order of 4 July 2011, the Court granted Greece permission to intervene as a non-party in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)*.

105. The Court made an Order on the request for the indication of provisional measures submitted by the Kingdom of Cambodia in the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*.

106. The Court also made Orders fixing time-limits for the filing of written pleadings in each of the following cases (in chronological order):

Frontier Dispute (Burkina Faso/Niger); and

Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua)*.

107. Further, it made Orders removing each of the following cases from the General List (in chronological order):

Certain Criminal Proceedings in France (Republic of the Congo v. *France)*; and

Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. *Switzerland)*.

108. During the period under review, the President of the Court made three Orders extending the time-limits for the filing of

written pleadings: in the case concerning *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)*; in the advisory proceedings initiated by the International Fund for Agricultural Development (IFAD) on questions concerning the *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development*; and in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*.

B. Pending contentious proceedings during the period under review

1. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*

109. On 2 July 1993, Hungary and Slovakia jointly notified to the Court a Special Agreement, signed on 7 April 1993, for the submission of certain issues arising out of differences 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 (see Annual Report 1992-1993 *et seq.*). In its Judgment of 25 September 1997, the Court found that both Hungary and Slovakia had breached their legal obligations. It called upon both States to negotiate in good faith in order to ensure the achievement of the objectives of the

1977 Budapest Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989. On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional judgment in the case. Such an additional judgment was necessary, according to Slovakia, because of the unwillingness of Hungary to implement the Judgment delivered by the Court in that case on 25 September 1997. Hungary filed a written statement of its position on the request for an additional judgment made by Slovakia within the time-limit of 7 December 1998 fixed by the President of the Court. The Parties have subsequently resumed negotiations and have informed the Court on a regular basis of the progress made. The case remains pending.

2. *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*

110. On 28 December 1998, the Republic of Guinea filed in the Registry an Application instituting proceedings against the Democratic Republic of the Congo in respect of a dispute concerning "serious breaches of international law" alleged to have been committed "upon the person of a Guinean national", Mr. Ahmadou Sadio Diallo (see Annual Report 1998-1999 *et seq.*). Guinea filed its Memorial within the time-limit as extended by the Court. On 3 October 2002, within the time-limit

as extended for the filing of its Counter-Memorial, the Democratic Republic of the Congo raised a number of preliminary objections in respect of the admissibility of the Application. On 24 May 2007, the Court rendered a Judgment declaring Guinea's Application to be admissible in so far as it concerned protection of Mr. Diallo's rights as an individual and of his direct rights as *associé* in Africom-Zaire and Africontainers-Zaire, but inadmissible in so far as it concerned protection of Mr. Diallo in respect of alleged violations of the rights of Africom-Zaire and Africontainers-Zaire. By an Order of 27 June 2007, the Court fixed 27 March 2008 as the time-limit for the filing of a Counter-Memorial by the Democratic Republic of the Congo. The Counter-Memorial was filed within the time-limit thus fixed. By an Order of 5 May 2008, the Court authorized the submission of a Reply by Guinea and a Rejoinder by the Democratic Republic of the Congo. It fixed 19 November 2008 and 5 June 2009 as the respective time-limits for the filing of those written pleadings, which were filed within the time-limits thus fixed.

111. Public hearings took place from 19 to 29 April 2010. At the conclusion of their oral arguments, the Parties presented their final submissions to the Court.

112. The Republic of Guinea requested the Court "to adjudge and declare: (a) that, in carrying out arbitrary arrests of its national,

Mr. Ahmadou Sadio Diallo, and expelling him; in not at that time respecting his right to the benefit of the provisions of the 1963 Vienna Convention on Consular Relations; in submitting him to humiliating and degrading treatment; in depriving him of the exercise of his rights of ownership, oversight and management in respect of the companies which he founded in the DRC and in which he was the sole *associé*; in preventing him in that capacity from pursuing recovery of the numerous debts owed to the said companies both by the DRC itself and by other contractual partners; and in expropriating de facto Mr. Diallo's property, the Democratic Republic of the Congo has committed internationally wrongful acts which engage its responsibility to the Republic of Guinea; (b) that the Democratic Republic of the Congo is accordingly bound to make full reparation on account of the injury suffered by Mr. Diallo or by the Republic of Guinea in the person of its national; (c) that such reparation shall take the form of compensation covering the totality of the injuries caused by the internationally wrongful acts of the Democratic Republic of the Congo, including loss of earnings, and shall also include interest." Guinea further requested the Court "kindly to authorize it to submit an assessment of the amount of the compensation due to it on this account from the Democratic Republic of the Congo in a subsequent phase of the proceedings in the event that the two

Parties should be unable to agree on the amount thereof within a period of six months following delivery of the Judgment".

113. The Democratic Republic of the Congo, "[i]n the light of the arguments [which it made] and of the Court's Judgment of 24 May 2007 on the preliminary objections, whereby the Court declared Guinea's Application to be inadmissible in so far as it concerned protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire, . . . respectfully request[ed] the Court to adjudge and declare that: 1. [it] has not committed any internationally wrongful acts towards Guinea in respect of Mr. Diallo's individual personal rights; 2. [it] has not committed any internationally wrongful acts towards Guinea in respect of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire; 3. accordingly, the Application of the Republic of Guinea is unfounded in fact and in law and no reparation is due".

114. On 30 November 2010, the Court delivered its Judgment on the merits, the operative clause of which reads as follows:

"For these reasons,

THE COURT,

(1) By eight votes to six,

Finds that the claim of the Republic of Guinea concerning the arrest and detention of Mr. Diallo in 1988-1989 is inadmissible;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Abraham, Keith, Sepúlveda-Amor, Skotnikov, Greenwood; *Judge* ad hoc Mampuya;

AGAINST: *Judges* Al-Khasawneh, Simma, Bennouna, Cançado Trindade, Yusuf; *Judge* ad hoc Mahiou;

(2) Unanimously,

Finds that, in respect of the circumstances in which Mr. Diallo was expelled from Congolese territory on 31 January 1996, the Democratic Republic of the Congo violated Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights;

(3) Unanimously,

Finds that, in respect of the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion, the Democratic Republic of the Congo violated Article 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples' Rights;

(4) By thirteen votes to one,

Finds that, by not informing Mr. Diallo without delay, upon his detention in 1995-1996, of his rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations,

the Democratic Republic of the Congo violated the obligations incumbent upon it under that subparagraph;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; *Judge* ad hoc Mahiou;

AGAINST: *Judge* ad hoc Mampuya;

(5) By twelve votes to two,

Rejects all other submissions by the Republic of Guinea relating to the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood; *Judge* ad hoc Mampuya;

AGAINST: *Judge* Cançado Trindade; *Judge* ad hoc Mahiou;

(6) By nine votes to five,

Finds that the Democratic Republic of the Congo has not violated Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Simma, Abraham, Keith, Sepúlveda-Amor, Skotnikov, Greenwood; *Judge* ad hoc Mampuya;

AGAINST: *Judges* Al-Khasawneh, Bennouna, Cançado Trindade, Yusuf; *Judge* ad hoc Mahiou;

(7) Unanimously,

Finds that the Democratic Republic of the Congo is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) above;

(8) Unanimously,

Decides that, failing agreement between the Parties on this matter within six months from the date of this Judgment, the question of compensation due to the Republic of Guinea shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case."

Judges Al-Khasawneh, Simma, Bennouna, Cançado Trindade and Yusuf appended a joint declaration to the Judgment of the Court; Judges Al-Khasawneh and Yusuf appended a joint dissenting opinion to the Judgment of the Court; Judges Keith and Greenwood appended a joint declaration to the Judgment of the Court; Judge Bennouna appended a dissenting opinion to the

Judgment of the Court; Judge Cançado Trindade appended a separate opinion to the Judgment of the Court; Judge *ad hoc* Mahiou appended a dissenting opinion to the Judgment of the Court; Judge *ad hoc* Mampuya appended a separate opinion to the Judgment of the Court.

3. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*

115. On 23 June 1999, the Democratic Republic of the Congo filed an Application instituting proceedings against Uganda for "acts of armed aggression perpetrated in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (see Annual Report 1998-1999 *et seq.*). Public hearings on the merits of the case were held from 11 to 29 April 2005.

116. In the Judgment which it rendered on 19 December 2005 (see Annual Report 2005-2006), the Court found in particular that the Parties were under obligation to one another to make reparation for the injury caused; it decided that, failing agreement between the Parties, the question of reparation would be settled by the Court. It reserved for this purpose the subsequent procedure in the case. The Parties have transmitted to the Court certain information concerning the negotiations they are holding to settle the question of reparation, as referred to in points (6) and

(14) of the operative clause of the Judgment and paragraphs 260, 261 and 344 of the reasoning in the Judgment.

4. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*

117. On 2 July 1999, Croatia instituted proceedings before the Court against Serbia (then known as the Federal Republic of Yugoslavia) with respect to a dispute concerning alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide committed between 1991 and 1995.

118. In its Application, Croatia contends, *inter alia*, that, "[b]y directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of . . . Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia", Serbia is liable for "ethnic cleansing" committed against Croatian citizens, "a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as extensive property destruction".

119. Accordingly, Croatia requests the Court to adjudge and declare that Serbia has "breached its legal obligations" to Croatia under the Genocide Convention and that it has "an obligation to pay to . . . Croatia, in its own right and as *parens patriae* for its

citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment . . . in a sum to be determined by the Court" (see Annual Report 1998-1999 *et seq.*).

120. As basis for the Court's jurisdiction, Croatia invokes Article IX of the Genocide Convention, to which, it claims, both States are parties.

121. By an Order of 14 September 1999, the Court fixed 14 March 2000 and 14 September 2000 as the respective time-limits for the filing of a Memorial by Croatia and a Counter-Memorial by Serbia. These time-limits were twice extended, by Orders of 10 March 2000 and 27 June 2000. Croatia filed its Memorial within the time-limit as extended by the latter Order.

122. On 11 September 2002, within the time-limit for the filing of its Counter-Memorial as extended by the Order of 27 June 2000, Serbia raised certain preliminary objections in respect of jurisdiction and admissibility. Pursuant to Article 79 of the Rules of Court, the proceedings on the merits were suspended. Croatia filed a written statement of its observations and submissions on Serbia's preliminary objections on 25 April 2003, within the time-limit fixed by the Court.

123. Public hearings on the preliminary objections in respect of jurisdiction and admissibility were held from 26 to 30 May 2008 (see Annual Report 2007-2008).

124. On 18 November 2008, the Court rendered its Judgment on the preliminary objections (see Annual Report 2008-2009 *et seq*). In its Judgment the Court found *inter alia* that, subject to its statement concerning the second preliminary objection raised by the Respondent, it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain Croatia's Application. The Court added that Serbia's second preliminary objection did not, in the circumstances of the case, possess an exclusively preliminary character. It then rejected the third preliminary objection raised by Serbia.

125. By an Order of 20 January 2009, the President of the Court fixed 22 March 2010 as the time-limit for the filing of the Counter-Memorial of Serbia. That pleading, containing counterclaims, was filed within the time-limit thus prescribed. By an Order of 4 February 2010, the Court directed the submission of a Reply by the Republic of Croatia and a Rejoinder by the Republic of Serbia concerning the claims presented by the Parties. It fixed 20 December 2010 and 4 November 2011, respectively, as the time-limits for the filing of those written pleadings. The Reply of Croatia was filed within the time-limit thus fixed.

5. *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*

126. On 6 December 2001, Nicaragua filed an Application instituting proceedings against Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

127. In its Application, Nicaragua requests the Court to adjudge and declare:

> "First, that . . . Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);
>
> Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary."

128. Nicaragua further indicates that it "reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title". It also "reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua" (see Annual Report 2001-2002 *et seq.*).

129. As basis for the Court's jurisdiction, Nicaragua invokes Article XXXI of the Pact of Bogotá, to which both Nicaragua and Colombia are parties, as well as the declarations of the two States recognizing the compulsory jurisdiction of the Court.

130. By an Order of 26 February 2002, the Court fixed 28 April 2003 and 28 June 2004 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Colombia. The Memorial of Nicaragua was filed within the time-limit thus fixed.

131. Copies of the pleadings and documents annexed were requested by the Governments of Honduras, Jamaica, Chile, Peru, Ecuador, Venezuela and Costa Rica by virtue of Article 53, paragraph 1, of the Rules of Court. Pursuant to that same provision, the Court, after ascertaining the views of the Parties, acceded to those requests.

132. On 21 July 2003, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, Colombia raised preliminary objections to the jurisdiction of the Court.

133. Public hearings on the preliminary objections were held from 4 to 8 June 2007.

134. On 13 December 2007, the Court rendered a Judgment, in which it found that Nicaragua's Application was admissible in so far as it concerned sovereignty over the maritime features claimed by the Parties other than the islands of San Andrés, Providencia and Santa Catalina, and in respect of the maritime delimitation between the Parties (see Annual Report 2007-2008).

135. By an Order of 11 February 2008, the President of the Court fixed 11 November 2008 as the time-limit for the filing of the Counter-Memorial of Colombia. The Counter-Memorial was filed within the time-limit thus fixed.

136. By an Order of 18 December 2008, the Court directed Nicaragua to submit a Reply and Colombia a Rejoinder, and fixed 18 September 2009 and 18 June 2010 as the respective time-limits for the filing of those written pleadings, which were filed within the time-limits thus fixed.

137. On 25 February 2010, the Republic of Costa Rica filed an Application for permission to intervene in the case. In its Application, Costa Rica stated among other things that "[b]oth

Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled". It made clear that it was seeking to intervene in the proceedings as a non-party State. Costa Rica's Application was immediately communicated to Nicaragua and Colombia, and the Court fixed 26 May 2010 as the time-limit for the filing of written observations by those States. The written observations were filed within the time-limit thus fixed.

138. On 10 June 2010, the Republic of Honduras also filed an Application for permission to intervene in the case. It asserted in the Application that Nicaragua, in its dispute with Colombia, was putting forward maritime claims that lay in an area of the Caribbean Sea in which Honduras had rights and interests. Honduras stated in its Application that it was seeking primarily to intervene in the proceedings as a party. Honduras's Application was immediately communicated to Nicaragua and Colombia. The President of the Court fixed 2 September 2010 as the time-limit for these two States to furnish written observations. The written observations were filed within the time-limit thus fixed.

139. Public hearings on the admission of Costa Rica's Application for permission to intervene were held from 11 to 15 October 2010.

140. At the close of the hearings, the Agents of Costa Rica and the Parties presented the following submissions to the Court.

For Costa Rica:

"On behalf of the Republic of Costa Rica, I should like to restate the remedy which my Government requests from the Court in this intervention. We seek the application of the provisions of Article 85 of the Rules of Court, namely:

Paragraph 1: 'the intervening State shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Court', and;

Paragraph 3: '[t]he intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.'"

For Nicaragua:

"In accordance with Article 60 of the Rules of the Court and having regard to the Application for permission to intervene filed by the Republic of Costa Rica and oral pleadings, the Republic of Nicaragua respectfully submits that the Application filed by the Republic of Costa Rica fails to comply with the requirements established by the Statute and the Rules of the Court, namely, Article 62, and paragraph 2 *(a)* and *(b)* of Article 81, respectively."

For Colombia:

"In light of the considerations stated during these proceedings, my Government wishes to reiterate what it stated in the Written Observations it submitted to the Court, to the effect that, in Colombia's view, Costa Rica has satisfied the requirements of Article 62 of the Statute and, consequently, that Colombia does not object to Costa Rica's request for permission to intervene in the present case as a non-party."

141. On 5 May 2011, the Court delivered its Judgment on the admission of the Application for permission to intervene filed by Costa Rica. The operative part of the Judgment reads as follows:

"For these reasons,

THE COURT,

By nine votes to seven,

Finds that the Application for permission to intervene in the proceedings filed by the Republic of Costa Rica under Article 62 of the Statute of the Court cannot be granted.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Xue; *Judge* ad hoc Cot;

AGAINST: *Judges* Al-Khasawneh, Simma, Abraham, Cançado Trindade, Yusuf, Donoghue; *Judge* ad hoc Gaja."

Judges Al-Khasawneh and Abraham appended dissenting opinions to the Judgment of the Court; Judge Keith appended a declaration to the Judgment of the Court; Judges Cançado Trindade and Yusuf appended a joint dissenting opinion to the Judgment of the Court; Judge Donoghue appended a dissenting opinion to the Judgment of the Court; Judge *ad hoc* Gaja appended a declaration to the Judgment of the Court.

142. Public hearings on the admission of Honduras's Application for permission to intervene took place from 18 to 22 October 2010.

143. At the close of the hearings, the Agents of Honduras and the Parties presented the following submissions to the Court.

For Honduras:

"Having regard to the Application and the oral pleadings,

May it please the Court to permit Honduras:

(1) to intervene as a party in respect of its interests of a legal nature in the area of concern in the Caribbean Sea (paragraph 17 of the Application) which may be affected by the decision of the Court; or

(2) in the alternative, to intervene as a non-party with respect of those interests."

For Nicaragua:

"In accordance with Article 60 of the Rules of Court and having regard to the Application for permission to intervene filed by the Republic of Honduras and its oral pleadings, the Republic of Nicaragua respectfully submits that, [t]he Application filed by the Republic of Honduras is a manifest challenge to the authority of the *res judicata* of your 8 October 2007 Judgment. Moreover, Honduras has failed to comply with the requirements established by the Statute and the Rules of Court, namely, Article 62, and paragraph 2 *(a)* and *(b)* of Article 81 respectively, and therefore Nicaragua (1) opposes the granting of such permission, and (2) requests that the Court dismiss the Application for permission to intervene filed by Honduras."

For Colombia:

"In light of the considerations stated during these proceedings, my Government wishes to reiterate what it stated in the Written Observations it submitted to the Court, to the effect that, in Colombia's view, Honduras has satisfied the requirements of Article 62 of the Statute and, consequently, that Colombia does not object to Honduras's request for permission to intervene in the present case as a non-party. As concerns Honduras's request to be permitted to intervene as a party, Colombia likewise reiterates that it is a matter for the Court to decide in conformity with Article 62 of the Statute."

144. On 5 May 2011, the Court delivered its Judgment on the admission of the Application for permission to intervene filed by Honduras. The operative part of the Judgment reads as follows:

"For these reasons,

THE COURT,

By thirteen votes to two,

Finds that the Application for permission to intervene in the proceedings, either as a party or as a non-party, filed by the Republic of Honduras under Article 62 of the Statute of the Court cannot be granted.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Keith, Sepúlveda-Amor, Bennouna, Cançado Trindade, Yusuf, Xue; *Judges* ad hoc Cot, Gaja;

AGAINST: *Judges* Abraham, Donoghue."

Judge Al-Khasawneh appended a declaration to the Judgment of the Court; Judge Abraham appended a dissenting opinion to the Judgment of the Court; Judge Keith appended a declaration to the Judgment of the Court; Judges Cançado Trindade and Yusuf appended a joint declaration to the Judgment of the Court; Judge Donoghue appended a dissenting opinion to the Judgment of the Court.

6. *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)*

145. On 9 December 2002, the Congo filed an Application instituting proceedings against France seeking the annulment of the investigation and prosecution measures taken by the French judicial authorities further to a complaint for crimes against humanity and torture filed by various associations against the President of the Republic of the Congo, Denis Sassou Nguesso, the Congolese Minister of the Interior, Pierre Oba, and other individuals including General Norbert Dabira, Inspector-General of the Congolese Armed Forces. The Application further stated that, in connection with these proceedings, an investigating judge of the Meaux *Tribunal de grande instance* had issued a warrant for the President of the Republic of the Congo to be examined as witness (see Annual Report 2002-2003 *et seq.*).

146. By letter dated 5 November 2010 and received in the Registry the same day, the Agent of the Republic of the Congo, referring to Article 89 of the Rules of Court, informed the Court that his Government "withdraws its Application instituting proceedings" and requested the Court "to make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the list". A copy of that letter was immediately communicated to the Government of the French

Republic, which was simultaneously informed that the time-limit provided for in Article 89, paragraph 2, of the Rules of Court, within which the French Republic might state whether it opposed the discontinuance of the proceedings, had been fixed as 12 November 2010. By letter dated 8 November 2010 and received in the Registry the same day, the Agent of the French Republic informed the Court that her Government "has no objection to the discontinuance of the proceedings by the Republic of the Congo". On 16 November 2010, the Court, placing on record the discontinuance by the Republic of the Congo of the proceedings, ordered that the case be removed from the List.

7. *Maritime Dispute (Peru* v. *Chile)*

147. On 16 January 2008, Peru filed an Application instituting proceedings against Chile concerning a dispute in relation to "the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia, . . . the terminal point of the land boundary established pursuant to the Treaty . . . of 3 June 1929"[3], and also to the recognition in favour of Peru of a "maritime zone lying within 200 nautical miles of Peru's coast, and thus appertaining

[3]Treaty between Chile and Peru for the settlement of the dispute regarding Tacna and Arica, signed at Lima on 3 June 1929.

to Peru, but which Chile considers to be part of the high seas" (see Annual Report 2007-2008 *et seq.*).

148. Peru "requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law . . . and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf".

149. As basis for the Court's jurisdiction, Peru invokes Article XXXI of the Pact of Bogotá of 30 April 1948, to which both States are parties without reservation.

150. By an Order of 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010 as the respective time-limits for the filing of a Memorial by Peru and a Counter-Memorial by Chile. Those pleadings were filed within the time-limits thus prescribed.

151. Colombia, Ecuador and Bolivia, relying on Article 53, paragraph 1, of the Rules of Court, requested copies of the pleadings and annexed documents produced in the case. In accordance with that provision, the Court, after ascertaining the views of the Parties, acceded to those requests.

152. By an Order of 27 April 2010, the Court authorized the submission of a Reply by Peru and a Rejoinder by Chile. It fixed 9 November 2010 and 11 July 2011 as the respective time-limits for the filing of those pleadings. The Reply and Rejoinder were filed within the time-limits thus fixed.

8. *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*

153. On 31 March 2008, Ecuador filed an Application instituting proceedings against Colombia in respect of a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador".

154. Ecuador maintains that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contends that it has made "repeated and sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful" (see Annual Report 2007-2008 *et seq.*).

155. Ecuador accordingly requests the Court:

> "to adjudge and declare that:
>
> *(a)* Colombia has violated its obligations under international law by causing or allowing the deposit on the

territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;

(b) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:

(i) death or injury to the health of any person or persons arising from the use of such herbicides; and

(ii) any loss of or damage to the property or livelihood or human rights of such persons; and

(iii) environmental damage or the depletion of natural resources; and

(iv) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and

(v) any other loss or damage; and

(c) Colombia shall:

(i) respect the sovereignty and territorial integrity of Ecuador; and

(ii) forthwith, take all steps necessary to prevent, on any part of its territory, the use of any toxic herbicides

in such a way that they could be deposited onto the territory of Ecuador; and

(iii) prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador."

156. As basis for the Court's jurisdiction, Ecuador invokes Article XXXI of the Pact of Bogotá of 30 April 1948, to which both States are parties. Ecuador also relies on Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

157. In its Application, Ecuador reaffirms its opposition to "the export and consumption of illegal narcotics", but stresses that the issues presented to the Court "relate exclusively to the methods and locations of Colombia's operations to eradicate illicit coca and poppy plantations — and the harmful effects in Ecuador of such operations".

158. By an Order of 30 May 2008, the Court fixed 29 April 2009 and 29 March 2010 as the respective time-limits for the filing of a Memorial by Ecuador and a Counter-Memorial by Colombia. Those pleadings were filed within the time-limits thus prescribed.

159. By an Order of 25 June 2010, the Court directed the submission of a Reply by Ecuador and a Rejoinder by Colombia. It fixed 31 January 2011 and 1 December 2011, respectively, as

the time-limits for the filing of those pleadings. The Reply of Ecuador was filed within the time-limit thus fixed.

9. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*

160. On 12 August 2008, the Republic of Georgia instituted proceedings against the Russian Federation on the grounds of "its actions on and around the territory of Georgia in breach of CERD [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination]". In its Application, Georgia "also seeks to ensure that the individual rights" under the Convention "of all persons on the territory of Georgia are fully respected and protected".

161. Georgia claimed that the Russian Federation, "through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under CERD, including Articles 2, 3, 4, 5 and 6". According to Georgia, the Russian Federation "violated its obligations under CERD during three distinct phases of its interventions in South Ossetia and Abkhazia", in the period from 1990 to August 2008.

162. Georgia requested the Court to order "the Russian Federation to take all steps necessary to comply with its obligations under CERD".

163. As a basis for the jurisdiction of the Court, Georgia relied on Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination. It also reserved its right to invoke, as an additional basis of jurisdiction, Article IX of the Genocide Convention, to which Georgia and the Russian Federation are parties.

164. Georgia's Application was accompanied by a request for the indication of provisional measures, in order to preserve its rights under CERD "to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries" (see Annual Report 2008-2009 *et seq.*).

165. Public hearings were held from 8 to 10 October 2008 to hear the oral observations of the Parties on the request for the indication of provisional measures.

166. On 15 October 2008, the Court handed down an Order in which it indicated provisional measures for both Parties (see Annual Report 2008-2009 *et seq.*).

167. By an Order of 2 December 2008, the President fixed 2 September 2009 as the time-limit for the filing of a Memorial

by Georgia and 2 July 2010 as the time-limit for the filing of a Counter-Memorial by the Russian Federation. The Memorial of Georgia was filed within the time-limit thus prescribed.

168. On 1 December 2009, within the time-limit set in Article 79, paragraph 1, of the Rules of Court, the Russian Federation filed preliminary objections in respect of jurisdiction. Pursuant to Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were then suspended.

169. By an Order of 11 December 2009, the Court fixed the time-limit for the filing by Georgia of a written statement containing its observations and submissions on the preliminary objections in respect of jurisdiction raised by the Russian Federation; it set that time-limit at 1 April 2010. Georgia's written statement was filed within the time-limit thus prescribed.

170. Public hearings on the preliminary objections were held from 13 to 17 September 2010. At the end of the hearings, the Agents of the Parties presented the following submissions to the Court:

For the Russian Federation:

"For the reasons advanced in the written Preliminary Objections and during the oral pleadings, the Russian Federation requests the Court to adjudge and declare that it lacks jurisdiction over the claims brought against the Russian

Federation by Georgia, referred to it by the Application of Georgia of 12 August 2008."

For Georgia:

"For the reasons advanced in the *Written Statement of Georgia on Preliminary Objections* and during the oral pleadings Georgia respectfully requests the Court:

1. to dismiss the preliminary objections presented by the Russian Federation;

2. to hold that the Court has jurisdiction to hear the claims presented by Georgia and that these claims are admissible."

171. On 1 April 2011, the Court delivered its Judgment on the preliminary objections raised by the Russian Federation. The operative part of the Judgment reads as follows:

"For these reasons,

THE COURT,

(1) *(a)* by twelve votes to four,

Rejects the first preliminary objection raised by the Russian Federation;

IN FAVOUR: *President* Owada; *Judges* Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Vice-President* Tomka; *Judges* Koroma, Skotnikov, Xue;

(b) by ten votes to six,

Upholds the second preliminary objection raised by the Russian Federation;

IN FAVOUR: *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue;

AGAINST: *President* Owada; *Judges* Simma, Abraham, Cançado Trindade, Donoghue; *Judge* ad hoc Gaja;

(2) by ten votes to six,

Finds that it has no jurisdiction to entertain the Application filed by Georgia on 12 August 2008.

IN FAVOUR: *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue;

AGAINST: *President* Owada; *Judges* Simma, Abraham, Cançado Trindade, Donoghue; *Judge* ad hoc Gaja."

172. In its Judgment, the Court, recalling that, by Order of 15 October 2008, it had indicated certain provisional measures, stated that this Order ceased to be operative upon the delivery of the Judgment on the preliminary objections. It added however

that the Parties had a duty to comply with their obligations under CERD, of which they were reminded in the said Order.

10. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*

173. On 17 November 2008, the former Yugoslav Republic of Macedonia instituted proceedings against Greece for what it describes as "a flagrant violation of [Greece's] obligations under Article 11" of the Interim Accord signed by the Parties on 13 September 1995.

174. In its Application, the former Yugoslav Republic of Macedonia requests the Court "to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organisations".

175. The former Yugoslav Republic of Macedonia requests the Court to order Greece to "immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1" and "to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organisation and/or of any other 'international, multilateral and regional organizations and institutions' of which

[Greece] is a member . . .” (see Annual Report 2008-2009 *et seq.*).

176. The Applicant invokes as a basis for the jurisdiction of the Court Article 21, paragraph 2, of the Interim Accord of 13 September 1995, which provides that “[a]ny difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, except for the differences referred to in Article 5, paragraph 1”.

177. By an Order of 20 January 2009, the Court fixed 20 July 2009 as the time-limit for the filing of a Memorial by the former Yugoslav Republic of Macedonia and 20 January 2010 as the time-limit for the filing of a Counter-Memorial by Greece. Those pleadings were filed within the time-limits thus prescribed.

178. On 9 March 2010, the Government of the former Yugoslav Republic of Macedonia indicated that it wished to be able to respond to the Counter-Memorial of Greece, including the objections to jurisdiction and admissibility contained therein, by means of a Reply, and to have available for that purpose a time-limit of approximately four and a half months as from the filing of the Counter-Memorial. The Government of Greece had no objection to the granting of this request, provided that it could

in turn submit a Rejoinder and have an identical time-limit for that purpose.

179. By an Order of 12 March 2010, the Court authorized the submission of a Reply by the former Yugoslav Republic of Macedonia and a Rejoinder by Greece. It fixed 9 June 2010 and 27 October 2010 as the respective time-limits for the filing of those pleadings. The Reply of the former Yugoslav Republic of Macedonia and the Rejoinder of Greece were filed within the time-limits thus prescribed.

180. Public hearings were held from 21 to 30 March 2011. At the end of those hearings, on the basis of the evidence produced and the legal arguments presented in their written and oral pleadings, the Parties presented their final submissions.

181. The former Yugoslav Republic of Macedonia "requests the Court:

(i) to reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims;

(ii) to adjudge and declare that the Respondent, through its State organs and Agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and

(iii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

182. Greece "requests the Court to adjudge and declare:

(i) that the case brought by the Applicant before the Court does not fall within the jurisdiction of the Court and that the Applicant's claims are inadmissible;

(ii) in the event that the Court finds that it has jurisdiction and that the claims are admissible, that the Applicant's claims are unfounded."

183. The Court has begun its deliberation; it will deliver its Judgment at a public sitting on a date to be announced later.

11. *Jurisdictional Immunities of the State (Germany* v. *Italy; Greece intervening)*

184. On 23 December 2008, the Federal Republic of Germany instituted proceedings against the Italian Republic, alleging that "[t]hrough its judicial practice . . . Italy has infringed and continues to infringe its obligations towards Germany under international law".

185. In its Application, Germany contends that "[i]n recent years, Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State. The critical stage of that development was reached by the judgment of the Corte di Cassazione of 11 March 2004 in the *Ferrini* case, where [that court] declared that Italy held jurisdiction with regard to a claim . . . brought by a person who during World War II had been deported to Germany to perform forced labour in the armaments industry. After this judgment had been rendered, numerous other proceedings were instituted against Germany before Italian courts by persons who had also suffered injury as a consequence of the armed conflict."

186. The Applicant states that enforcement measures have already been taken against German assets in Italy: a "judicial mortgage" on Villa Vigoni, the German-Italian centre of cultural exchange, has been recorded in the land register. In addition to the claims brought against it by Italian nationals, Germany also

cites "attempts by Greek nationals to enforce in Italy a judgment obtained in Greece on account of a . . . massacre committed by German military units during their withdrawal in 1944."

187. Germany concludes its Application by requesting the Court to adjudge and declare that Italy:

"(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September 1943 to May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;

(2) by taking measures of constraint against 'Villa Vigoni', German State property used for government non-commercial purposes, also committed violations of Germany's jurisdictional immunity;

(3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany's jurisdictional immunity.

Accordingly, the Federal Republic of Germany prays the Court to adjudge and declare that:

(4) the Italian Republic's international responsibility is engaged;

(5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany's sovereign immunity become unenforceable;

(6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above."

188. As the basis for the jurisdiction of the Court, Germany invokes, in its Application, Article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961 (see Annual Report 2008-2009 *et seq.*).

189. By an Order of 29 April 2009, the Court fixed 23 June 2009 as the time-limit for the filing of a Memorial by Germany and 23 December 2009 as the time-limit for the filing of a

Counter-Memorial by Italy. Those pleadings were filed within the time-limits thus prescribed.

190. In Chapter VII of the Counter-Memorial filed by Italy, the Respondent, referring to Article 80 of the Rules of Court, made a counter-claim "with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich" (see Annual Report 2009-2010).

191. Having received full and detailed written observations from each of the Parties, the Court judged that it was sufficiently well informed of the positions they held as to whether the Court could entertain the claim presented as a counter-claim by Italy in its Counter-Memorial. Accordingly, the Court did not consider it necessary to hear the Parties further on the subject; on 6 July 2010 it made an Order on the admissibility of Italy's counter-claim. By that Order, the Court, by thirteen votes to one, found "that the counter-claim presented by Italy . . . is inadmissible as such and does not form part of the current proceedings" (see Annual Report 2009-2010). The Court then unanimously authorized the submission of a Reply by Germany and a Rejoinder by Italy, relating to the claims brought by Germany, and fixed 14 October 2010 and 14 January 2011 as the respective time-limits for the filing of those pleadings. The Reply of Germany and the Rejoinder of Italy were filed within the time-limits thus prescribed.

192. On 12 January 2011, the Hellenic Republic (hereinafter "Greece") filed in the Registry of the International Court of Justice an Application for permission to intervene in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)*.

193. In its Application, Greece first set out the legal interest which it considered may be affected by the decision in the case: it indicated that "the interests — even if only indirect — of a legal nature of Greece that may be affected by a Judgment of the Court are the sovereign rights and jurisdiction enjoyed by Greece under general international law" and that "[i]t is the purpose of Greece to present and demonstrate its legal rights and interests to the Court and, appropriately, state its views as to how the claims of Germany may or may not affect the legal rights and interests of Greece". Greece further stated that its legal interest "derives from the fact that Germany has acquiesced to, if not recognised, its international responsibility vis-à-vis Greece for all acts and omissions perpetrated by the Third Reich between 6 April 1941, when Germany invaded Greece and the unconditional surrender of Germany on 8 May 1945".

194. In its Application, Greece then set out the precise object of the intervention. It stated that its request had two objects: "First, to protect and preserve the legal rights of Greece by all legal means available. These include, *inter alia*, the ones emanating from

disputes created by particular acts and the general practice of Germany during World War II and the ones enjoyed under general international law, especially with respect to jurisdiction and the institution of State responsibility" and "[s]econdly, to inform the Court of the nature of the legal rights and interests of Greece that could be affected by the Court's decision in light of the claims advanced by Germany to the case before the Court".

195. Greece recalled that, in its Application filed on 23 December 2008, Germany had requested the Court to adjudge and declare, *inter alia*, that: "(3) by declaring Greek judgments based on occurrences similar to those defined . . . in request No. 1 [in the Application] enforceable in Italy, [Italy] committed a further breach of Germany's jurisdictional immunity". Greece further stated that "its intention is to solely intervene in the aspects of the procedure relating to judgements rendered by its own (domestic . . .) Tribunals and Courts on occurrences during World War II and enforced (*exequatur*) by the Italian Courts".

196. Lastly, Greece set out the basis of jurisdiction claimed to exist as between itself and the Parties to the case. It stated that it did not seek "to become a party to the case" and that its request to intervene "is based solely and exhaustively upon article 62 of the Statute of the Court".

197. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar transmitted certified copies of Greece's Application for permission to intervene to the German and Italian Governments, and informed them that the Court had fixed 1 April 2011 as the time-limit within which they could submit their written observations on this Application. These written observations were submitted within the time-limit thus fixed.

198. In its written observations on Greece's Application, Germany, whilst drawing the Court's attention to certain considerations which would indicate that Greece's Application did not meet the criteria set out in Article 62, paragraph 1, of the Statute of the Court, expressly stated that it did not "formally object" to the Application being allowed. Italy, for its part, indicated that it did not object to the Application being granted.

199. In light of Article 84, paragraph 2, of its Rules, and taking into account the fact that neither Party had filed an objection, the Court decided that it was not necessary to hold hearings on the question of whether Greece's Application for permission to intervene should be granted. Having nevertheless decided that Greece should be given an opportunity to comment on the observations of the Parties and that the latter should be allowed to submit additional written observations on those views, the Court fixed 6 May 2011 as the time-limit for the submission by Greece of its own written observations on those of the Parties

and 6 June 2011 as the time-limit for the submission by the Parties of additional observations on Greece's written observations. All these observations were submitted within the time-limits thus fixed.

200. In its written observations, in order to establish its interest of a legal nature, Greece stated that the Court, in the decision that it would be called upon to render in the case between Germany and Italy, would rule on the question whether "a judgment handed down by a Greek court can be enforced on Italian territory (having regard to Germany's jurisdictional immunity)". Greece, in this regard, referred to the Judgment of the Court of First Instance of Livadia, a Greek judicial body, in the *Distomo* case. It pointed out that "a Greek judicial body and Greek nationals lie at the heart of the Italian enforcement proceedings". According to Greece, it followed that the decision of the Court as to whether Italian and Greek judgments may be enforced in Italy was directly and primarily of interest to Greece and could affect its interest of a legal nature.

201. In its written observations, Greece also expressed its wish to inform the Court "on Greece's approach to the issue of State immunity, and to developments in that regard in recent years". Greece made clear that it was not presenting this element as indicating the existence of an interest of a legal nature, but rather as providing context to its Application for intervention.

202. In its additional written observations, Germany observed that Greece no longer claimed that it had a general interest in the legal issues which the Court would have to address, nor did it submit that it wished to place before the Court the occurrences of the Second World War. Germany accordingly limited its additional comments as to the granting of the Greek Application to a consideration of the question whether a State could be deemed to have a legal interest in the enforceability, in foreign countries, of the judgments rendered by its courts. Germany expounded its position according to which the execution of a judgment outside national boundaries "is entirely committed to the public authorities of the country where the planned measures of constraint are to be taken" and therefore did not affect the legal interests of the State whose courts handed down the relevant judicial decision. Germany further emphasized that the *Distomo* decision had in effect been overruled in Greece by the Judgment rendered in the *Margellos* case, which upheld Germany's jurisdictional immunity in a comparable situation. Germany left it to the Court to assess the admissibility of the Greek Application as it saw fit.

203. Italy, in its additional written observations, confirmed that it did not object to the Application by Greece being granted.

204. By an Order dated 4 July 2011, the Court granted Greece permission to intervene as a non-party in the case. In its Order,

the Court stated that, in the judgment that it would render in the principal proceedings, it "might find it necessary to consider the decisions of Greek courts in the *Distomo* case, in light of the principle of State immunity, for the purposes of making findings with regard to the third request in Germany's submissions". The Court concluded that this was sufficient to indicate that Greece had an interest of a legal nature which might be affected by the judgment in the principal proceedings. It pointed out that "in light of the scope of the intervention sought by Greece, as specified in its written observations, and of the conclusions which the Court has reached …, Greece may be permitted to intervene as a non-party in so far as this intervention is limited to the decisions of Greek courts as referred to … above".

205. Intervening as a "non-party" allows Greece to have access to the Parties' written pleadings and "to inform the Court of the nature of [its] legal rights and interests . . . that could be affected by the Court's decision in light of the claims advanced by Germany" in the principal proceedings. To this end, by the same Order, the Court fixed 5 August 2011 as the time-limit for the filing of the written statement of Greece, and 5 September 2011 as the time-limit for the filing of the written observations of Germany and Italy on that statement. The subsequent procedure was reserved for further decision.

206. Article 85 of the Rules of Court provides, *inter alia*, that "[t]he intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention". Its non-party status denies Greece the possibility of asserting rights of its own in the context of the principal proceedings between the Parties (Germany and Italy). The judgment that the Court will render on the merits of the case will not be binding on Greece, whereas it will have binding force and be without appeal for the Parties.

12. *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*

207. On 19 February 2009, Belgium instituted proceedings against Senegal, on the grounds that a dispute exists "between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute" the former President of Chad, Hissène Habré, "or to extradite him to Belgium for the purposes of criminal proceedings". Belgium also submitted a request for the indication of provisional measures, in order to protect its rights pending the Court's Judgment on the merits.

208. In its Application, Belgium maintains that Senegal, where Mr. Habré has been living in exile since 1990, has taken no action on its repeated requests to see the former President of

Chad prosecuted in Senegal, failing his extradition to Belgium, for acts characterized as including crimes of torture and crimes against humanity (see Annual Report 2008-2009 *et seq.*).

209. To found the Court's jurisdiction, Belgium, in its Application, first invokes the unilateral declarations recognizing the compulsory jurisdiction of the Court made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 2 December 1985 (Senegal).

210. Moreover, the Applicant indicates that "[t]he two States have been parties to the United Nations Convention against Torture of 10 December 1984" since 21 August 1986 (Senegal) and 25 June 1999 (Belgium). Article 30 of that Convention provides that any dispute between two States parties concerning the interpretation or application of the Convention which it has not been possible to settle through negotiation or arbitration may be submitted to the ICJ by one of the States. Belgium contends that negotiations between the two States "have continued unsuccessfully since 2005" and that it reached the conclusion on 20 June 2006 that they had failed. Belgium states, moreover, that it suggested recourse to arbitration to Senegal on 20 June 2006 and notes that the latter "failed to respond to that request . . . whereas Belgium has persistently confirmed in Notes Verbales that a dispute on this subject continues to exist".

211. At the end of its Application, Belgium requests the Court to adjudge and declare that:

"— the Court has jurisdiction to entertain the dispute between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute Mr. H. Habré or to extradite him to Belgium for the purposes of criminal proceedings;

— Belgium's claim is admissible;

— the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as perpetrator, co-perpetrator or accomplice;

— failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for these crimes before the Belgian courts".

212. Belgium's Application was accompanied by a request for the indication of provisional measures. It explains therein that while "Mr. H. Habré is [at present] under house arrest in Dakar . . . it transpires from an interview which the President of Senegal, A. Wade, gave to Radio France International that

Senegal could lift his house arrest if it fails to find the budget which it regards as necessary in order to hold the trial of Mr. H. Habré". The Applicant states that, "in such an event, it would be easy for Mr. H. Habré to leave Senegal and avoid any prosecution", which "would cause irreparable prejudice to the rights conferred on Belgium by international law . . . and also violate the obligations which Senegal must fulfil".

213. Public hearings were held from 6 to 8 April 2009 to hear the oral observations of the Parties on the request for the indication of provisional measures submitted by Belgium.

214. At the close of the hearings, Belgium asked the Court to indicate the following provisional measures: "the Republic of Senegal is requested to take all the steps within its power to keep Mr. Hissène Habré under the control and surveillance of the Senegalese authorities so that the rules of international law with which Belgium requests compliance may be correctly applied". For its part, Senegal asked the Court "to reject the provisional measures requested by Belgium".

215. On 28 May 2009, the Court gave its decision on the request for the indication of provisional measures submitted by Belgium.

The operative clause of the Order of 28 May 2009 reads as follows:

"For these reasons,

THE COURT,

By thirteen votes to one,

Finds that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

IN FAVOUR: *President* Owada; *Judges* Shi, Koroma, Al-Khasawneh, Simma, Abraham, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood; *Judges* ad hoc Sur, Kirsch;

AGAINST: *Judge* Cançado Trindade."

Judges Koroma and Yusuf appended a joint declaration to the Order of the Court; Judges Al-Khasawneh and Skotnikov appended a joint separate opinion to the Order; Judge Cançado Trindade appended a dissenting opinion to the Order; Judge *ad hoc* Sur appended a separate opinion to the Order.

216. By an Order of 9 July 2009, the Court fixed 9 July 2010 as the time-limit for the filing of a Memorial by the Kingdom of Belgium and 11 July 2011 as the time-limit for the filing of a Counter-Memorial by the Republic of Senegal. The Memorial of Belgium was filed within the time-limit thus fixed.

217. By Order of 11 July 2011, the President of the Court extended the time-limit for the filing of the Counter-Memorial of the Republic of Senegal from 11 July 2011 to 29 August 2011. In his Order, he explained that, by letter dated 10 July 2011 and received in the Registry on 11 July 2011, a copy of which was immediately communicated to the Belgian Government, the Agent of the Republic of Senegal, referring to a decision of the ECOWAS Court of Justice dated 18 November 2010 and to the developments prior to and following the adoption, on 1 July 2011, of a decision by the Assembly of the African Union, had asked the Court to extend the time-limit for the filing of his Government's Counter-Memorial until 29 August 2011. In the same Order, the President then explained that, by letter dated 11 July 2011 and received in the Registry the same day, containing his Government's views on the request for an extension of the time-limit, the Agent of the Kingdom of Belgium indicated, *inter alia*, that the decision rendered by the ECOWAS Court of Justice did not drastically alter the substance of the dispute between Belgium and Senegal and that the decision of the Assembly of the African Union of 1 July 2011 merely reiterated the decision adopted by the same Assembly in January 2011. The Agent of the Kingdom of Belgium asserted, moreover, that the further time-limit requested by Senegal, supposing it to be essential, was too long. He nevertheless added

that his Government would leave the decision on Senegal's request to the wisdom of the Court.

13. *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)*

218. On 21 December 2009, the Kingdom of Belgium initiated proceedings against the Swiss Confederation in respect of a dispute concerning "the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters . . ., and the application of the rules of general international law that govern the exercise of State authority, in particular in the judicial domain, [and relating to] the decision by Swiss courts not to recognize a decision by Belgian courts and not to stay proceedings later initiated in Switzerland on the subject of the same dispute".

219. In its Application Belgium stated that the dispute in question "has arisen out of the pursuit of parallel judicial proceedings in Belgium and Switzerland" in respect of the civil and commercial dispute between the "main shareholders in Sabena, the former Belgian airline now in bankruptcy". The Swiss shareholders in question were SAirGroup (formerly Swissair) and its subsidiary SAirLines; the Belgian shareholders were the Belgian State and three companies in which it held the shares.

220. To found the jurisdiction of the Court, Belgium cited solely the unilateral declarations recognizing the compulsory jurisdiction of the ICJ made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 28 July 1948 (Switzerland) (see Annual Report 2009-2010).

221. By an Order of 4 February 2010, the Court fixed 23 August 2010 as the time-limit for the filing of a Memorial by the Kingdom of Belgium and 25 April 2011 as the time-limit for the filing of a Counter-Memorial by the Swiss Confederation.

222. By Order of 10 August 2010, the President of the Court, at the request of the Government of Belgium and after having ascertained the views of the Government of the Swiss Confederation, extended the time-limits for the filing of the Memorial of Belgium and the Counter-Memorial of Switzerland to 23 November 2010 and 24 October 2011 respectively. The Memorial of Belgium was filed within the time-limit thus prescribed.

223. On 18 February 2011, Switzerland raised preliminary objections to the jurisdiction of the Court and to the admissibility of the Application in this case.

224. By letter dated 21 March 2011 and received in the Registry the same day, the Agent of Belgium, referring to Article 89 of the Rules of Court, informed the Court that his Government "in concert

with the Commission of the European Union, considers that it can discontinue the proceedings instituted [by Belgium] against Switzerland" and requested the Court "to make an order recording Belgium's discontinuance of the proceedings and directing that the case be removed" from the Court's General List. In his letter, the Agent explained in particular that Belgium had taken note of the fact that in paragraph 85 of its Preliminary Objections, "Switzerland states . . . that the reference by the [Swiss] Federal Supreme Court in its 30 September 2008 judgment to the 'non-recognizability' of a future Belgian judgment does not have the force of *res judicata* and does not bind either the lower cantonal courts or the Federal Supreme Court itself, and that there is therefore nothing to prevent a Belgian judgment, once handed down, from being recognized in Switzerland in accordance with the applicable treaty provision". A copy of the letter from the Agent of Belgium was immediately communicated to the Agent of Switzerland, who was informed that the time-limit provided for in Article 89, paragraph 2, of the Rules of Court, within which Switzerland might state whether it opposed the discontinuance of the proceedings, had been fixed as Monday 28 March 2011. Since Switzerland did not oppose the said discontinuance within the time-limit thus fixed, the Court, placing on record the discontinuance by Belgium of the proceedings, ordered that the case be removed from the List on 5 April 2011.

14. *Whaling in the Antarctic (Australia* v. *Japan)*

225. On 31 May 2010, Australia instituted proceedings against Japan, alleging that "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II') [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and the marine environment" (see Annual Report 2009-2010).

226. At the end of its Application, Australia requests the Court to adjudge and declare that "Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean", and to order that Japan: "*(a)*cease implementation of JARPA II; *(b)* revoke any authorisations, permits or licences allowing the activities which are the subject of this application to be undertaken; and *(c)* provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law."

227. As the basis for the jurisdiction of the Court, the Applicant invokes the provisions of Article 36, paragraph 2, of the Court's Statute, referring to the declarations recognizing the Court's jurisdiction as compulsory made by Australia on 22 March 2002 and by Japan on 9 July 2007.

228. By an Order of 13 July 2010, the Court fixed 9 May 2011 as the time-limit for the filing of a Memorial by Australia and 9 March 2012 as the time-limit for the filing of a Counter-Memorial by Japan. The Memorial of Australia was filed within the time-limit thus fixed.

15. *Frontier Dispute (Burkina Faso/Niger)*

229. On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court. By a joint letter dated 12 May 2010 and filed in the Registry on 20 July 2010, the two States notified to the Court a Special Agreement signed in Niamey on 24 February 2009, which entered into force on 20 November 2009. Under the terms of Article 1 of this Special Agreement, the Parties have agreed to submit their frontier dispute to the Court, and that each of them will choose a judge *ad hoc*.

Article 2 of the Special Agreement indicates the subject of the dispute as follows:

> "The Court is requested to:

1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14° 25' 04" N; longitude 00° 12' 47" E) to the beginning of the Botou bend (latitude 12° 36' 18" N; longitude 01° 52' 07" E);

2. place on record the Parties' agreement on the results of the work of the Joint Technical Commission on demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:

(a) the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;

(b) the sector from the beginning of the Botou bend to the River Mekrou."

In Article 3, paragraph 1, the Parties request the Court to authorize the following written proceedings:

"*(a)* a Memorial filed by each Party not later than nine (9) months after the seising of the Court;

(b) a Counter-Memorial filed by each Party not later than nine (9) months after exchange of the Memorials;

(c) any other pleading whose filing, at the request of either of the Parties, shall have been authorized or directed by the Court."

Article 7 of the Special Agreement, entitled "Judgment of the Court", reads as follows:

> "1. The Parties accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them.
>
> 2. From the day on which the Judgment is rendered, the Parties shall have eighteen (18) months in which to commence the work of demarcating the boundary.
>
> 3. In case of difficulty in the implementation of the Judgment, either Party may seise the Court pursuant to Article 60 of its Statute.
>
> 4. The Parties request the Court to nominate, in its Judgment, three (3) experts to assist them in the demarcation."

Lastly, Article 10 contains the following "Special undertaking":

> "Pending the Judgment of the Court, the Parties undertake to maintain peace, security and tranquillity among the populations of the two States in the frontier region, refraining from any act of incursion into the disputed areas and organizing regular meetings of administrative officials and the security services.

With regard to the creation of socio-economic infrastructure, the Parties undertake to hold preliminary consultations prior to implementation."

The Special Agreement was accompanied by an exchange of notes dated 29 October and 2 November 2009 embodying the agreement between the two States on the delimited sectors of the frontier.

230. By Order of 14 September 2010, the Court fixed 20 April 2011 and 20 January 2012 as the respective time-limits for the filing of a Memorial and a Counter-Memorial by each of the Parties. The Memorials were filed within the time-limits thus prescribed.

16. *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*

231. On 18 November 2010, the Republic of Costa Rica instituted proceedings against the Republic of Nicaragua in respect of an alleged "incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as [alleged] breaches of Nicaragua's obligations towards Costa Rica" under a number of international treaties and conventions.

232. In its Application, Costa Rica claims that "[b]y sending contingents of its armed forces to Costa Rican territory and

establishing military camps therein, Nicaragua is not only acting in outright breach of the established boundary regime between the two states, but also of the core founding principles of the United Nations, namely the principle of territorial integrity and the prohibition of the threat or use of force against any State . . .".

233. Costa Rica charges Nicaragua with having occupied, in two separate incidents, the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (also known as Harbor Head Lagoon), and with having carried out certain related works of dredging on the San Juan River. Costa Rica states that the "ongoing and planned dredging and the construction of the canal will seriously affect the flow of water to the Colorado River of Costa Rica, and will cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region".

234. The Applicant claims that Nicaragua rejected all calls for withdrawal of its armed forces from the occupied territory and all means of negotiation. Costa Rica states further that Nicaragua does not intend to comply with the Resolution of 12 November 2010 of the Permanent Council of the Organisation of American States calling, in particular, for the withdrawal of Nicaraguan armed forces from the border region, and requests the avoidance of the

presence of military or security forces in the area, in order to create a favourable climate for dialogue between the two nations.

235. Costa Rica accordingly "requests the Court to adjudge and declare that Nicaragua is in breach of its international obligations . . . as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:

(a) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;

(b) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;

(c) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;

(d) the obligation not to damage Costa Rican territory;

(e) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;

(f) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;

(g) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;

(h) the obligations under the Ramsar Convention on Wetlands;

(i) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica's territorial integrity under international law."

236. The Court is also requested, in the Application, to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in the paragraph above.

237. As the basis for the jurisdiction of the Court, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 ("Pact of Bogotá"), as well

as the declarations of acceptance made by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (modified on 23 October 2001), pursuant to Article 36, paragraph 2, of the Statute of the Court.

238. On 18 November 2010, Costa Rica also filed a Request for the indication of provisional measures, in which it stated that "Costa Rica's rights which are subject of the dispute and of this request for provisional measures are its right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River, its lands, its environmentally protected areas, as well as the integrity and flow of the Colorado River". Costa Rica also indicated that the protection of its rights was of real urgency and pointed out that "[t]here is a real risk that without a grant of provisional measures, action prejudicial to the rights of Costa Rica will continue and may significantly alter the factual situation on the ground before the Court has the opportunity to render its final decision".

239. Costa Rica accordingly "requests the Court as a matter of urgency to order the following provisional measures so as to rectify the presently ongoing breach of Costa Rica's territorial integrity and to prevent further irreparable harm to Costa Rica's territory, pending its determination of this case on the merits:

(1) the immediate and unconditional withdrawal of all Nicaraguan troops from the unlawfully invaded and occupied Costa Rican territories;

(2) the immediate cessation of the construction of a canal across Costa Rican territory;

(3) the immediate cessation of the felling of trees, removal of vegetation and soil from Costa Rican territory, including its wetlands and forests;

(4) the immediate cessation of the dumping of sediment in Costa Rican territory;

(5) the suspension of Nicaragua's ongoing dredging programme, aimed at the occupation, flooding and damage of Costa Rican territory, as well as at the serious damage to and impairment of the navigation of the Colorado River, giving full effect to the Cleveland Award and pending the determination of the merits of this dispute;

(6) that Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court".

240. Public hearings on the request for the indication of provisional measures submitted by Costa Rica were held from 11 to 13 January 2011.

241. At the close of its second round of oral observations, the Agent of Costa Rica set out the provisional measures requested by that State as follows:

"Costa Rica requests the Court to order the following provisional measures:

"A. Pending the determination of this case on the merits, Nicaragua shall not, in the area comprising the entirety of Isla Portillos, that is to say, across the right bank of the San Juan river and between the banks of the Laguna Los Portillos (also known as Harbor Head Lagoon) and the Taura river ("the relevant area"):

(1) station any of its troops or other personnel;

(2) engage in the construction or enlargement of a canal;

(3) fell trees or remove vegetation or soil;

(4) dump sediment.

B. Pending the determination of this case on the merits, Nicaragua shall suspend its ongoing dredging programme in the River San Juan adjacent to the relevant area.

C. Pending the determination of this case on the merits, Nicaragua shall refrain from any other action which

might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court."

242. At the close of its second round of oral observations, the Agent of Nicaragua presented the following submissions on behalf of his Government:

> "In accordance with Article 60 of the Rules of Court and having regard to the Request for the indication of provisional measures of the Republic of Costa Rica and its oral pleadings, the Republic of Nicaragua respectfully submits that, [f]or the reasons explained during these hearings and any other reasons the Court might deem appropriate, the Republic of Nicaragua asks the Court to dismiss the Request for provisional measures filed by the Republic of Costa Rica."

243. On 8 March 2011, the Court delivered its decision on the request for the indication of provisional measures submitted by Costa Rica. In its Order, it indicated the following provisional measures:

"(1) Unanimously,

Each Party shall refrain from sending to, or maintaining in the disputed territory, including the *caño* [the canal cut by Nicaragua], any personnel, whether civilian, police or security;

(2) By thirteen votes to four,

Notwithstanding point (1) above, Costa Rica may dispatch civilian personnel charged with the protection of the environment to the disputed territory, including the *caño*, but only in so far as it is necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated; Costa Rica shall consult with the Secretariat of the Ramsar Convention in regard to these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Dugard;

AGAINST: *Judges* Sepúlveda-Amor, Skotnikov, Xue; *Judge* ad hoc Guillaume;

(3) Unanimously,

Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(4) Unanimously,

Each Party shall inform the Court as to its compliance with the above provisional measures."

Judges Koroma and Sepúlveda-Amor appended separate opinions to the Order; Judges Skotnikov, Greenwood and Xue appended declarations to the Order; Judge *ad hoc* Guillaume appended a declaration to the Order; Judge *ad hoc* Dugard appended a separate opinion to the Order.

244. By an Order of 5 April 2011, the Court, taking account of the views of the Parties, fixed 5 December 2011 and 6 August 2012 respectively, as the time-limits for the filing of a Memorial by the Republic of Costa Rica and a Counter-Memorial by the Republic of Nicaragua. The subsequent procedure was reserved for further decision.

17. *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*

245. On 28 April 2011, the Kingdom of Cambodia submitted, by an Application filed in the Registry of the Court, a request for interpretation of the Judgment rendered by the Court on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)*.

246. In its Application, Cambodia indicates the "points in dispute as to the meaning or scope of the Judgment", as stipulated by Article 98 of the Rules of Court. It states in particular that: "(1) according to Cambodia, the Judgment [rendered by the Court

in 1962] is based on the prior existence of an international boundary established and recognized by both States; (2) according to Cambodia, that boundary is defined by the map to which the Court refers on page 21 of its Judgment . . ., a map which enables the Court to find that Cambodia's sovereignty over the Temple is a direct and automatic consequence of its sovereignty over the territory on which the Temple is situated . . .; (3) according to [Cambodia], Thailand is under an obligation [pursuant to the Judgment] to withdraw any military or other personnel from the vicinity of the Temple on Cambodian territory. [T]his is a general and continuing obligation deriving from the statements concerning Cambodia's territorial sovereignty recognized by the Court in that region." Cambodia asserts that "Thailand disagrees with all of these points."

247. The Applicant seeks to base the jurisdiction of the Court on Article 60 of the Statute of the Court, which provides that "[i]n the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party". Cambodia also invokes Article 98 of the Rules of Court.

248. It explains in its Application that, while "Thailand does not dispute Cambodia's sovereignty over the Temple — and only over the Temple itself", it does, however, call into question the 1962 Judgment in its entirety.

249. Cambodia contends that "in 1962, the Court placed the Temple under Cambodian sovereignty, because the territory on which it is situated is on the Cambodian side of the boundary", and that "[t]o refuse Cambodia's sovereignty over the area beyond the Temple as far as its 'vicinity' is to say to the Court that the boundary line which it recognized [in 1962] is wholly erroneous, *including in respect of the Temple itself*".

250. Cambodia emphasizes that the purpose of its Request is to seek an explanation from the Court regarding the "meaning and . . . scope of its Judgment, within the limit laid down by Article 60 of the Statute". It adds that such an explanation, "which would be binding on Cambodia and Thailand, . . . could then serve as a basis for a final resolution of this dispute through negotiation or any other peaceful means".

251. Regarding the facts underlying its Application, Cambodia recalls that it instituted proceedings against Thailand in 1959, and that certain problems arose after the Court had given Judgment on the merits in 1962. It goes on to describe the more recent events which directly motivated the present Application (failure of endeavours aimed at achieving agreement between the two States on a joint interpretation of the 1962 Judgment; deterioration in relations following "discussions within UNESCO to have the Temple declared a World Heritage Site"; armed incidents between the two States in April 2011).

252. At the close of its Application, Cambodia asks the Court to adjudge and declare that "[t]he obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' (point 2 of the operative clause [of the Judgment rendered by the Court in 1962]) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line on the map [referred to on page 21 of the Judgment], on which [the Judgment] is based."

253. On the same day, Cambodia also filed a request for the indication of provisional measures, pursuant to Article 41 of the Statute and Article 73 of the Rules of Court. The Applicant explained that "[s]ince 22 April 2011, serious incidents have occurred in the area of the Temple of Preah Vihear, . . . as well as at several locations along that boundary between the two States, causing fatalities, injuries and the evacuation of local inhabitants".

Cambodia stated that "[s]erious armed incidents are continuing at the time of filing . . . [its] request [for interpretation], for which Thailand is entirely responsible".

254. According to the Applicant, "[m]easures are urgently required, both to safeguard the rights of Cambodia pending the Court's

decision — rights relating to its sovereignty, its territorial integrity and to the duty of non-interference incumbent upon Thailand — and to avoid aggravation of the dispute". Cambodia further explained that, "in the unfortunate event that its request were to be rejected, and if Thailand persisted in its conduct, the damage to the Temple of Preah Vihear, as well as irremediable losses of life and human suffering as a result of these armed clashes, would become worse".

255. In conclusion, Cambodia "respectfully requests the Court to indicate the following provisional measures, pending the delivery of its judgment:

— an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear;

— a ban on all military activity by Thailand in the area of the Temple of Preah Vihear;

— that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings".

256. Public hearings on the request for the indication of provisional measures filed by Cambodia were held on Monday 30 and Tuesday 31 May 2011.

257. At the close of the second round of oral observations, Cambodia reiterated its request for the indication of provisional measures; the Agent of Thailand, for his part, presented the following submissions on behalf of his Government: "[i]n accordance with Article 60 of the Rules of Court and having regard to the Request for the indication of provisional measures of the Kingdom of Cambodia and its oral pleadings, the Kingdom of Thailand respectfully requests the Court to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List".

258. On 18 July 2011, the Court delivered its Order on the request for the indication of provisional measures submitted by Cambodia. The operative part of the Order reads as follows:

"For these reasons,

THE COURT,

(A) Unanimously,

Rejects the Kingdom of Thailand's request to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List of the Court;

(B) *Indicates* the following provisional measures:

(1) By eleven votes to five,

Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone;

IN FAVOUR: *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; *Judge* ad hoc Guillaume;

AGAINST: *President* Owada; *Judges* Al-Khasawneh, Xue, Donoghue; *Judge* ad hoc Cot;

(2) By fifteen votes to one,

Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(3) By fifteen votes to one,

Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers

appointed by that organization to have access to the provisional demilitarized zone;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges ad hoc* Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(4) By fifteen votes to one,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges ad hoc* Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(C) By fifteen votes to one,

Decides that each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna,

Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(D) By fifteen votes to one,

Decides that, until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue."

President Owada appended a dissenting opinion to the Order of the Court; Judge Koroma appended a declaration to the Order of the Court; Judge Al-Khasawneh appended a dissenting opinion to the Order of the Court; Judge Cançado Trindade appended a separate opinion to the Order of the Court; Judges Xue and Donoghue appended dissenting opinions to the Order of the Court; Judge *ad hoc* Guillaume appended a declaration to the Order of the Court; Judge *ad hoc* Cot appended a dissenting opinion to the Order of the Court.

C. Pending advisory proceedings during the period under review

1. *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development* (request for advisory opinion)

259. On 26 April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), aimed at obtaining the reversal of a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization (hereinafter "the Tribunal" or "ILOAT").

260. In its judgment No. 2867 (*S-G.* v. *IFAD*), delivered on 3 February 2010, the Tribunal found that it had jurisdiction under the terms of Article II of its Statute to rule on the merits of a complaint against IFAD introduced by Ms S-G., a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter "the Global Mechanism"). Ms S-G. held a fixed-term contract of employment which was due to expire on 15 March 2006 (see Annual Report 2009-2010).

261. The Executive Board of IFAD, by a resolution adopted at its ninety-ninth session on 22 April 2010, acting within the framework of Article XII of the Annex of the Statute of the

Tribunal, decided to challenge the above-mentioned judgment of the Tribunal and to refer the question of the validity of that judgment to the International Court of Justice for an advisory opinion.

262. The request for an advisory opinion was transmitted to the Court by a letter from the President of the Executive Board of IFAD dated 23 April 2010 and received in the Registry on 26 April.

263. It contains the nine following questions:

> "I. Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?
>
> II. Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a

member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made in support of its decision confirming its jurisdiction, that 'the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes' and that the 'effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

III. Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that 'the personnel of the Global Mechanism are staff members of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IV. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

V. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing

Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VI. Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its

jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?"

By letters dated 26 April 2010, the Registrar of the Court gave notice, pursuant to Article 66, paragraph 1, of the Statute, of the request for an advisory opinion to all States entitled to appear before the Court.

264. By an Order of 29 April 2010, the Court:

(1) decided that the International Fund for Agricultural Development and its Member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which have made a declaration recognizing the jurisdiction of the Administrative Tribunal of the International Labour Organization pursuant to Article II, paragraph 5, of the Statute of the Tribunal were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;

(2) fixed 29 October 2010 as the time-limit within which written statements on these questions could be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

(3) fixed 31 January 2011 as the time-limit within which States and organizations having presented written statements could submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;

(4) decided that the President of the International Fund for Agricultural Development should transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the Administrative Tribunal of the International Labour Organization which the said complainant may wish to bring to the attention of the Court; and fixed 29 October 2010 as the time-limit within which any possible statement by the complainant who is the subject of the judgment could be presented to the Court and 31 January 2011 as the time-limit within which any possible comments by the complainant could be presented to the Court. The subsequent procedure has been reserved for further decision.

265. On 26 October 2010, the General Counsel of IFAD submitted a written statement of the Fund and a statement setting forth the views of the complainant.

266. On 28 October 2010, the Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands submitted a written statement of the Government of Bolivia.

267. By Order of 24 January 2011, the President of the Court extended to 11 March 2011 the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute, as well as the time-limit within which any comments by the complainant in the proceedings against the Fund before the Tribunal may be presented to the Court. The time-limits were extended in response to a request to that effect made by the General Counsel of IFAD.

268. The written comments of the Fund and those of the complainant were presented within the time-limit thus extended.

Chapter VI

Visits to the Court and other activities

269. On 13 December 2010, the Court was visited by H.E. Mr. Prasobsook Boondech, President of the Senate of the Kingdom of Thailand, accompanied by senators and other dignitaries. The delegation attended a presentation on the activities of the Court and was received by its President, Judge Hisashi Owada.

270. On 17 March 2011, the Court was paid a visit by H.E. Mr. Dag Terje Andersen, President of the Parliament of the Kingdom of Norway. Mr. Andersen was accompanied by four Members of Parliament and three representatives of the Norwegian Embassy in The Hague. The delegation was received by the Registrar of the Court, Mr. Philippe Couvreur. The Registry organized a presentation on the activities of the Court, during which it answered the questions put to it by the Norwegian Members of Parliament.

271. On 2 May 2011, the Court was visited by H.E. Mrs. Mary McAleese, President of Ireland. Mrs. McAleese, who was accompanied by an official delegation which included her spouse, Dr. Martin McAleese, H.E. Ms Frances Fitzgerald, Minister for Children and Youth Affairs of Ireland, H.E. Mrs. Mary Whelan, Ambassador of Ireland to the Kingdom of the Netherlands, and other high-ranking officials, was welcomed

by the President of the Court, Judge Hisashi Owada, and his spouse, Mrs. Yumiko Owada, and by the Registrar, Mr. Philippe Couvreur. President McAleese and principal members of the delegation were then escorted to the Ante-Chamber of the Great Hall of Justice, where they were introduced by President Owada to Members of the Court and their spouses, and by the Registrar to senior Registry officials. At a solemn sitting held afterwards in the Great Hall of Justice and attended by the Diplomatic Corps, representatives of the Dutch authorities and senior officials of other international institutions located in The Hague, speeches were made by President Owada and President McAleese.

272. In addition, during the period under review, the President and Members of the Court, as well as the Registrar and Registry officials, welcomed a large number of dignitaries, including members of governments, diplomats, parliamentary representatives, presidents and members of judicial bodies and other senior officials, to the seat of the Court.

273. There were also many visits by researchers, academics, lawyers and other members of the legal profession, and journalists, among others. Presentations were made during a number of these visits by the President, Members of the Court, the Registrar or Registry officials.

274. A noteworthy development has been the increasing interest on the part of leading national and regional courts in visiting the Court for exchanges of ideas. The Court has also conducted electronic exchanges of information with a number of other courts and tribunals.

275. On Sunday 19 September 2010, the Court welcomed some six hundred visitors as part of "The Hague International Day", organized in conjunction with the Municipality of The Hague, in order to introduce the expatriate community and Dutch citizens to the international organizations based in the city. This was the third time that the Court had taken part in this event for the general public. During the course of this "open day", the Information Department screened its new "institutional film" in English and in French, answered visitors' questions and distributed various information brochures on the Court.

276. On 1 April 2011, to celebrate the sixty-fifth anniversary of the Court's inaugural sitting, an exhibition of photographs and authentic items relating to the judicial activity of the Court was unveiled, and President Owada officially received the first copies of three new postage stamps designed for the Court. This event took place in the Atrium of the City Hall in The Hague, at a ceremony organized by the Court's Registry, with the help of the Municipality, in the presence of Members of the Court, the Mayor of The Hague, Aldermen, representatives of the Diplomatic Corps

and senior officials from the Dutch Ministry of Foreign Affairs and international organizations based in The Hague. The exhibition, which was on display in the City Hall for two weeks and then for the following two weeks at the Peace Palace, briefly traced the history of the Court and its predecessor, the Permanent Court of International Justice; the various photos and other exhibits illustrated the Court's role as the principal judicial organ of the United Nations.

Chapter VII

Publications, documents and website of the Court

277. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the world's major law libraries. The distribution of these publications is handled chiefly by the sales and marketing section of the United Nations Secretariat in New York. The catalogue published in English and French is distributed free of charge. An updated version of the catalogue, containing the new 13-digit ISBN references, was published in mid 2009 and is available on the Court's website (www.icj-cij.org, under the heading "Publications").

278. The publications of the Court consist of several series. The following three series are published annually: (1) *Reports of Judgments, Advisory Opinions and Orders* (published in separate fascicles and as a bound volume), (2) *Yearbooks* and (3) the *Bibliography* of works and documents relating to the Court.

279. As at the date of the present report, the bound volume of *Reports 2008* had been printed. The bound volume of *Reports 2009* will appear early in the second half of 2011. The *Yearbook 2007-2008* was printed during the 2010-2011 period, while the *Yearbook 2008-2009* was being finalized. The *Bibliography of the International Court of Justice*, No. 55, was

also published during the period under review. The *Bibliography of the International Court of Justice*, Nos. 56, 57 and 58, will appear at the end of the second half of 2011.

280. The Court also publishes bilingual printed versions of the instruments instituting proceedings in contentious cases referred to it (applications instituting proceedings and special agreements), and of applications for permission to intervene and requests for advisory opinions it receives. In the period covered by this report, the Court received two applications instituting proceedings and one application for permission to intervene, which are currently being printed.

281. The pleadings and other documents submitted to the Court in a case are usually made accessible to the public by the Court once that case is concluded. They are published after the instruments instituting proceedings, in the series *Pleadings, Oral Arguments, Documents*. The volumes of this series, which now contain the full texts of the written pleadings, including annexes, as well as the verbatim reports of the public hearings, give practitioners a complete view of the arguments elaborated by the parties.

282. The following volumes were published in the period covered by this report, or will be published shortly: *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*

(nine volumes); *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)* (five volumes to be issued in the second half of 2011).

283. In the series *Acts and Documents concerning the Organization of the Court*, the Court publishes the instruments governing its functioning and practice. The most recent edition, No. 6, which was completely updated and includes the Practice Directions adopted by the Court, came out in 2007. An offprint of the Rules of Court, as amended on 5 December 2000, is available in English and French. These documents can also be found online on the Court's website (www.icj-cij.org, under the heading "Basic Documents"). Unofficial translations of the Rules of Court are also available in the other official languages of the United Nations and in German and may be found on the Court's website.

284. The Court issues press releases and summaries of its decisions.

285. It also publishes a handbook intended to facilitate a better understanding of the history, organization, jurisdiction, procedures and jurisprudence of the Court. The fifth edition of this handbook came out in January 2006 in the Court's two official languages. The sixth edition will be published shortly in

those two languages, and will subsequently be translated into the other official languages of the United Nations and German.

286. The Court also produces a general information booklet in the form of questions and answers. This booklet is produced in all UN official languages and in Dutch. A revised version will be released in the second half of 2011.

287. A special, lavishly illustrated, book, *The Illustrated Book of the International Court of Justice*, was also published in 2006.

288. A leaflet for the general public about the Court was produced in December 2009. It gives an overview of the history and composition of the Court, as well as of its mission (contentious and advisory jurisdiction).

289. In 2010, the Registry also produced a 15-minute documentary film about the Court. The film is available online on the Court's website and is shown regularly on a big screen to visitors at the Peace Palace. It has also been supplied to United Nations audiovisual broadcasting services, such as UNifeed.

290. Thanks to its clearly organized website, the Registry is able to post various multimedia files online for the print and broadcast media and, when necessary, to provide live broadcasts of the Court's public hearings.

291. The website makes it possible to access the entire jurisprudence of the Court since 1946, as well as that of its

predecessor, the Permanent Court of International Justice. It also gives easy access to the principal documents (not including annexes) from the written and oral proceedings of all cases, all of the Court's press releases, a number of basic documents (Charter of the United Nations, Statute of the Court, Rules of Court and Practice Directions), declarations recognizing the Court's compulsory jurisdiction and a list of treaties and conventions providing for that jurisdiction, general information on the Court's history and procedure, biographies and portraits of the judges and the Registrar, information on the organization and functioning of the Registry, and a catalogue of publications.

292. The site also includes a calendar of hearings and events, and online application forms for groups and individuals wishing to attend hearings or presentations on the activities of the Court. Pages listing vacancy announcements and internship opportunities can also be found on the website.

293. Finally, the "Press Room" page provides online access to all the necessary services and information for reporters wishing to cover the Court's activities (in particular, the online accreditation procedures). The photo gallery offers them digital photos, which can be downloaded free of charge (for non-commercial use only). Audio and video clips from hearings and readings of the Court's decisions are also available in several formats (Flash, MPEG2, MP3).

Chapter VIII
Finances of the Court

A. Method of covering expenditure

294. In accordance with Article 33 of the Statute of the Court, "The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly." As the budget of the Court has been incorporated in the budget of the United Nations, Member States participate in the expenses of both in the same proportion, in accordance with the scale of assessments determined by the General Assembly.

295. In accordance with established practice, sums derived from staff assessment, sales of publications (dealt with by the sales sections of the Secretariat), bank interest, etc., are recorded as United Nations income.

B. Drafting of the budget

296. In accordance with Articles 26 to 30 of the Instructions for the Registry, a preliminary draft budget is prepared by the Registrar. This preliminary draft is submitted for the consideration of the Budgetary and Administrative Committee of the Court and then for approval to the Court itself.

297. Once approved, the draft budget is forwarded to the Secretariat of the United Nations for incorporation in the draft

budget of the United Nations. It is then examined by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and is afterwards submitted to the Fifth Committee of the General Assembly. It is finally adopted by the General Assembly in plenary meeting, within the framework of decisions concerning the budget of the United Nations.

C. Budget implementation

298. The Registrar is responsible for implementing the budget, with the assistance of the Finance Division (see para. 82 above). The Registrar has to ensure that proper use is made of the funds voted and must see that no expenses are incurred that are not provided for in the budget. He alone is entitled to incur liabilities in the name of the Court, subject to any possible delegations of authority. In accordance with a decision of the Court, adopted on the recommendation of the Subcommittee on Rationalization, the Registrar now regularly communicates a statement of accounts to the Budgetary and Administrative Committee of the Court.

299. The accounts of the Court are audited every year by the Board of Auditors appointed by the General Assembly. At the end of each biennium, the closed accounts are forwarded to the Secretariat of the United Nations.

D. Budget of the Court for the biennium 2010-2011

300. Regarding the budget for the 2010-2011 biennium, the Court was pleased to note that its requests for new posts and for an appropriation for the modernization of the Great Hall of Justice, where it holds its hearings, were largely granted (see also Chapter I of this report).

Revised budget for the biennium 2010-2011
(United States dollars, after re-costing)

Programme		
Members of the Court		
0311025	Allowances for various expenses	877,200
0311023	Pensions	3,886,600
0393909	Duty allowance: judges ad hoc	1,165,100
2042302	Travel on official business	50,800
0393902	Emoluments	7,456,900
Subtotal		**13,436,600**
Registry		
0110000	Permanent posts	15,217,700
0170000	Temporary posts for the biennium	1,829,200
0200000	Common staff costs	6,841,500
1540000	(Medical and associated costs, after suspension of services)	346,500
0211014	Representation allowance	7,200
1210000	Temporary assistance for meetings	1,622,700
1310000	General temporary assistance	295,000
1410000	Consultants	89,400
1510000	Overtime	128,500
2042302	Official travel	47,500
0454501	Hospitality	19,900
Subtotal		**26,445,100**
Programme Support		
3030000	External translation	362,700
3050000	Printing	361,400
3070000	Data-processing services	404,000
4010000	Rental/maintenance of premises	3,301,700
4030000	Rental of furniture and equipment	191,500
4040000	Communications	237,800
4060000	Maintenance of furniture and equipment	87,000
4090000	Miscellaneous services	31,800
5000000	Supplies and materials	293,500
5030000	Library books and supplies	215,700

Programme		
6000000	Furniture and equipment	171,500

Programme		
6025041	Acquisition of office automation equipment	554,700
6025042	Replacement of office automation equipment	510,800
Subtotal		**6,724,100**
Total		**46,605,800**

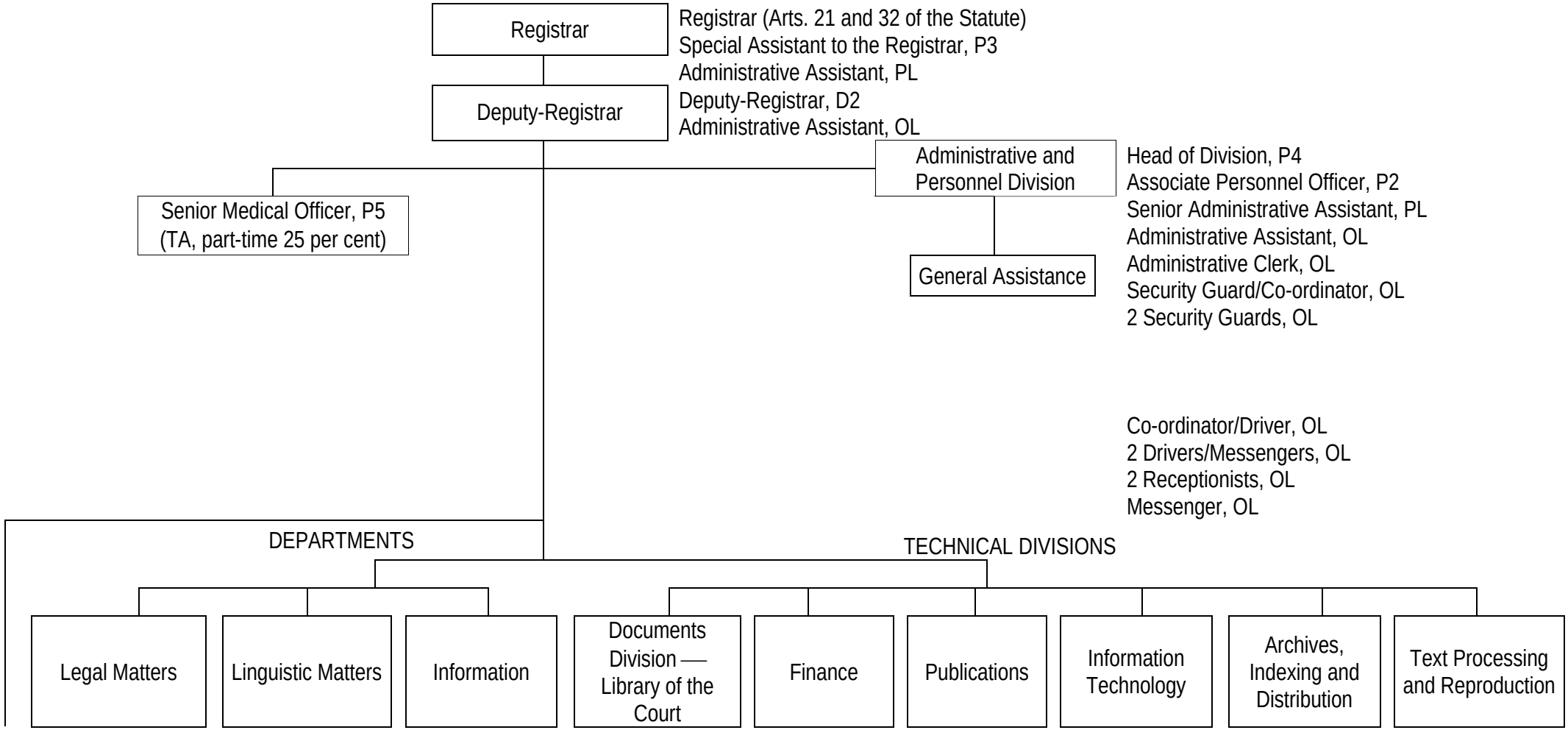
301. More comprehensive information on the work of the Court during the period under review is available on its website, broken down by case. It will also be found in the *Yearbook 2010-2011*, to be issued in due course.

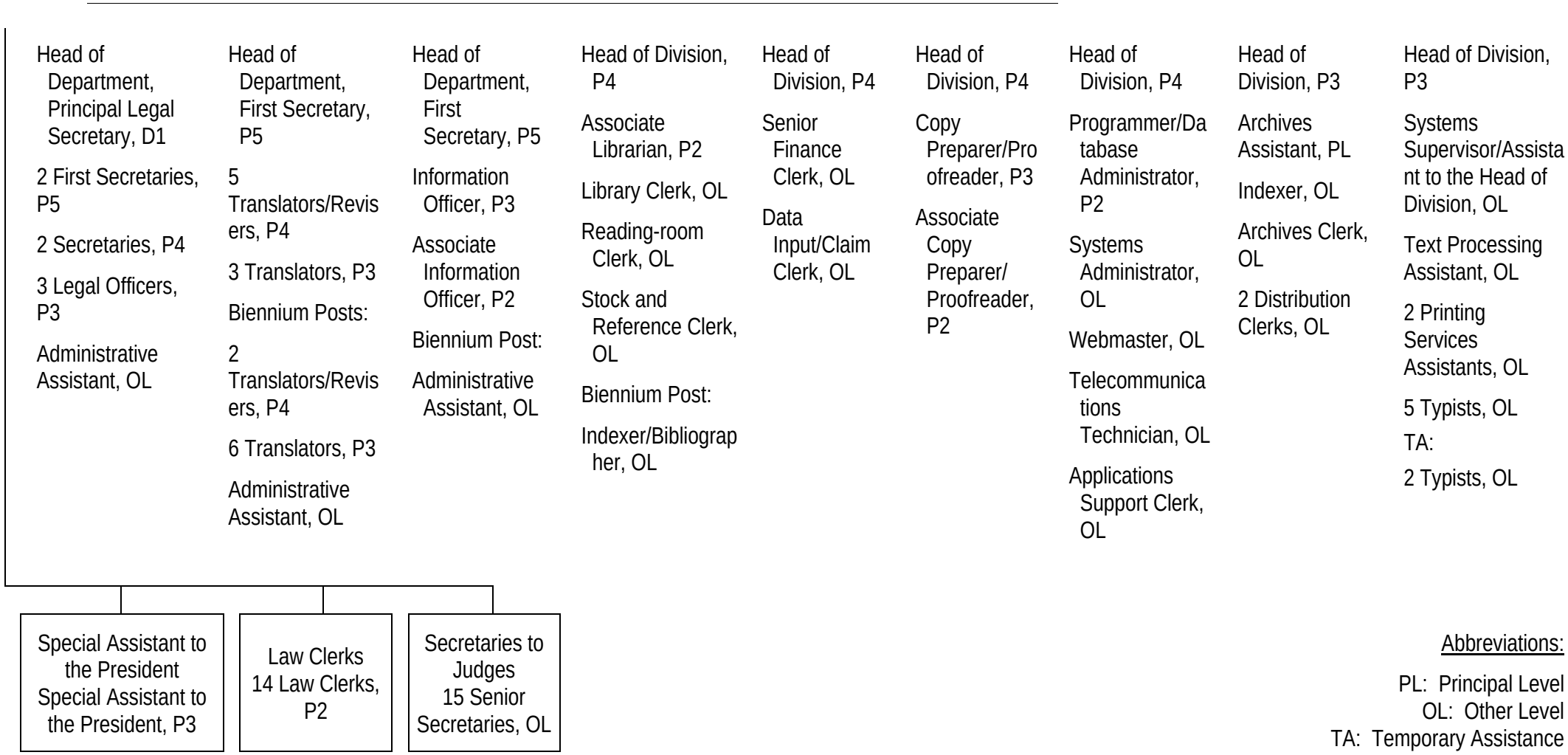
(Signed) Hisashi OWADA,
President of the International
Court of Justice.

The Hague, 1 August 2011.

Annex

International Court of Justice: Organizational structure and post distribution as at 31 July 2011





Abbreviations:

PL: Principal Level
OL: Other Level
TA: Temporary Assistance