THE INTERNATIONAL COURT OF JUSTICE

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Contents

INTRODUCTION

One of the main purposes of the United Nations is "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace". It was with this object in view that the Charter of the United Nations created the International Court of Justice as one of the principal organs of the United Nations (Articles 1 and 7).

The importance of the place occupied by the Court in the United Nations is emphasized by other provisions of the Charter: the Court is the principal judicial organ of the United Nations (Article 92); further, the Security Council, when called upon to make recommendations in a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, should take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice (Article 36).

The present publication is intended to give a short account of the organization of the Court, its jurisdiction, the manner in which it functions and, finally, the Judgments and advisory opinions delivered by the Court since its creation. This is preceded by a brief historical outline of the judicial settlement of international disputes.

I

HISTORICAL OUTLINE OF THE JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES

A. The origin of arbitration

The idea of entrusting the settlement of international disputes to an impartial authority, which would give a decision on the basis of law, is a very old one. Examples are to be found in ancient Greece, but the modern development of international arbitration dates from the Jay Treaty of 1794, between Great Britain and the United States, which provided for the establishment of mixed commissions for the settlement of a number of disputes existing between the two countries. These commissions were composed of an equal number of members appointed by each of the parties and presided over by an umpire. During the nineteenth century,

the movement in favour of arbitration gathered momentum. A decisive stage in this development was marked by the *Alabama Claims* arbitration between the United States and Great Britain in 1872, involving claims by the former for alleged breaches of neutrality by the latter during the United States Civil War. The proceedings demonstrated the effectiveness of arbitration in the settlement of a major international dispute. In the years that followed, several other international disputes were settled by arbitration.

B. The Permanent Court of Arbitration

A further stage in the development of the judicial settlement of international disputes was reached with the First Hague Peace Conference of 1899. The Powers which took part in this Conference signed the Hague Convention for the Pacific Settlement of International Disputes, in which they undertook to use their best efforts to ensure the pacific settlement of international differences with a view to obviating, as far as possible, recourse to force in relations between States. Believing that the only effective means of extending the rule of law and increasing respect for international justice was the creation of a permanent arbitral body open to all States, they set up the Permanent Court of Arbitration. Although that Court was a permanent institution, it was not a permanent tribunal in the true sense of the word but a panel of about 150 to 200 persons (four from each contracting Power) from among whom States could select one or more arbitrators to form a tribunal for the settlement of a particular dispute.

The Permanent Court of Arbitration, which was maintained by the Second Hague Peace Conference of 1907, is still in existence. From 1899 to the present, it has decided about 20 cases, some of which have been of considerable importance. The functioning of the Permanent Court, however, presupposes that two States parties to a dispute are animated by a sincere desire to arrive at a settlement. They must not only agree beforehand to submit the dispute to arbitration, but must also reach agreement with respect to the arbitrators to be appointed and the formulation of the questions to be submitted to them. It is obvious that the negotiations leading to such an agreement may be both lengthy and difficult.

The Second Hague Peace Conference had envisaged the establishment of two bodies whose permanent character was much more marked than that of the Permanent Court of Arbitration: an international Prize Court and a Judicial Arbitration Court. Although, for various reasons, these two attempts did not succeed, they are nevertheless of interest since they show that it was in the

field of judicial institutions that the Powers sought to take a first step in the direction of international organization. A member of the United States delegation to the Second Hague Conference expressed himself in words which history has borne out in a striking manner, when he declared, in connection with the Judicial Arbitration Court, that: "A court of that kind will deliver its judgements in virtue of the authority of the united nations."

C. The Permanent Court of International Justice and the International Court of Justice

The creation in 1920 of the Permanent Court of International Justice, for which provision had been made in the Covenant of the League of Nations, marked the greatest advance in the field of the judicial settlement of international disputes. The Permanent Court was a court in the real sense of the term and was ready to function at any time. It is true that, as in the case of the Permanent Court of Arbitration, its jurisdiction depended solely upon the consent of the parties to a dispute. On the other hand, the fact that the new Court was open to States at all times made it possible for them to accept its jurisdiction not only for the purposes of a particular dispute that had arisen but also for all disputes which might arise in the future—that is, before any dispute had come into being—and hence at a time when they were not divided by disagreement. In other words, there existed, for the first time, an international tribunal, having a corporate character, before which a State could bring a dispute by means of a unilateral application calling upon another State to appear before it, without the need for the parties to the dispute to reach a prior agreement on the composition of the tribunal and the questions to be submitted to it.

The Permanent Court of International Justice sat for the first time in 1922. Its activities were interrupted by the Second World War and in 1946 it was dissolved in consequence of the dissolution of the League of Nations. Between 1922 and 1940, however, it dealt with 29 contentious cases which States had referred to it either by special agreement or by unilateral application, while 28 cases arose from requests for advisory opinions submitted by the Council of the League of Nations. In hundreds of treaties provision was made enabling States to bring disputes before the Court by unilateral application. Numerous States also recognized the Court's compulsory jurisdiction under Article 36, paragraph 2, of its Statute.

In 1945, a new judicial organ, the International Court of Justice, was brought into being by the Charter of the United Nations. The Statute of the Court is annexed to the Charter, of which it forms

an integral part. Except for a few changes, most of which are purely formal, it is similar to the Statute of the Permanent Court of International Justice. Furthermore, when the new Court met, it adopted the Rules of Court of its predecessor without any substantial change. On 10 May 1972, however, certain amendments were adopted, to take effect the following September, and, on 14 April 1978, the Court adopted a completely revised set of Rules, which came into force on 1 July of that year. The modifications were aimed in particular at simplifying and accelerating proceedings, to the extent that this depended on the Court, at introducing greater flexibility and at helping parties to keep down costs.

II

ORGANIZATION OF THE INTERNATIONAL COURT OF JUSTICE

A. The Judges of the Court

The International Court of Justice is composed of 15 Judges who are elected by the General Assembly and the Security Council. They are chosen from a list of persons nominated by the national groups in the Permanent Court of Arbitration; or, in the case of Members of the United Nations not represented in the Permanent Court of Arbitration, by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of that Permanent Court. The General Assembly and the Security Council hold separate elections independently of each other. They must be satisfied not only that the persons to be elected individually possess the qualifications required in their respective countries for appointment to the highest judicial offices or are jurisconsults of recognized competence in international law, but also that, in the body as a whole, the main forms of civilization and the principal legal systems of the world are represented. In order to be elected, a candidate must obtain a majority of votes, both in the Assembly and in the Council. Not more than one candidate of the same nationality may be elected. The Statute lays down the procedure to be applied when one or more seats still remain unfilled after three meetings have been held for the purpose of the election but concurring majorities have not been achieved in the two organs. There is also a provision concerning the conditions under which a State which is a party to the Statute but is not a Member of the United Nations may take part in the election of Judges of the Court.

The Judges are elected for terms of nine years and may be re-elected. As a result of transitional provisions applied to the 1946 elections with a view to ensuring the gradual renewal of the Bench, the terms of five of the 15 Judges expire at the end of every three years.

The Court elects its President and Vice-President for three years; they may be re-elected.

The Judges are bound to hold themselves permanently at the disposal of the Court unless they are on leave or prevented from attending by illness or other serious reasons. No Judge may exercise any political or administrative function or engage in any other occupation of a professional nature. Furthermore, no Judge may act as agent, counsel or advocate in any suit or participate in the decision of any case in which he had previously taken part as a representative of one of the parties or in any other capacity.

In order to protect the members of the Court against any political pressure, it is provided that no Judge can be dismissed unless, in the unanimous opinion of the other Judges, he has ceased to fulfil the required conditions.

When engaged on the business of the Court, the Judges enjoy diplomatic privileges and immunities. They make a solemn declaration in open court that they will exercise their powers impartially and conscientiously.

B. Judges *ad hoc*

In the circumstances set out in chapter V of this booklet, the parties to a case before the Court are entitled to choose Judges *ad hoc*. These Judges are not permanent Judges of the Court and sit only in the particular case for which they have been appointed. They take part in the decision on terms of complete equality with the other Judges of the Court.

C. Assessors and experts

The Court may invite assessors to sit with it for the consideration of a particular case. Unlike the Judges *ad hoc*, assessors are not entitled to vote, and they are chosen by the Court itself and not by the parties. The Court may also entrust any individual or organization that it may select with the task of carrying out an inquiry or giving an expert opinion.

D. The Registry

The Registry of the Court consists of a Registrar, a Deputy-Registrar and other officials. The Registrar and Deputy-Registrar are elected by the Court for a term of seven years and may be re-

elected. The other officials of the Registry are appointed either by the Court on proposals submitted by the Registrar or by him with the President's approval. The staff of the Registry is subject to Staff Regulations, drawn up by the Registrar, so far as possible in accordance with the Staff Regulations and Rules of the United Nations, and approved by the Court. The Registrar is responsible for all departments of the Registry. He prepares and keeps up to date the General List of cases submitted, and is the regular channel for communications to and from the Court. He is also responsible for publishing a collection of the Court's Judgments and advisory opinions and documents of the written proceedings, and other volumes. The Registrar is responsible for the archives of the Court and prepares the Court's budget.[1] He is assisted by a staff of secretaries and other officials who carry out a variety of functions: correspondence, legal research, drafting and translation, interpretation at meetings of the Court, writing of minutes, preparation of publications, etc. One of the secretaries, within the limits of the discretion attaching to his duties, keeps the press informed of the Court's work.

III

ACCESS TO THE COURT

Only States may be parties in cases before the International Court of Justice. In the first place, the Court is open to all States Members of the United Nations, who are *ipso facto* parties to the Statute of the Court.

Secondly, the Court is open to certain States which are not Members of the United Nations; such a State may become a party to the Statute on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council (Charter, Art. 93, para. 2). At the request of Switzerland—the first such Government to ask to become a party to the Statute—the Assembly adopted a resolution defining these conditions as follows: *(a)* acceptance of the provisions of the Statute; *(b)* acceptance of the obligations of a Member of the United Nations under Article 94 of the Charter; *(c)* an undertaking to contribute to the expenses of the Court such equitable amount as may be assessed by the Assembly. Switzerland became a party to the Statute in July 1948. Identical conditions were approved by the General Assembly in the case of Liechtenstein and San Marino, which subsequently became parties to the Statute.

[1] In 1982 the expenditure of the Court was approximately U.S. $4.8 million.

Thirdly, the Court is also open to States which are not parties to its Statute, on conditions laid down by the Security Council in a resolution of 15 October 1946. Such States must file with the Registrar of the Court a declaration by which they accept the Court's jurisdiction in accordance with the United Nations Charter and the Statute and Rules of the Court, and undertake to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter. Such a declaration may be either particular or general. A particular declaration is one accepting the Court's jurisdiction in respect of a particular dispute or disputes which have already arisen. A general declaration is one accepting the jurisdiction in respect of all disputes, or of a particular class or classes of dispute, which have already arisen or which may arise in the future. Such declarations were filed in the past by several States which have since become Members of the United Nations.

The Court is therefore not open to private individuals. It has always refused to entertain the petitions and requests which have often been addressed to it by individuals. However, this does not prevent private interests from being the subject of proceedings before the Court, for it is always open to a State to take up the complaint of one of its nationals against another State, and to bring a case before the Court if it is entitled to do so. But what is then involved is a dispute between States.

IV

THE JURISDICTION OF THE COURT IN CONTENTIOUS CASES

One of the functions of the International Court of Justice is, by delivering binding Judgments, to decide in accordance with international law all disputes which are submitted to it by States. But the fact that the Court is open to a State does not mean that the State is obliged to have its disputes with other States decided by the Court. The Court's jurisdiction to try contentious cases depends upon the consent of States, since international justice, in contrast to national justice, is still optional.

The consent of States may be expressed in many ways. First, two States which are in disagreement regarding a certain question may agree to refer it to the Court (Statute, Art. 36, para. 1). In such cases, the matter is brought before the Court by the notification of a special agreement concluded for that purpose by the two

States. But a State may also accept the jurisdiction of the Court with regard to disputes which have not yet arisen: this is an undertaking to appear before the Court if a dispute should arise. In such cases, the matter is brought before the Court by one State's unilateral application against another. There is a large number of treaties and conventions under which States bind themselves in advance to accept the jurisdiction of the Court: bilateral treaties relating to all disputes that may arise between two States or to certain categories of dispute, multilateral conventions relating to one or more categories of dispute, etc. (Statute, Arts. 36, para. 1, and 37). Likewise, States which are parties to the Statute may give a very broad undertaking in accordance with Article 36, paragraph 2: they may at any time declare that they recognize as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: *(a)* the interpretation of a treaty; *(b)* any question of international law; *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation; and *(d)* the nature or extent of the reparation to be made for the breach of an international obligation. Such declarations are generally accompanied by conditions: limited duration, nature of the dispute, etc. The following is a list of the 47 States which accept the compulsory jurisdiction of the Court; this list, which represents the situation at 1 January 1983, includes States whose declarations accepting the compulsory jurisdiction of the Permanent Court of International Justice have not lapsed or been withdrawn and are therefore applicable to the present Court (Statute, Art. 36, para. 5):

Australia
Austria
Barbados
Belgium
Botswana
Canada
Colombia
Costa Rica
Democratic Kampuchea
Denmark
Dominican Republic
Egypt
El Salvador
Finland
Gambia
Haiti
Honduras
India
Israel
Japan
Kenya
Liberia
Liechtenstein
Luxembourg
Malawi
Malta
Mauritius
Mexico
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
Panama
Philippines
Portugal
Somalia
Sudan
Swaziland
Sweden
Switzerland
Togo
Uganda
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay

In the event of a dispute as to whether the Court has jurisdiction in a given case, the Court decides the matter.

V

FUNCTIONING OF THE COURT

The seat of the International Court of Justice is at The Hague, Netherlands. A special agreement concluded between the United Nations and the Carnegie Foundation governs the terms on which the Court occupies premises in the Peace Palace. The Court may, however, sit and discharge its duties elsewhere should it consider it advisable to do so. The official languages of the Court are French and English, but the Court may authorize a party to use another language.

The Court discharges its duties as a full court (a quorum of nine Judges being sufficient) but, at the request of the parties, it may also sit as a chamber. Indeed, the Statute provides that the Court shall annually elect five Judges to form a Chamber of Summary Procedure for the speedy dispatch of business. It also provides that the Court may constitute one or more chambers, composed of three or more Judges, for dealing with particular categories of cases—for example, labour cases and cases relating to transit and communications—but hitherto the Court has not availed itself of that possibility. Lastly, the Statute provides that the Court may constitute a chamber for dealing with a particular case. When this provision was applied in 1982 *(see p. 13)*, it was the first time that a chamber of any of the kinds provided for in the Statute had begun to function. The purpose of some of the amendments made in 1972 and 1978 to the Rules of Court was to render the provisions concerning chambers more explicit.

A Judge continues to sit even if the case before the Court directly concerns his own country. The Rules of Court, however, provide that if the President is a national of one of the parties to a case before the Court, he will abstain from exercising his functions as President in respect of that case.

If the Court includes upon the Bench a Judge of the nationality of one of the parties, any other party may choose a person to sit as Judge *ad hoc* in the case. Similarly, if the Court includes upon the Bench no Judge of the nationality of the parties, each of the parties may choose a Judge *ad hoc*.

VI

THE LAW APPLIED BY THE COURT

In accordance with Article 38 of its Statute, the International Court of Justice applies *(a)* international conventions and treaties,

(b) international custom, *(c)* the general principles of law recognized by civilized nations, and *(d)* judicial decisions and the teachings of the most highly qualified publicists as subsidiary means of the determination of rules of law. Furthermore, the Court may decide a case *ex aequo et bono*—that is, according to the principles of equity—if the parties agree thereto.

VII

PROCEDURE IN CONTENTIOUS CASES

Cases may be brought before the International Court of Justice either by notification to the Registry of a special agreement under which the parties agree to refer a dispute to the Court, or by an application by one of the parties founded on a clause providing for compulsory jurisdiction. These documents have to specify the subject of the dispute and the parties. The Registrar forthwith communicates the special agreement or application to all concerned and also the Members of the United Nations and to any other States entitled to appear before the Court.

The various stages of the proceedings are laid down in the Rules of Court adopted in 1946, amended in 1972 and completely revised in 1978. The parties are represented by agents and may be assisted by counsel and advocates. The proceedings consist of two parts: written and oral. The written part usually consists of the presentation by each of the parties of pleadings which are filed within time-limits fixed by Orders. The oral part consists of the hearing by the Court, at public sittings, of the agents, counsel, advocates, witnesses and experts.

The duration of the written proceedings may vary depending, of course, on the importance and complexity of the case: the parties sometimes request long time-limits and frequently even extensions of the time-limits fixed. The length of the oral proceedings also depends on the parties. The Court then holds deliberations *in camera* and is able to prepare its Judgment, draft it in the two official languages of the Court and deliver it, within a few weeks. All questions are decided by a majority of Judges present; in the event of an equality of votes, the President, or the Judge who acts in his place, has a casting vote.

As in cases before national courts, the proceedings before the Court may give rise to questions that are incidental to these proceedings. For example, a party may raise a preliminary objection; in other words, it puts forward certain reasons—for example, lack of jurisdiction—for which, in its view, the Court ought to refuse

to adjudicate on the merits of the dispute. The filing of objections suspends the proceedings on the merits and gives rise to separate proceedings, following which the Court either upholds or rejects each objection, or finds that it does not possess an exclusively preliminary character. However, the Court will give effect to any agreement between the parties that an objection be considered within the framework of the merits.

Intervention is another incidental question that may arise. A third State may ask to intervene in a case, if it considers that it has an interest of a legal nature which may be affected by the decision. It is for the Court to decide upon a request of this kind. Furthermore, if the dispute between the parties relates to the application of a treaty which has also been signed by other States, those States are entitled to intervene and take part in the proceedings, in which case the Judgment's construction of the treaty will be binding upon them.

A Judgment of the Court must give the reasons on which it is based. Judges who are unable to concur in the decision of the Court, or in the reasons given in support of it, may attach to the Judgment a statement of their separate or dissenting opinions.

As has been seen above, States are under no compulsion to recognize the jurisdiction of the Court, but where their consent to it has been established in a given case it is incumbent upon them to comply with the Court's decisions therein. Article 94 of the United Nations Charter provides that if a party to a case fails to perform its obligations under a Judgment of the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the Judgment.

A Judgment of the Court is final and without appeal. After the Court has given a Judgment, the only procedure available to a party is a request for an interpretation of the Judgment (in the event of dispute as to its meaning or scope) or an application for its revision if some new fact is discovered which, when the Judgment was given, was unknown to the Court and to the party claiming revision.

Unless otherwise decided by the Court, each party bears its own costs.

VIII

ADVISORY OPINIONS

Apart from its jurisdiction to deal with contentious cases, the International Court of Justice also has the power to give advisory opinions—that is, its views on any legal question—at the request

of the General Assembly of the United Nations, the Security Council, or other bodies so authorized. An opinion given by the Court is in principle purely advisory, but the requesting body will be bound by it if—as is sometimes the case—a provision in that sense is inseparable from its authorization to submit the question to the Court.

The following organizations are at present authorized to request advisory opinions of the Court:

United Nations: General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly, Committee on Applications for Review of Administrative Tribunal Judgements
International Labour Organisation (ILO)
Food and Agriculture Organization of the United Nations (FAO)
United Nations Educational, Scientific and Cultural Organization (UNESCO)
World Health Organization (WHO)
International Bank for Reconstruction and Development (World Bank)
International Finance Corporation (IFC)
International Development Association (IDA)
International Monetary Fund (IMF)
International Civil Aviation Organization (ICAO)
International Telecommunication Union (ITU)
World Meteorological Organization (WMO)
International Maritime Organization (IMO)
World Intellectual Property Organization (WIPO)
International Fund for Agricultural Development (IFAD)
International Atomic Energy Agency (IAEA)

The rules governing the exercise of the Court's advisory functions are laid down in the Statute and the Rules of Court. It should in particular be noted that, with regard to a request for an advisory opinion, the Court may draw up a list of States and international organizations considered likely to be able to furnish information on the question and may give them an opportunity to submit their views in writing or orally, or both. In addition to the express rules applicable in advisory proceedings, the Court is guided by the rules applicable in contentious cases.

When the Court has gathered all the necessary information, it deliberates *in camera*. The deliberations last an average of one month. The advisory opinion of the Court is then delivered in open court.

IX

COMPOSITION OF THE COURT

The members of the International Court of Justice are, as at 1 January 1983, in order of precedence: Taslim Olawale Elias

(Nigeria), *President;* José Sette Câmara (Brazil), *Vice President;* Judges Manfred Lachs (Poland), Platon Dmitrievich Morozov (USSR), Nagendra Singh (India), José María Ruda (Argentina), Hermann Mosler (Federal Republic of Germany), Shigeru Oda (Japan), Roberto Ago (Italy), Abdallah Fikri El-Khani (Syrian Arab Republic), Stephen M. Schwebel (United States), Sir Robert Jennings (United Kingdom), Guy Ladreit de Lacharrière (France), Kéba Mbaye (Senegal) and Mohammed Bedjaoui (Algeria).[2] The Registrar of the Court is Santiago Torres Bernárdez.

X

CASES DEALT WITH BY THE COURT SINCE 1946

A. CONTENTIOUS CASES

Between 1946 and 1 January 1983, the International Court of Justice dealt with 48 contentious cases, delivering 42 Judgments and making 174 Orders.

1. Corfu Channel (United Kingdom *v.* Albania)

This dispute, which gave rise to three Judgments by the Court, arose out of the explosions of mines by which some British warships suffered damage while passing through the Corfu Channel in 1946, in a part of the Albanian waters which had been previously swept. The ships were severely damaged and members of the crew were killed. The United Kingdom accused Albania of having laid or allowed a third party to lay the mines after mine-clearing operations had been carried out by the Allied naval authorities. The case was brought before the United Nations and, in consequence of a recommendation by the Security Council, was referred to the Court. In a first Judgment (25 March 1948), the Court dealt with the question of its jurisdiction, which Albania had challenged. A second Judgment (9 April 1949) related to the merits of the case. The Court found that Albania was responsible under international law for the explosions that had taken place in

[2] The following is the composition of the chamber formed by the Court in 1982 *(see p. 9):* Judge Roberto Ago (Italy), *President;* Judges André Gros (France), Hermann Mosler (Federal Republic of Germany) and Stephen M. Schwebel (United States); Judge *ad hoc* Maxwell Cohen (Canada).

Albanian waters and for the damage and loss of life which had ensued. It did not accept the view that Albania had itself laid the mines. On the other hand, it held that the mines could not have been laid without the knowledge of the Albanian Government. Albania, for its part, had submitted a counter-claim against the United Kingdom. It accused the latter of having violated Albanian sovereignty by sending warships into Albanian territorial waters and of carrying out mine-sweeping operations in Albanian waters after the explosions. The Court did not accept the first of these complaints but found that the United Kingdom had exercised the right of innocent passage through international straits. On the other hand, it found that the mine-sweeping had violated Albanian sovereignty, because it had been carried out against the will of the Albanian Government. In a third Judgment (15 December 1949), the Court assessed the amount of reparation owed to the United Kingdom and ordered Albania to pay £844,000 *(see also No. 12 below).*

2. Fisheries (United Kingdom *v.* Norway)

The Judgment delivered by the Court in this case ended a long controversy between the United Kingdom and Norway which had aroused considerable interest in other maritime States. In 1935 Norway enacted a decree by which it reserved certain fishing grounds situated off its northern coast for the exclusive use of its own fishermen. The question at issue was whether this decree, which laid down a method for drawing the baselines from which the width of the Norwegian territorial waters had to be calculated, was valid international law. This question was rendered particularly delicate by the intricacies of the Norwegian coastal zone, with its many fjords, bays, islands, islets and reefs. In its Judgment of 18 December 1951, the Court found that, contrary to the submissions of the United Kingdom, neither the method nor the actual baselines stipulated by the 1935 decree were contrary to international law.

3. Protection of French Nationals and Protected Persons in Egypt (France *v.* Egypt)

As a consequence of certain measures adopted by the Egyptian Government against the property and persons of various French nationals and protected persons in Egypt, France instituted proceedings in which it invoked the Montreux Convention of 1935, concerning the abrogation of the capitulations in Egypt. However,

the case was not proceeded with, as the Egyptian Government desisted from the measures in question. By agreement between the parties, the case was removed from the Court's List (Order of 29 March 1950).

4-5. Asylum (Colombia/Peru)

The granting of asylum in the Colombian Embassy at Lima, on 3 January 1949, to a Peruvian national, Víctor Raúl Haya de la Torre, a political leader accused of having instigated a military rebellion, was the subject of a dispute between Peru and Colombia which the parties agreed to submit to the Court. The Pan-American Havana Convention on Asylum (1928) laid down that, subject to certain conditions, asylum could be granted in a foreign embassy to a political offender who was a national of the territorial State. The question in dispute was whether Colombia, as the State granting the asylum, was entitled unilaterally to "qualify" the offence committed by the refugee in a manner binding on the territorial State—that is, to decide whether it was a political offence or a common crime. Furthermore, the Court was asked to decide whether the territorial State was bound to afford the necessary guarantees to enable the refugee to leave the country in safety. In its Judgment of 20 November 1950, the Court answered both these questions in the negative, but at the same time it specified that Peru had not proved that Mr. Haya de la Torre was a common criminal. Lastly, it found in favour of a counter-claim submitted by Peru that Mr. Haya de la Torre had been granted asylum in violation of the Havana Convention. On the day on which the Court delivered this Judgment, Colombia filed a request for interpretation, seeking a reply to the question whether the Judgment implied an obligation to surrender the refugee to the Peruvian authorities. In a Judgment delivered on 27 November 1950, the Court declared the request inadmissible.

6. Haya de la Torre (Colombia *v.* Peru)

This case, a sequel to the earlier proceedings *(see Nos. 4-5 above),* was instituted by Colombia by means of a fresh application. Immediately after the Judgment of 20 November 1950, Peru had called upon Colombia to surrender Mr. Haya de la Torre. Colombia refused to do so, maintaining that neither the applicable legal provisions nor the Court's Judgment placed it under an obligation to surrender the refugee to the Peruvian authorities. The Court confirmed this view in its Judgment of 13 June 1951. It de-

clared that the question was a new one, and that although the Havana Convention expressly prescribed the surrender of common criminals to the local authorities, no obligation of the kind existed in regard to political offenders. While confirming that asylum had been irregularly granted and that on this ground Peru was entitled to demand its termination, the Court declared that Colombia was not bound to surrender the refugee; these two conclusions, it stated, were not contradictory because there were other ways in which the asylum could be terminated besides the surrender of the refugee.

7. Rights of Nationals of the United States of America in Morocco (France *v.* United States)

By a decree of 30 December 1948, the French authorities in the Moroccan Protectorate imposed a system of licence control in respect of imports not involving an official allocation of currency, and limited these imports to a number of products indispensable to the Moroccan economy. The United States maintained that this measure affected its rights under treaties with Morocco and contended that, in accordance with these treaties and with the General Act of Algeciras of 1906, no Moroccan law or regulation could be applied to its nationals in Morocco without its previous consent. In its Judgment of 27 August 1952, the Court held that the import controls were contrary to the Treaty between the United States and Morocco of 1836 and the General Act of Algeciras since they involved discrimination in favour of France against the United States. The Court considered the extent of the consular jurisdiction of the United States in Morocco and held that the United States was entitled to exercise such jurisdiction in the French Zone in all disputes, civil or criminal, between United States citizens or persons protected by the United States. It was also entitled to exercise such jurisdiction to the extent required by the relevant provisions of the General Act of Algeciras. The Court rejected the contention of the United States that its consular jurisdiction included cases in which only the defendant was a citizen or protégé of the United States. It also rejected the claim by the United States that the application to United States citizens of laws and regulations in the French Zone of Morocco required the assent of the United States Government. Such assent was required only in so far as the intervention of the consular courts of the United States was necessary for the effective enforcement of such laws or regulations as against United States citizens. The Court rejected a counter-claim by the United States that its nationals in

Morocco were entitled to immunity from taxation. It also dealt with the question of the valuation of imports by the Moroccan customs authorities.

8. Ambatielos (Greece *v.* United Kingdom)

In 1919, Nicolas Ambatielos, a Greek shipowner, entered into a contract for the purchase of ships with the Government of the United Kingdom. He claimed he had suffered damage through the failure of that Government to carry out the terms of the contract and as a result of certain judgements given against him by the English courts in circumstances said to involve the violation of international law. The Greek Government took up the case of its national and claimed that the United Kingdom was under a duty to submit the dispute to arbitration in accordance with Treaties between the United Kingdom and Greece of 1886 and 1926. The United Kingdom objected to the Court's jurisdiction. In a Judgment of 1 July 1952, the Court held that it had jurisdiction to decide whether the United Kingdom was under a duty to submit the dispute to arbitration but, on the other hand, that it had no jurisdiction to deal with the merits of the Ambatielos claim. In a further Judgment of 19 May 1953, the Court decided that the dispute was one which the United Kingdom was under a duty to submit to arbitration in accordance with the Treaties of 1886 and 1926.

9. Anglo-Iranian Oil Company (United Kingdom *v.* Iran)

In 1933 an agreement was concluded between the Government of Iran and the Anglo-Iranian Oil Company. In 1951, laws were passed in Iran for the nationalization of the oil industry. These laws resulted in a dispute between Iran and the company. The United Kingdom took up the company's case and instituted proceedings before the Court. Iran disputed the Court's jurisdiction. In its Judgment of 22 July 1952, the Court decided that it had no jurisdiction to deal with the dispute. Its jurisdiction depended on the declarations by Iran and the United Kingdom accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Court's Statute. The Court held that the declaration by Iran, which was ratified in 1932, covered only disputes based on treaties concluded by Iran after that date, whereas the claim of the United Kingdom was directly or indirectly based on treaties concluded prior to 1932. The Court also rejected the view that the agreement of 1933 was both a concessionary contract between Iran and the company and an international treaty between Iran and the United

Kingdom, since the United Kingdom was not a party to the contract. The position was not altered by the fact that the concessionary contract was negotiated through the good offices of the Council of the League of Nations. By an Order of 5 July 1951, the Court had indicated interim measures of protection, that is, provisional measures for protecting the rights alleged by either party, in proceedings already instituted, until a final Judgment was given. In its Judgment, the Court declared that the Order had ceased to be operative.

10. Minquiers and Ecrehos (France/United Kingdom)

The Minquiers and Ecrehos are two groups of islets situated between the British island of Jersey and the coast of France. Under a special agreement between France and the United Kingdom, the Court was asked to determine which of the parties had produced a more convincing proof of title to these groups of islets. After the conquest of England by William, Duke of Normandy, in 1066, the islands formed part of the Union between England and Normandy which lasted until 1204, when Philip Augustus of France conquered Normandy but failed to occupy the islands. The United Kingdom submitted that the islands then remained united with England and that this situation was placed on a legal basis by subsequent treaties between the two countries. France contended that the Minquiers and Ecrehos were held by France after 1204, and referred to the same medieval treaties as those relied on by the United Kingdom. In its Judgment of 17 November 1953, the Court considered that none of those Treaties stated specifically which islands were held by the King of England or by the King of France. Moreover, what was of decisive importance was not indirect presumptions based on matters in Middle Ages, but direct evidence of possession and the actual exercise of sovereignty. After considering this evidence, the Court arrived at the conclusion that the sovereignty over the Minquiers and Ecrehos belonged to the United Kingdom.

11. Nottebohm (Liechtenstein *v.* Guatemala)

In this case, Liechtenstein claimed restitution and compensation from the Government of Guatemala on the ground that the latter had acted towards Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law. Guatemala objected to the Court's jurisdiction but the Court overruled this objection in a Judgment of 18 November 1953. In a second Judg-

ment, of 6 April 1955, the Court held that Liechtenstein's claim was inadmissible on grounds relating to Mr. Nottebohm's nationality. It was the bond of nationality between a State and an individual which alone conferred upon the State the right to put forward an international claim on his behalf. Mr. Nottebohm, who was then a German national, had settled in Guatemala in 1905 and continued to reside there. In October 1939—after the beginning of the Second World War—while on a visit to Europe, he obtained Liechtenstein nationality and returned to Guatemala in 1940, where he resumed his former business activities until his removal as a result of war measures in 1943. On the international plane, the grant of nationality was entitled to recognition by other States only if it represented a genuine connection between the individual and the State granting its nationality. Mr. Nottebohm's nationality, however, was not based on any genuine prior link with Liechtenstein and the object of his naturalization was to enable him to acquire the status of a neutral national in time of war. For these reasons, Liechtenstein was not entitled to take up his case and put forward an international claim on his behalf against Guatemala.

12. Monetary Gold Removed from Rome in 1943 (Italy *v.* France, United Kingdom and United States)

A certain quantity of monetary gold was removed by the Germans from Rome in 1943. It was later recovered in Germany and found to belong to Albania. The 1946 agreement on reparation from Germany provided that monetary gold found in Germany should be pooled for distribution among the countries entitled to receive a share of it. The United Kingdom claimed that the gold should be delivered to it in partial satisfaction of the Court's Judgment of 1949 in the Corfu Channel case *(see No. 1 above)*. Italy claimed that the gold should be delivered to it in partial satisfaction for the damage which it alleged it had suffered as a result of an Albanian law of 13 January 1945. In the Washington statement of 25 April 1951, the Governments of France, the United Kingdom and the United States, to whom the implementation of the reparations agreement had been entrusted, decided that the gold should be delivered to the United Kingdom unless, within a certain time-limit, Italy or Albania applied to the Court requesting it to adjudicate on their respective rights. Albania took no action, but Italy made an application to the Court. Later, however, Italy raised the preliminary question as to whether the Court had jurisdiction to adjudicate upon the validity of the Italian claim against

Albania. In its Judgment of 15 June 1954, the Court found that, without the consent of Albania, it could not deal with a dispute between that country and Italy and that it was therefore unable to decide the questions submitted.

13. Electricité de Beyrouth Company (France *v.* Lebanon)

This case arose out of certain measures taken by the Lebanese Government which a French company regarded as contrary to undertakings that that Government had given in 1948 as part of an agreement with France. The French Government referred the dispute to the Court, but the Lebanese Government and the company entered into an agreement for the settlement of the dispute and the case was removed from the Court's List by an Order of 29 July 1954.

14-15. Treatment in Hungary of Aircraft and Crew of the United States of America (United States *v.* Hungary; United States *v.* USSR)

16. Aerial Incident of 10 March 1953 (United States *v.* Czechoslovakia)

17. Aerial Incident of 7 October 1952 (United States *v.* USSR)

18. Aerial Incident of 4 September 1954 (United States *v.* USSR)

19. Aerial Incident of 7 November 1954 (United States *v.* USSR)

In these six cases the United States did not claim that the States against which the applications were made had given any consent to jurisdiction, but relied on Article 36, paragraph 1, of the Court's Statute, which provides that the jurisdiction of the Court comprises all cases which the parties refer to it. The United States stated that it submitted to the Court's jurisdiction for the purpose of the above-mentioned cases and indicated that it was open to the other Governments concerned to do likewise. These Governments having stated in each case that they were unable to submit to the Court's jurisdiction in the matter, the Court found that it did not have jurisdiction to deal with the cases, and removed them from its List by Orders dated 12 July 1954 (Nos. 14-15), 14 March 1956 (Nos. 16 and 17), 9 December 1958 (No. 18) and 7 October 1959 (No. 19).

20-21. Antarctica (United Kingdom *v.* Argentina; United Kingdom *v.* Chile)

On 4 May 1955, the United Kingdom instituted proceedings before the Court against Argentina and Chile concerning disputes as to the sovereignty over certain lands and islands in the Antarctic.

In its applications to the Court, the United Kingdom stated that it submitted to the Court's jurisdiction for the purposes of the case, and although, as far as it was aware, Argentina and Chile had not yet accepted the Court's jurisdiction, they were legally qualified to do so. Moreover, the United Kingdom relied on Article 36, paragraph 1, of the Court's Statute. In a letter of 15 July 1955, Chile informed the Court that in its view the application was unfounded and that it was not open to the Court to exercise jurisdiction. In a note of 1 August 1955, Argentina informed the Court of its refusal to accept the Court's jurisdiction to deal with the case. In these circumstances, the Court found that neither Chile nor Argentina had accepted its jurisdiction to deal with the cases, and, on 16 March 1956, Orders were made removing them from its List.

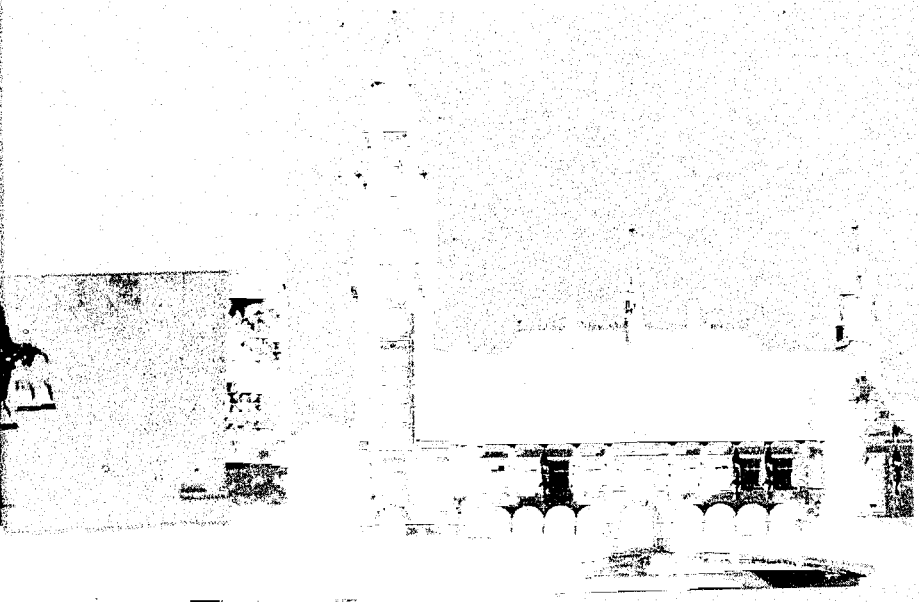
22. Certain Norwegian Loans (France *v.* Norway)

Certain Norwegian loans had been floated in France between 1885 and 1909. The bonds securing them stated the amount of the obligation in gold, or in currency convertible into gold, as well as in various national currencies. From the time when Norway suspended the convertibility of its currency into gold, the loans had been serviced in Norwegian kroner. The French Government, espousing the cause of the French bondholders, filed an application requesting the Court to declare that the debt should be discharged by payment of the gold value of the coupons of the bonds on the date of payment and of the gold value of the redeemed bonds on the date of repayment. The Norwegian Government raised a number of preliminary objections to the jurisdiction of the Court and, in the Judgment it delivered on 6 July 1957, the Court found that it was without jurisdiction to adjudicate on the dispute. Indeed, the Court held that, since its jurisdiction depended upon the two unilateral declarations made by the parties, jurisdiction was conferred upon the Court only to the extent to which those declarations coincided in conferring it. The Norwegian Government was therefore entitled, by virtue of the condition of reciprocity, to invoke in its own favour the reservation contained in the French declaration which excluded from the jurisdiction of the Court differences relating to matters which were essentially within the national jurisdiction as understood by the Government of the French Republic.

23. Right of Passage over Indian Territory (Portugal *v.* India)

The Portuguese possessions in India included the two enclaves of Dadra and Nagar-Aveli which, in mid-1954, passed under an

A public sitting of the Court.



The Peace Palace, the seat of the International Court of Justice, is at The Hague, Netherlands.

autonomous local administration. Portugal claimed that it had a right of passage to those enclaves and between one enclave and the other to the extent necessary for the exercise of its sovereignty and subject to the regulation and control of India; it also claimed that, in July 1954, contrary to the practice previously followed, India had prevented it from exercising that right and that that situation should be redressed. A first Judgment, delivered on 26 November 1957, related to the jurisdiction of the Court, which had been challenged by India. The Court rejected four of the preliminary objections raised by India and joined the other two to the merits. In a second Judgment, delivered on 12 April 1960, after rejecting the two remaining preliminary objections the Court gave its decision on the claims of Portugal, which India maintained were unfounded. The Court found that Portugal had in 1954 the right of passage claimed by it but that such right did not extend to armed forces, armed police, arms and ammunition, and that India had not acted contrary to the obligations imposed on it by the existence of that right.

24. Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands *v.* Sweden)

The Swedish authorities had placed an infant of Netherlands nationality residing in Sweden under the régime of protective upbringing instituted by Swedish law for the protection of children and young persons. The father of the child, jointly with the deputy-guardian appointed by a Netherlands court, appealed against the action of the Swedish authorities, but the measure of protective upbringing was maintained. The Netherlands claimed that the decisions which instituted and maintained the protective upbringing were not in conformity with Sweden's obligations under the Hague Convention of 1902 governing the guardianship of infants, the provisions of which were based on the principle that the national law of the infant was applicable. In its Judgment of 28 November 1958, the Court held that the 1902 Convention did not include within its scope the matter of the protection of children as understood by the Swedish law on the protection of children and young persons and that the Convention could not have given rise to obligations in a field outside the matter with which it was concerned. Accordingly, the Court did not, in this case, find any failure to observe the Convention on the part of Sweden.

25. Interhandel (Switzerland *v.* United States)

In 1942 the Government of the United States vested almost all the shares of the General Aniline and Film Corporation (GAF), a

company incorporated in the United States, on the ground that those shares, which were owned by Interhandel, a company registered in Basle, belonged in reality to I. G. Farbenindustrie of Frankfurt, or that GAF was in one way or another controlled by the German company. On 1 October 1957, Switzerland applied to the Court for a declaration that the United States was under an obligation to restore the vested assets to Interhandel or, alternatively, that the dispute on the matter between Switzerland and the United States was one fit for submission for judicial settlement, arbitration or conciliation. Two days later Switzerland asked the Court to indicate, as an interim measure of protection, that the United States should not part with the assets in question so long as proceedings were pending before the Court. On 24 October 1957, the Court made an Order noting that, in the light of the information furnished, there appeared to be no need to indicate interim measures. The United States raised preliminary objections to the Court's jurisdiction, and in a Judgment delivered on 21 March 1959 the Court found the Swiss application inadmissible, because Interhandel had not exhausted the remedies available to it in the United States courts.

26. Aerial Incident of 27 July 1955 (Israel *v.* Bulgaria)

This case arose out of the destruction by Bulgarian anti-aircraft defence forces of an aircraft belonging to an Israeli airline. Israel instituted proceedings before the Court by means of an application in October 1957. Bulgaria having challenged the Court's jurisdiction to deal with the claim, Israel contended that, since Bulgaria had in 1921 accepted the compulsory jurisdiction of the Permanent Court of International Justice for an unlimited period, that acceptance became applicable, when Bulgaria was admitted to the United Nations in 1955, to the jurisdiction of the International Court of Justice by virtue of Article 36, paragraph 5, of the present Court's Statute, which provides that declarations made under the Statute of the former Court and which are still in force shall be deemed, as between the parties to the present Court's Statute, to be acceptances applicable to the International Court of Justice for the period which they still have to run and in accordance with their terms. In its Judgment on the preliminary objections, delivered on 26 May 1959, the Court found that it was without jurisdiction on the ground that Article 36, paragraph 5, was intended to preserve only declarations in force as between States signatories of the United Nations Charter, and not subsequently to revive undertakings which had lapsed on the dissolution of the Permanent Court.

27. Aerial Incident of 27 July 1955 (United States *v.* Bulgaria)

This case arose out of the incident which was the subject of the proceedings mentioned above *(see No. 26)*. The aircraft destroyed by Bulgarian anti-aircraft defence forces was carrying several United States nationals, who all lost their lives. Their Government asked the Court to find Bulgaria liable for the losses thereby caused and to award damages. Bulgaria filed preliminary objections to the Court's jurisdiction, but, before hearings were due to open, the United States informed the Court of its decision, after further consideration, not to proceed with its application. Accordingly, the case was removed from the List by an Order of 30 May 1960.

28. Aerial Incident of 27 July 1955 (United Kingdom *v.* Bulgaria)

This case arose out of the same incident as that mentioned above *(see Nos. 26 and 27)*. The aircraft destroyed by Bulgarian anti-aircraft defence forces was carrying several nationals of the United Kingdom and Colonies, who all lost their lives. The United Kingdom asked the Court to find Bulgaria liable for the losses thereby caused and to award damages. After filing a Memorial, however, the United Kingdom informed the Court that it wished to discontinue the proceedings in view of the decision of 26 May 1959 whereby the Court found that it lacked jurisdiction in the case brought by Israel. Accordingly, the case was removed from the List by an Order of 3 August 1959.

29. Sovereignty over Certain Frontier Land (Belgium/Netherlands)

The Court was asked to settle a dispute as to sovereignty over two plots of land situated in an area where the Belgo-Dutch frontier presented certain unusual features, as there had long been a number of enclaves formed by the Belgian commune of Baerle-Duc and the Netherlands commune of Baarle-Nassau. A Communal Minute drawn up between 1836 and 1841 attributed the plots to Baarle-Nassau, whereas a Descriptive Minute and map annexed to the Boundary Convention of 1843 attributed them to Baerle-Duc. The Netherlands maintained that the Boundary Convention recognized the existence of the *status quo* as determined by the Communal Minute, that the provision by which the two plots were attributed to Belgium was vitiated by a mistake, and that Netherlands sovereignty over the disputed plots had been established by the exercise of various acts of sovereignty since 1843. After considering the evidence produced, the Court, in a Judg-

ment delivered on 20 June 1959, found that sovereignty over the two disputed plots belonged to Belgium.

30. Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras *v.* Nicaragua)

On 7 October 1894, Honduras and Nicaragua signed a Convention for the demarcation of the limits between the two countries, one of the articles of which provided that, in certain circumstances, any points of the boundary-line which were left unsettled should be submitted to the decision of the Government of Spain. In October 1904, the King of Spain was asked to determine that part of the frontier-line on which the Mixed Boundary Commission appointed by the two countries had been unable to reach agreement. The King gave his arbitral award on 23 December 1906. Nicaragua contested the validity of the award and, in accordance with a resolution of the Organization of American States, the two countries agreed in July 1957 on the procedure to be followed for submitting the dispute on this matter to the Court. In the application by which the case was brought before the Court on 1 July 1958, Honduras claimed that failure by Nicaragua to give effect to the arbitral award constituted a breach of an international obligation and asked the Court to declare that Nicaragua was under an obligation to give effect to the award. After considering the evidence produced, the Court found that Nicaragua had in fact freely accepted the designation of the King of Spain as arbitrator, had fully participated in the arbitral proceedings, and had thereafter accepted the award. Consequently the Court found in its Judgment delivered on 18 November 1960 that the award was binding and that Nicaragua was under an obligation to give effect to it.

31. Barcelona Traction, Light and Power Company, Limited (Belgium *v.* Spain)

On 23 September 1958, Belgium instituted proceedings against Spain in connection with the adjudication in bankruptcy in Spain, in 1948, of the above-named company, formed in Toronto in 1911. The application stated that the company's share-capital belonged largely to Belgian nationals and claimed that the acts of organs of the Spanish State whereby the company had been declared bankrupt and liquidated were contrary to international law and that Spain, as responsible for the resultant damage, was under an obligation either to restore or to pay compensation for the

liquidated assets. In May 1960, Spain filed preliminary objections to the jurisdiction of the Court, but before the time-limit fixed for its observations and submissions thereon Belgium informed the Court that it did not intend to go on with the proceedings. Accordingly, the case was removed from the List by an Order of 10 April 1961.

32. Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium *v.* Spain)

Belgium had ceased pursuing the case summarized above *(see No. 31)* on account of efforts to negotiate a friendly settlement. The negotiations broke down, however, and Belgium filed a new application on 19 June 1962. The following March, Spain filed four preliminary objections to the Court's jurisdiction, and on 24 July 1964 the Court delivered a Judgment dismissing the first two but joining the others to the merits. After the filing, within the time-limits requested by the parties, of the pleadings on the merits and on the objections joined thereto, hearings were held from 15 April to 22 July 1969. Belgium sought compensation for the damage claimed to have been caused to its nationals, shareholders in the Barcelona Traction, Light and Power Company, Ltd., as the result of acts contrary to international law said to have been committed by organs of the Spanish State. Spain, on the other hand, submitted that the Belgian claim should be declared inadmissible or unfounded. In a Judgment delivered on 5 February 1970, the Court found that Belgium had no legal standing to exercise diplomatic protection of shareholders in a Canadian company in respect of measures taken against that company in Spain. The Court accordingly rejected Belgium's claim.

33. Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France *v.* Lebanon)

This case arose out of certain measures adopted by the Lebanese Government with regard to two French companies. France instituted proceedings against Lebanon because it considered these measures contrary to certain undertakings embodied in a Franco-Lebanese agreement of 1948. Lebanon raised preliminary objections to the Court's jurisdiction, but before hearings could be held the parties informed the Court that satisfactory arrangements had been concluded. Accordingly, the case was removed from the List by an Order of 31 August 1960.

34. Temple of Preah Vihear (Cambodia *v.* Thailand)

Cambodia complained that Thailand occupied a piece of its territory surrounding the ruins of the Temple of Preah Vihear, a place of pilgrimage and worship for Cambodians, and asked the Court to declare that territorial sovereignty over the Temple belonged to it and that Thailand was under an obligation to withdraw the armed detachment stationed there since 1954. Thailand filed preliminary objections to the Court's jurisdiction, which were rejected in a Judgment given on 26 May 1961. In its Judgment on the merits, rendered on 15 June 1962, the Court found that the Temple was situated on Cambodian territory. It also held that Thailand was under an obligation to withdraw any military or police force stationed there and to restore any objects removed from the ruins since 1954.

35-36. South West Africa (Ethiopia *v.* South Africa; Liberia *v.* South Africa)

On 4 November 1960, Ethiopia and Liberia instituted separate proceedings against South Africa in a case concerning the continued existence of the mandate for South West Africa *(see below,* Advisory Cases, *Nos. 6-9)* and the duties and performance of South Africa as mandatory Power. The Court was requested to make declarations to the effect that South West Africa remained a Territory under a mandate, that South Africa had been in breach of its obligations under that mandate, and that the mandate and hence the mandatory authority were subject to the supervision of the United Nations. On 20 May 1961, the Court made an Order finding Ethiopia and Liberia to be in the same interest and joining the proceedings each had instituted. South Africa filed four preliminary objections to the Court's jurisdiction. In a Judgment of 21 December 1962, the Court rejected these and upheld its jurisdiction. After pleadings on the merits had been filed within the time-limits requested by the parties, the Court held public sittings from 15 March to 29 November 1965 in order to hear oral arguments and testimony, and judgment in the second phase was given on 18 July 1966. By the casting vote of the President—the votes having been equally divided (7-7)—the Court found that Ethiopia and Liberia could not be considered to have established any legal right or interest appertaining to them in the subject-matter of their claims, and accordingly decided to reject those claims.

37. Northern Cameroons (Cameroons *v.* United Kingdom)

The Republic of Cameroon claimed that the United Kingdom had violated the Trusteeship Agreement for the Territory of the Cameroons under British administration by creating such conditions that the Trusteeship had led to the attachment of the Northern Cameroons to Nigeria instead of to the Republic of Cameroon. The United Kingdom raised preliminary objections to the Court's jurisdiction. The Court found that to adjudicate on the merits would be devoid of purpose since, as the Republic of Cameroon had recognized, its judgment thereon could not affect the decision of the General Assembly providing for the attachment of the Northern Cameroons to Nigeria in accordance with the results of a plebiscite supervised by the United Nations. Accordingly, by a Judgment of 2 December 1963, the Court found that it could not adjudicate upon the merits of the claim.

38-39. North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)

These cases concerned the delimitation of the continental shelf of the North Sea as between Denmark and the Federal Republic of Germany, and as between the Netherlands and the Federal Republic, and were submitted to the Court by special agreement. The parties asked the Court to state the principles and rules of international law applicable, and undertook thereafter to carry out the delimitations on that basis. By an Order of 26 April 1968 the Court, having found Denmark and the Netherlands to be in the same interest, joined the proceedings in the two cases. In its Judgment, delivered on 20 February 1969, the Court found that the boundary-lines in question were to be drawn by agreement between the parties and in accordance with equitable principles in such a way as to leave to each party those areas of the continental shelf which constituted the natural prolongation of its land territory under the sea, and it indicated certain factors to be taken into consideration for that purpose. The Court rejected the contention that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in the 1958 Geneva Convention on the Continental Shelf. The Court took account of the fact that the Federal Republic had not ratified that Convention, and held that the equidistance principle was not inherent in the basic concept of continental shelf rights, and that this principle was not a rule of customary international law.

40. Appeal Relating to the Jurisdiction of the ICAO Council (India *v.* Pakistan)

In February 1971, following an incident involving the diversion to Pakistan of an Indian aircraft, India suspended overflights of its territory by Pakistan civil aircraft. Pakistan took the view that this action was in breach of the 1944 Convention on International Civil Aviation and the International Air Services Transit Agreement and complained to the Council of the International Civil Aviation Organization. India raised preliminary objections to the jurisdiction of the Council, but these were rejected and India appealed to the Court. During the ensuing written and oral proceedings before the Court, Pakistan contended, *inter alia,* that the Court was not competent to hear the appeal. In its Judgment of 18 August 1972; the Court found that it was competent to hear the appeal and that the Council had jurisdiction to deal with Pakistan's case.

41. Trial of Pakistani Prisoners of War (Pakistan *v.* India)

In May 1973, Pakistan instituted proceedings against India concerning 195 Pakistani prisoners of war whom, according to Pakistan, India proposed to hand over to Bangladesh, which was said to intend trying them for acts of genocide and crimes against humanity. India stated that there was no legal basis for the Court's jurisdiction in the matter and that Pakistan's application was without legal effect. Pakistan having also filed a request for the indication of interim measures of protection, the Court held public sittings to hear observations on this subject; India was not represented at the hearings. In July 1973, Pakistan asked the Court to postpone further consideration of its request in order to facilitate negotiations. Before any written pleadings had been filed, Pakistan informed the Court that negotiations had taken place, and requested the Court to record discontinuance of the proceedings. Accordingly, the case was removed from the List by an Order of 15 December 1973.

42-43. Fisheries Jurisdiction (United Kingdom *v.* Iceland; Federal Republic of Germany *v.* Iceland)

On 14 April and 5 June 1972, respectively, the United Kingdom and the Federal Republic of Germany instituted proceedings against Iceland concerning a dispute over the proposed extension by Iceland, as from 1 September 1972, of the limits of its exclusive

fisheries jurisdiction from a distance of 12 to a distance of 50 nautical miles. Iceland declared that the Court lacked jurisdiction, and declined to be represented in the proceedings or file pleadings. At the request of the United Kingdom and the Federal Republic, the Court in 1972 indicated, and in 1973 confirmed, interim measures of protection to the effect that Iceland should refrain from implementing, with respect to their vessels, the new Regulations for the extension of the fishery zone, and that the annual catch of those vessels in the disputed area should be limited to certain maxima. In Judgments given on 2 February 1973, the Court found that it possessed jurisdiction; and in Judgments of 25 July 1974, it found that the Icelandic Regulations constituting a unilateral extension of exclusive fishing rights to a limit of 50 nautical miles were not opposable to either the United Kingdom or the Federal Republic, that Iceland was not entitled unilaterally to exclude their fishing vessels from the disputed area, and that the parties were under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences.

44-45. Nuclear Tests (Australia *v.* France; New Zealand *v.* France)

On 9 May 1973, Australia and New Zealand each instituted proceedings against France concerning tests of nuclear weapons which France proposed to carry out in the atmosphere in the South Pacific region. France stated that it considered the Court manifestly to lack jurisdiction and refrained from appearing at the public hearings or filing any pleadings. By two Orders of 22 June 1973, the Court, at the request of Australia and New Zealand, indicated interim measures of protection to the effect, *inter alia,* that pending judgment France should avoid nuclear tests causing radioactive fall-out on Australian or New Zealand territory. By two Judgments delivered on 20 December 1974, the Court found that the applications of Australia and New Zealand no longer had any object and that it was therefore not called upon to give any decision thereon. Herein the Court based itself on the conclusion that the objective of Australia and New Zealand had been achieved inasmuch as France, in various public statements, had announced its intention of carrying out no further atmospheric nuclear tests on the completion of the 1974 series.

46. Aegean Sea Continental Shelf (Greece *v.* Turkey)

On 10 August 1976, Greece instituted proceedings against Turkey in a dispute over the Aegean Sea continental shelf. It

asked the Court in particular to declare that the Greek islands in the area were entitled to their lawful portion of continental shelf and to delimit the respective parts of that shelf appertaining to Greece and Turkey. At the same time, it requested interim measures of protection indicating that, pending the Court's judgment, neither State should without the other's consent engage in exploration or research with respect to the shelf in question. On 11 September 1976, the Court found that the indication of such measures was not required and, as Turkey had denied that the Court was competent, ordered that the proceedings should first concern the question of jurisdiction. In a Judgment delivered on 19 December 1978, the Court found that jurisdiction to deal with the case was not conferred upon it by either of the two instruments relied upon by Greece: the application of the General Act of Geneva, 1928, whether or not the Act was in force, was excluded by the effect of a reservation made by Greece upon accession, while the Greco-Turkish press communiqué of 31 May 1975 did not contain an agreement binding upon either State to accept the unilateral referral of the dispute to the Court.

47. Continental Shelf (Tunisia/Libyan Arab Jamahiriya)

The Court was requested in 1978 to determine what principles and rules of international law were applicable to the delimitation as between Tunisia and the Libyan Arab Jamahiriya of the respective areas of continental shelf appertaining to each. After considering arguments as well as evidence based on geology, physiography and bathymetry on the basis of which each party sought to claim particular areas of the sea-bed as the natural prolongation of its land territory, the Court concluded, in a Judgment of 24 February 1982, that the two countries abutted on a common continental shelf and that physical criteria were therefore of no assistance for the purpose of delimitation. Hence it had to be guided by "equitable principles" (as to which it emphasized that this term cannot be interpreted in the abstract, but only as referring to the principles and rules which may be appropriate in order to achieve an equitable result) and by certain factors such as the necessity of ensuring a reasonable degree of proportionality between the areas allotted and the lengths of the coastlines concerned; but the application of the equidistance method could not, in the particular circumstances of the case, lead to an equitable result. With respect to the course to be taken by the delimitation line, the Court distinguished two sectors: near the shore, it considered, having taken note of some evidence of historical agreement as to the maritime

boundary, that the delimitation should run in a north-easterly direction at an angle of 26°; further seawards, it considered that the line of delimitation should veer eastwards at a bearing of 52° to take into account the change of direction of the Tunisian coast and the existence of the Kerkennah Islands.

During the course of the proceedings, Malta requested permission to intervene, claiming an interest of a legal nature under Article 62 of the Court's Statute. In view of the very character of the intervention for which permission was sought, the Court considered that the interest of a legal nature which Malta had invoked could not be affected by the decision in the case and that the request was not one to which, under Article 62, the Court might accede. It therefore rejected it.

48. United States Diplomatic and Consular Staff in Tehran (United States *v.* Iran)

The case was brought before the Court by application by the United States following the occupation of its Embassy in Tehran by Iranian militants on 4 November 1979, and the capture and holding as hostages of its diplomatic and consular staff. On a request by the United States for the indication of provisional measures, the Court held that there was no more fundamental prerequisite for relations between States than the inviolability of diplomatic envoys and embassies, and it indicated provisional measures for ensuring the immediate restoration to the United States of the Embassy premises and the release of the hostages. In its decision on the merits of the case, at a time when the situation complained of still persisted, the Court, in its Judgment of 24 May 1980, found that Iran had violated and was still violating obligations owed by it to the United States under conventions in force between the two countries and rules of general international law, that the violation of these obligations engaged its responsibility, and that the Iranian Government was bound to secure the immediate release of the hostages, to restore the Embassy premises, and to make reparation for the injury caused to the United States Government. The Court reaffirmed the cardinal importance of the principles of international law governing diplomatic and consular relations. The Court gave judgment, notwithstanding the absence of the Iranian Government and after rejecting the reasons put forward by Iran in two communications addressed to the Court for its assertion that the Court could not and should not entertain the case. The Court was not called upon to deliver a further judgment on the reparation for the injury caused to the United

States Government since, by Order of 12 May 1981, the case was removed from the List following discontinuance.

It should also be added that two contentious cases were pending as at 1 January 1983:

Continental Shelf (Libyan Arab Jamahiriya/Malta);
Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States). This case is being dealt with by a chamber of five members *(see pp. 9 and 13)*.

B. ADVISORY CASES

Between 1946 and 1 January 1983, the Court dealt with 17 requests for advisory opinions, delivering 18 such opinions and making 25 Orders in the cases concerned.

1. Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)

Prior to this case, from the creation of the United Nations some 12 States had unsuccessfully applied for admission. Their applications were rejected by the Security Council in consequence of a veto imposed by one or other of the States which are permanent members of the Council. A proposal was then made for the admission of all the candidates at the same time. The General Assembly referred the question to the Court. In the interpretation it gave of Article 4 of the Charter of the United Nations, in its Advisory Opinion of 28 May 1948, the Court declared that the conditions laid down for the admission of States were exhaustive and that if these conditions were fulfilled by a State which was a candidate, the Security Council ought to make the recommendation which would enable the General Assembly to decide upon the admission.

2. Competence of the General Assembly for the Admission of a State to the United Nations

The preceding Advisory Opinion *(No. 1 above)* given by the Court did not lead to a settlement of the problem in the Security Council. A Member of the United Nations then proposed that the word "recommendation" in Article 4 of the Charter should be construed as not necessarily signifying a favourable recommenda-

tion. In other words, a State might be admitted by the General Assembly even in the absence of a recommendation—this being interpreted as an unfavourable recommendation—thus making it possible, it was suggested, to escape the effects of the veto. In the Advisory Opinion which it delivered on 3 March 1950, the Court pointed out that the Charter laid down two conditions for the admission of new Members: a recommendation by the Security Council and a decision by the General Assembly. If the latter body had power to decide without a recommendation by the Council, the Council would be deprived of an important function assigned to it by the Charter. The absence of a recommendation by the Council, as the result of a veto, could not be interpreted as an unfavourable recommendation, since the Council itself had interpreted its own decision as meaning that no recommendation had been made.

3. Reparation for Injuries Suffered in the Service of the United Nations

As a consequence of the assassination in September 1948 in Jerusalem of Count Folke Bernadotte, the United Nations Mediator in Palestine, and other members of the United Nations Mission to Palestine, the General Assembly asked the Court whether the United Nations had the capacity to bring an international claim against the State responsible with a view to obtaining reparation for damage caused to the Organization and to the victim. If this question were answered in the affirmative, it was further asked in what manner the action taken by the United Nations could be reconciled with such rights as might be possessed by the State of which the victim was a national. In its Advisory Opinion of 11 April 1949, the Court held that the Organization was intended to exercise functions and rights which could only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon the international plane. It followed that the Organization had the capacity to bring a claim and to give it the character of an international action for reparation for the damage that had been caused to it. The Court further declared that the Organization can claim reparation not only in respect of damage caused to itself, but also in respect of damage suffered by the victim or persons entitled through him. Although, according to the traditional rule, diplomatic protection had to be exercised by the national State, the Organization should be regarded in international law as possessing the powers which, even if they are not expressly stated in the Charter, are conferred

upon the Organization as being essential to the discharge of its functions. The Organization may require to entrust its agents with important missions in disturbed parts of the world. In such cases, it is necessary that the agents should receive suitable support and protection. The Court therefore found that the Organization has the capacity to claim appropriate reparation, including also reparation for damage suffered by the victim or by persons entitled through him. The risk of possible competition between the Organization and the victim's national State could be eliminated either by means of a general convention or by a particular agreement in any individual case.

4-5. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania

This case concerned the procedure to be adopted in regard to the settlement of disputes between the States signatories of the peace Treaties of 1947 (Bulgaria, Hungary, Romania, on the one hand, and the Allied States, on the other). In the first Advisory Opinion (30 March 1950), the Court stated that the countries, which had signed a Treaty providing an arbitral procedure for the settlement of disputes relating to the interpretation or application of the Treaty, were under an obligation to appoint their representatives to the arbitration commissions prescribed by the Treaty. Notwithstanding this Advisory Opinion, the three States, which had declined to appoint their representatives on the arbitration commissions, failed to modify their attitude. A time-limit was given to them within which to comply with the obligation laid down in the Treaties as they had been interpreted by the Court. After the expiry of the time-limit, the Court was requested to say whether the Secretary-General, who, by the terms of the Treaties, was authorized to appoint the third member of the arbitration commission in the absence of agreement between the parties in respect of this appointment, could proceed to make this appointment, even if one of the parties had failed to appoint its representative. In a further Advisory Opinion of 18 July 1950, the Court replied that this method could not be adopted since it would result in creating a commission of two members, whereas the Treaty provided for a commission of three members, reaching its decision by a majority.

6. International Status of South West Africa

This Advisory Opinion, given on 11 July 1950, at the request of the General Assembly, was concerned with the determination of

the legal status of the Territory, the administration of which had been placed by the League of Nations after the First World War under the mandate of the Union of South Africa. The League had disappeared, and with it the machinery for the supervision of the mandates. Moreover, the Charter of the United Nations did not provide that the former mandated Territories should automatically come under trusteeship. The Court held that the dissolution of the League of Nations and its supervisory machinery had not entailed the lapse of the mandate, and that the mandatory Power was still under an obligation to give an account of its administration to the United Nations, which was legally qualified to discharge the supervisory functions formerly exercised by the League of Nations. The degree of supervision to be exercised by the General Assembly should not, however, exceed that which applied under the mandates system and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. On the other hand, the mandatory Power was not under an obligation to place the Territory under trusteeship, although it might have certain political and moral duties in this connection. Finally, it had no competence to modify the international status of South West Africa unilaterally.

7. Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa

Following the preceding Advisory Opinion *(No. 6 above)*, the General Assembly, on 11 October 1954, adopted a special Rule F on voting procedure to be followed by the Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South West Africa. According to this Rule, such decisions were to be regarded as important questions within the meaning of Article 18, paragraph 2, of the United Nations Charter and would therefore require a two-thirds majority of Members of the United Nations present and voting. In its Advisory Opinion of 7 June 1955, the Court considered that Rule F was a correct application of its earlier Advisory Opinion. It related only to procedure, and procedural matters were not material to the degree of supervision exercised by the General Assembly. Moreover, the Assembly was entitled to apply its own voting procedure and Rule F was in accord with the requirement that the supervision exercised by the Assembly should conform as far as possible to the procedure followed by the Council of the League of Nations.

8. Admissibility of Hearings of Petitioners by the Committee on South West Africa

In this Advisory Opinion, of 1 June 1956, the Court considered that it would be in accordance with its Advisory Opinion of 1950 on the international status of South West Africa *(see No. 6 above)* for the Committee on South West Africa, established by the General Assembly, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa if such a course was necessary for the maintenance of effective international supervision of the mandated Territory. The General Assembly was legally qualified to carry out an effective and adequate supervision of the administration of the mandated Territory. Under the League of Nations, the Council would have been competent to authorize such hearings. Although the degree of supervision to be exercised by the Assembly should not exceed that which applied under the mandates system, the grant of hearings would not involve such an excess in the degree of supervision. Under the circumstances then existing, the hearing of petitioners by the Committee on South West Africa might be in the interest of the proper working of the mandates system.

9. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)

On 27 October 1966, the General Assembly decided that the mandate for South West Africa *(see* Advisory Cases, *Nos. 6-8 above, and* Contentious Cases, *Nos. 35-36)* was terminated and that South Africa had no other right to administer the Territory. In 1969 the Security Council called upon South Africa to withdraw its administration from the Territory, and on 30 January 1970 it declared that the continued presence there of the South African authorities was illegal and that all acts taken by the South African Government on behalf of or concerning Namibia after the termination of the mandate were illegal and invalid; it further called upon all States to refrain from any dealings with the South African Government that were incompatible with that declaration. On 29 July 1970, the Security Council decided to request of the Court an advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia. In its Advisory Opinion of 21 June 1971, the Court found that the continued presence

of South Africa in Namibia was illegal and that South Africa was under an obligation to withdraw its administration immediately. The Court was further of the opinion that States Members of the United Nations were under an obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts implying recognition of the legality of, or lending support or assistance to, such presence and administration. Finally, it was of the opinion that it was incumbent upon States which were not Members of the United Nations to give assistance in the action which had been taken by the United Nations with regard to Namibia.

10. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

In November 1950, the General Assembly asked the Court a series of questions as to the position of a State which attached reservations to its signature of the multilateral Convention on genocide if other States, signatories of the same Convention, objected to these reservations. The Court considered, in its Advisory Opinion of 28 May 1951, that, even if a convention contained no article on the subject of reservations, it did not follow that they were prohibited. The character of the convention, its purposes and its provisions must be taken into account. It was the compatibility of the reservation with the purpose of the convention which must furnish the criterion of the attitude of the State making the reservation, and of the State which objected thereto. The Court did not consider that it was possible to give an absolute answer to the abstract question put to it. As regards the effects of the reservation in relations between States, the Court considered that a State could not be bound by a reservation to which it had not consented. Every State was therefore free to decide for itself whether the State which formulated the reservation was or was not a party to the convention. The situation presented real disadvantages, but they could only be remedied by the insertion in the convention of an article on the use of reservations. A third question referred to the effects of an objection by a State which was not yet a party to the convention, either because it had not signed it or because it had signed but not ratified it. The Court was of the opinion that, as regards the first case, it would be inconceivable that a State which had not signed the convention should be able to exclude another State from it. In the second case, the situation was different: the objection was valid, but it would not produce an immediate legal effect; it would merely express and proclaim the atti-

tude which a signatory State would assume when it had become a party to the convention. In all the foregoing, the Court adjudicated only on the specific case referred to it, namely, the genocide Convention.

11. Effect of Awards of Compensation Made by the United Nations Administrative Tribunal

The United Nations Administrative Tribunal was established by the General Assembly to hear applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of the terms of appointment of such staff members. In its Advisory Opinion of 13 July 1954, the Court considered that the Assembly was not entitled on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal in favour of a staff member of the United Nations whose contract of service had been terminated without his assent. The Tribunal was an independent and truly judicial body pronouncing final judgements without appeal within the limited field of its functions and not merely an advisory or subordinate organ. Its judgements were therefore binding on the United Nations Organization and thus also on the General Assembly.

12. Judgements of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO

The Statute of the Administrative Tribunal of the International Labour Organisation (ILO) (the jurisdiction of which had been accepted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the purpose of settling certain disputes which might arise between the organization and its staff members) provides that the Tribunal's judgements shall be final and without appeal, subject to the right of the organization to challenge them. It further provides that in the event of such a challenge, the question of the validity of the decision shall be referred to the Court for an advisory opinion, which will be binding. When four UNESCO staff members holding fixed-term appointments complained of the Director-General's refusal to renew their contracts on expiry, the Tribunal gave judgement in their favour. UNESCO challenged these judgements, contending that the staff members concerned had no legal right to such renewal and that the Tribunal was competent only to hear complaints alleging non-observance of terms of appointment or staff regulations. Consequently, UNESCO maintained, the Tribunal lacked the requisite

jurisdiction. In its Advisory Opinion of 23 October 1956, the Court said that an administrative memorandum which had announced that all holders of fixed-term contracts would, subject to certain conditions, be offered renewals might reasonably be regarded as binding on the organization and that it was sufficient to establish the jurisdiction of the Tribunal, that the complaints should appear to have a substantial and not merely artificial connection with the terms and provisions invoked. It was therefore the Court's opinion that the Administrative Tribunal had been competent to hear the complaints in question.

13. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization

The Inter-Governmental Maritime Consultative Organization (IMCO) (now the International Maritime Organization) comprises, among other organs, an Assembly and a Maritime Safety Committee. Under the terms of article 28 (a) of the Convention for the establishment of the organization, this Committee consists of 14 members elected by the Assembly from the members of the organization having an important interest in maritime safety, "of which not less than eight shall be the largest ship-owning nations". When, on 15 January 1959, the IMCO Assembly, for the first time, proceeded to elect the members of the Committee, it elected neither Liberia nor Panama, although those two States were among the eight members of the organization which possessed the largest registered tonnage. Subsequently, the Assembly decided to ask the Court whether the Maritime Safety Committee was constituted in accordance with the Convention for the establishment of the organization. In its Advisory Opinion of 8 June 1960, the Court replied to this question in the negative.

14. Certain Expenses of the United Nations

Article 17, paragraph 2, of the Charter of the United Nations provides that "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". On 20 December 1961, the General Assembly adopted a resolution requesting an advisory opinion on whether the expenditures authorized by it relating to United Nations operations in the Congo and to the operations of the United Nations Emergency Force in the Middle East constituted "expenses of the Organization" within the meaning of this Article and paragraph of the Charter. The Court, in its Advisory Opinion of 20 July 1962, replied in the

affirmative that these expenditures were expenses of the United Nations. The Court pointed out that under Article 17, paragraph 2, of the Charter, the "expenses of the Organization" are the amounts paid out to defray the costs of carrying out the purposes of the Organization. After examining the resolutions authorizing the expenditures in question, the Court concluded that they were so incurred. The Court also analysed the principal arguments which had been advanced against the conclusion that these expenditures should be considered as "expenses of the Organization" and found these arguments to be unfounded.

15. Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal

On 28 April 1972, the United Nations Administrative Tribunal gave, in Judgement No. 158, its ruling on a complaint by a former United Nations staff member concerning the non-renewal of his fixed-term contract. The staff member applied for the review of this ruling to the Committee on Applications for Review of Administrative Tribunal Judgements, which decided that there was a substantial basis for the application and requested the Court to give an advisory opinion on two questions arising from the applicant's contentions. In its Advisory Opinion of 12 July 1973, the Court decided to comply with the Committee's request and expressed the opinion that, contrary to those contentions, the Tribunal had not failed to exercise the jurisdiction vested in it and had not committed a fundamental error in procedure having occasioned a failure of justice.

16. Western Sahara

On 13 December 1974, the General Assembly requested an advisory opinion on the following questions: "I. Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one *(terra nullius)*?" If the answer to the first question is in the negative, "II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?" In its Advisory Opinion, delivered on 16 October 1975, the Court replied to Question I in the negative. In reply to Question II, it expressed the opinion that the materials and information presented to it showed the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally showed the existence of

rights, including some rights relating to the land, which constitued legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion was that the materials and information presented to it did not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court did not find any legal ties of such a nature as might affect the application of the General Assembly's 1960 resolution 1514 (XV)—containing the Declaration on the Granting of Independence to Colonial Countries and Peoples—in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory.

17. Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt

Having regard to a possible transfer from Alexandria of the World Health Organization's Regional Office for the Eastern Mediterranean Region, the World Health Assembly in May 1980 submitted a request to the Court for an advisory opinion on the following questions: "1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either Party to the Agreement wishes to have the regional office transferred from the territory of Egypt? 2. If so, what would be the legal responsibilities of the World Health Organization and Egypt, with regard to the regional office in Alexandria, during the two-year period between notice and termination of the Agreement?" The Court expressed the opinion that in the event of a transfer of the seat of the Regional Office to another country, the WHO and Egypt were under mutual obligations to consult together in good faith as to the conditions and modalities of the transfer, and to negotiate the various arrangements needed to effect the transfer with a minimum of prejudice to the work of the organization and to the interests of Egypt. The party wishing to effect the transfer had a duty, despite the specific period of notice indicated in the 1951 Agreement, to give a reasonable period of notice to the other party, and during this period the legal responsibilities of the WHO and of Egypt would be to fulfil in good faith their mutual obligations as set out above.

18. Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal

A former staff member of the United Nations Secretariat had challenged the Secretary-General's refusal to pay him a repatriation grant unless he produced evidence of having relocated upon retirement. By a Judgement of 15 May 1981, the United Nations Administrative Tribunal had found that the staff member was entitled to receive the grant and, therefore, to compensation for the injury sustained through its non-payment. The injury had been assessed at the amount of the repatriation grant of which payment was refused. The United States Government addressed an application for review of this Judgement to the Committee on Applications for Review of Administrative Tribunal Judgements, and the Committee decided to request an Advisory Opinion of the Court on the correctness of the decision in question. In its Advisory Opinion of 20 July 1982, the Court, after pointing out that a number of procedural and substantive irregularities had been committed, decided nevertheless to comply with the Committee's request, whose wording it interpreted as really seeking a determination as to whether the Administrative Tribunal had erred on a question of law relating to the provisions of the United Nations Charter, or had exceeded its jurisdiction or competence. As to the first point, the Court said that its proper role was not to retry the case already dealt with by the Tribunal, and that it need not involve itself in the question of the proper interpretation of United Nations Staff Regulations and Rules further than was strictly necessary in order to judge whether the interpretation adopted by the Tribunal had been in contradiction with the provisions of the Charter. Having noted that the Tribunal had only applied what it had found to be the relevant Staff Regulations and Staff Rules made under the authority of the General Assembly, the Court found that the Tribunal had not erred on a question of law relating to the provisions of the Charter. As to the second point, the Court considered that the Tribunal's jurisdiction included the scope of Staff Regulations and Rules and that it had not exceeded its jurisdiction or competence.

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