

**REPORT
OF THE
INTERNATIONAL COURT
OF JUSTICE**

1 August 1987-31 July 1988

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-THIRD SESSION

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

CONTENTS

	<u>Page</u>
I. COMPOSITION OF THE COURT	1
II. JURISDICTION OF THE COURT	2
A. Jurisdiction of the Court in contentious cases	2
B. Jurisdiction of the Court in advisory proceedings	2
III. JUDICIAL WORK OF THE COURT	4
A. Contentious cases before the Court	4
1. Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)	4
2. Border and transborder armed actions (Nicaragua v. Costa Rica)	5
3. Border and transborder armed actions (Nicaragua v. Honduras) ..	6
B. Contentious cases before a Chamber	7
1. Land, island and maritime frontier dispute (El Salvador/ Honduras)	7
2. Case concerning Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)	8
C. Request for advisory opinion	9
IV. VISITS AND CONTACTS	11
A. Visits of heads of State	11
B. Contacts with other judicial bodies	11
V. LECTURES ON THE WORK OF THE COURT	12
VI. ADMINISTRATIVE QUESTIONS	13
VII. PUBLICATIONS AND DOCUMENTS OF THE COURT	14

I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows: President, José Maria Ruda; Vice-President, Kéba Mbaye; Judges: Manfred Lachs, Nagendra Singh, Taslim Olawale Elias, Shigeru Oda, Roberto Ago, Stephen M. Schwebel, Sir Robert Jennings, Mohammed Bedjaoui, Ni Zhengyu, Jens Evensen, Nikolai K. Tarassov, Gilbert Guillaume and Mohamed Shahabuddeen.
2. On 14 September 1987, the General Assembly and the Security Council elected Mr. Gilbert Guillaume to fill the vacancy left by the death on 10 March 1987 of Judge Guy Ladreit de Lacharrière. Judge Guillaume holds office for the remainder of his predecessor's term, i.e., until 5 February 1991.
3. On 11 November 1987, the General Assembly and the Security Council re-elected Judges R. Ago, S. M. Schwebel, M. Bedjaoui and N. K. Tarassov and elected Mr. M. Shahabuddeen as Members of the Court for a term of nine years beginning on 6 February 1988. At a public sitting of the Court on 24 February 1988 Judge Shahabuddeen made the solemn declaration provided for in Article 20 of the Statute.
4. Also on 24 February 1988, the Court elected Judge José Maria Ruda as President and re-elected Judge Kéba Mbaye as Vice-President, for a term of three years.
5. The Registrar of the Court is Mr. Eduardo Valencia-Ospina. The Deputy-Registrar is Mr. Bernard Noble.
6. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure. On 24 February 1988, this chamber was constituted as follows:

Members

President, José Maria Ruda;

Vice-President, Kéba Mbaye;

Judges Sir Robert Jennings, Ni Zhengyu and J. Evensen.

Substitute members

Judges G. Guillaume and M. Shahabuddeen.

7. On 2 March 1987, the Court constituted a Chamber to deal with the case of Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy). The composition of this Chamber is as follows: President, Nagendra Singh; Judges: Shigeru Oda, Roberto Ago, Stephen M. Schwebel and Sir Robert Jennings.
8. On 8 May 1987, the Court constituted a Chamber to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras). The composition of this Chamber is as follows: President, José Sette-Camara; Judges: Shigeru Oda and Sir Robert Jennings; Judges ad hoc: Nicolas Valticos and Michel Virally.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

9. On 31 July 1988, the 159 States Members of the United Nations, together with Liechtenstein, Nauru, San Marino and Switzerland, were parties to the Statute of the Court. The Republic of Nauru became a party to the Statute on 29 January 1988, after accepting the conditions determined by the General Assembly in resolution 42/21 of 18 November 1987, adopted upon the recommendation of the Security Council (Charter, Art. 93, para. 2).

10. There are now 49 States which have made declarations (a number of them with reservations) recognizing the jurisdiction of the Court as compulsory, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are: Australia, Austria, Barbados, Belgium, Botswana, Canada, Colombia, Costa Rica, Cyprus, Democratic Kampuchea, Denmark, Dominican Republic, Egypt, El Salvador, Finland, Gambia, Haiti, Honduras, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Portugal, Senegal, Somalia, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland and Uruguay. The declarations of Cyprus, Nauru and Suriname were deposited with the Secretary-General of the United Nations during the 12 months under review, on 29 April 1988, 29 January 1988 and 31 August 1987, respectively, and were the first such declarations made by those States. The texts of the declarations filed by these States appear in Chapter IV, section II, of the I.C.J. Yearbook 1987-1988.

11. Lists of treaties and conventions in force which provide for the jurisdiction of the Court appear in Chapter IV, section II, of the I.C.J. Yearbook 1987-1988. In addition, the jurisdiction of the Court extends to treaties or conventions in force providing for reference to the Permanent Court of International Justice (Statute, Art. 37).

B. Jurisdiction of the Court in Advisory Proceedings

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

International Labour Organisation;

Food and Agriculture Organization of the United Nations;

United Nations Educational, Scientific and Cultural Organization;

International Civil Aviation Organization;

World Health Organization;

World Bank;

International Finance Corporation;
International Development Association;
International Monetary Fund;
International Telecommunication Union;
World Meteorological Organization;
International Maritime Organization;
World Intellectual Property Organization;
International Fund for Agricultural Development;
United Nations Industrial Development Organization;
International Atomic Energy Agency.

13. The international instruments which make provision for the advisory jurisdiction of the Court are listed in Chapter IV, section I of the I.C.J. Yearbook 1987-1988.

III. JUDICIAL WORK OF THE COURT

14. During the period under review, the Court held 11 public sittings and 28 private meetings.

15. The President made an Order in the contentious case concerning Border and Transborder Armed Actions (Nicaragua v. Costa Rica), recording the removal of that case from the list. The Court made one Order in the contentious case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). In the advisory case concerning the Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 16 June 1947 it made an Order and delivered an Advisory Opinion. The President made an Order recording the withdrawal of a request for the indication of interim measures of protection by Nicaragua in the contentious case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras).

16. The Chamber constituted to deal with the contentious case of Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy) held one public sitting and three private meetings. It made an Order fixing time-limits.

17. The Chamber constituted to deal with the contentious case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras) held one public sitting, at which the two judges ad hoc made the solemn declaration required by the Statute and Rules of Court.

A. Contentious cases before the Court

1. Military and paramilitary activities in and against Nicaragua

(Nicaragua v. United States of America)

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

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

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

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

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

2. Border and transborder armed actions

(Nicaragua v. Costa Rica)

23. On 28 July 1986, the Republic of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Republic of Costa Rica. Nicaragua founded the jurisdiction of the Court on Article XXXI of the Pact of Bogotá and on the declarations of the Parties accepting the jurisdiction of the Court under Article 36, paragraphs 1 and 2, of the Statute of the Court.

24. In its Application, Nicaragua alleged specific border and transborder armed actions, of increasing frequency and intensity since 1982, organized by contras on its territory from Costa Rica. It mentioned various attempts on its part to achieve a peaceful solution, attributing the failure of these to the attitude of the Costa Rican authorities.

25. In its Application, Nicaragua requested the Court to adjudge and declare:

"(a) that the acts and omissions of Costa Rica in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Costa Rica bears legal responsibility;

"(b) that Costa Rica is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

"(c) that Costa Rica is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions".

26. By an Order dated 21 October 1986 (I.C.J. Reports 1986, p. 548), the Court, taking into account the views expressed by the Parties, fixed as time-limits for the filing of the pleadings: 21 July 1987 for the Memorial of Nicaragua, and 21 April 1988 for the Counter-Memorial of Costa Rica.

27. By an Order dated 21 July 1987 (I.C.J. Reports 1987, p. 179), the Vice-President, in the absence of the President, extended to 10 August 1987 the time-limit for the filing of the Memorial of Nicaragua and to 2 June 1988 the time-limit for the filing of the Counter-Memorial of Costa Rica. The Order was made in response to a request by Nicaragua and after the views of Costa Rica had been ascertained.

28. By a communication of 12 August 1987, the Agent of Nicaragua, referring to an Agreement signed on 7 August 1987 at Guatemala City by the Presidents of the five States of Central America (the "Esquipulas II" Agreement, entitled "Procedure for the establishment of a firm and lasting peace in Central America"), stated that "Nicaragua discontinues the judicial proceedings instituted against Costa Rica".

29. On 19 August 1987, after having ascertained that the Government of Costa Rica did not object to the discontinuance, the President of the Court made an Order placing the discontinuance on record and ordering that the case be removed from the list (I.C.J. Reports 1987, p. 182).

3. Border and transborder armed actions

(Nicaragua v. Honduras)

30. On 28 July 1986, the Government of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Republic of Honduras. Nicaragua founded the jurisdiction of the Court on Article XXXI of the Pact of Bogotá and on the declarations of the Parties accepting the jurisdiction of the Court under Article 36, paragraphs 1 and 2, of the Statute of the Court.

31. The matters referred to by Nicaragua in its Application included alleged border and transborder armed actions organized by contras on its territory from Honduras, the giving of assistance to the contras by the armed forces of Honduras, direct participation by the latter in military attacks against its territory, and threats of force against it emanating from the Government of Honduras. It requested the Court to adjudge and declare:

"(a) that the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Honduras bears legal responsibility;

"(b) that Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

"(c) that Honduras is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions".

32. In its Application, Nicaragua reserved the right to present to the Court a request for the indication of interim measures of protection. By letter of 29 August 1986, Honduras informed the Court that in its Government's view the Court had no jurisdiction over the matters raised by the Application.

33. By an Order dated 22 October 1986 (I.C.J. Reports 1986, p. 551), the Court decided that the first pleadings should deal exclusively with the issues of jurisdiction and admissibility, and fixed as time-limits for the filing of those pleadings: 23 February 1987 for the Memorial of Honduras, and 22 June 1987 for the Counter-Memorial of Nicaragua.

34. Both the Memorial of Honduras and the Counter-Memorial of Nicaragua were filed within the prescribed time-limits, but the oral proceedings on jurisdiction and admissibility were temporarily adjourned, with the approval of the Court, as a result of the signing on 7 August 1987 of the "Procedure for the establishment of a firm and lasting peace in Central America" (the "Esquipulas II" Agreement) by the Presidents of the five States of Central America.

35. On 21 March 1988, Nicaragua filed a request for the indication of interim measures of protection. By a letter of 31 March 1989, however, Nicaragua withdrew its request. The President of the Court, on that same day, made an Order recording the withdrawal (I.C.J. Reports 1988, p. 9).

36. At the request of Honduras, and with the agreement of Nicaragua, 6 June 1988 was fixed for the opening of the oral proceedings on the issues of jurisdiction and admissibility. At six public sittings, held between 6 and 15 June 1988, statements were made on behalf of Honduras and of Nicaragua.

37. The Court will deliver its decision on those issues in a Judgment.

B. Contentious cases before a Chamber

1. Land, island and maritime frontier dispute (El Salvador/Honduras)

38. On 11 December 1986, the Government of the Republic of El Salvador and the Government of the Republic of Honduras jointly notified the Registry of a Special Agreement concluded between them on 24 May 1986, entering into force on 1 October 1986 and registered with the Secretariat of the United Nations, submitting to the decision of the Court a dispute, referred to as the land, island and maritime frontier dispute, between the two States.

39. The Special Agreement provided that the parties submitted the questions in dispute to a Chamber which they requested the Court to form under Article 26, paragraph 2, of the Statute, which provides that the Court may form a Chamber to deal with a specific case.

40. On 17 February 1987, the Parties, having been consulted by the President, confirmed the indication given in the Special Agreement that they approved the number of judges to form the Chamber being fixed at five, including two judges ad hoc chosen by the Parties pursuant to Article 31 of the Statute.

41. Each of the two States chose a judge ad hoc under Article 31 of the Statute. El Salvador chose Mr. Nicolas Valticos and Honduras chose Mr. Michel Virally.

42. On 8 May 1987, the Court unanimously adopted an Order whereby it acceded to the request of the two Governments to form a special Chamber of five judges to deal with the case (I.C.J. Reports 1987, p. 10). It declared that it had elected Judges Shigeru Oda, José Sette-Camara and Sir Robert Jennings to form, with the judges ad hoc chosen by the Parties, the Chamber to deal with the case.

43. The Chamber so constituted elected as its President Judge José Sette-Camara. Its composition is accordingly as follows: President José Sette-Camara; Judges Shigeru Oda and Sir Robert Jennings; Judges ad hoc Nicolas Valticos and Michel Virally.

44. By an Order of 27 May 1987 (I.C.J. Reports 1987, p. 15), the Court fixed 1 June 1988 as the time-limit for the filing of a Memorial by each of the Parties.

45. The Chamber, by an Order of 29 May 1987 (I.C.J. Reports 1987, p. 176), taking into account the wishes of the Parties, fixed 1 February 1989 as the time-limit for the filing of a Counter-Memorial by each of the Parties and 1 August 1989 for the filing of Replies.

46. On 9 November 1987, the inaugural public sitting of the Chamber was held, at which Judges ad hoc Valticos and Virally made the solemn declaration required by the Statute and Rules of Court.

47. Each of the Parties filed a Memorial within the time-limit of 1 June 1988 fixed by the Court in its Order of 27 May 1987 (I.C.J. Reports 1987, p. 15).

2. Case concerning Elettronica Sicula S.p.A. (ELSI)

(United States of America v. Italy)

48. On 6 February 1987, the United States of America filed an Application instituting proceedings against the Republic of Italy concerning a dispute arising from the requisition by the Government of Italy of the plant and related assets of Elettronica Sicula S.p.A. (ELSI), an Italian company which was stated to have been 100 per cent owned by two United States corporations.

49. By a letter dated 6 February 1987, the United States requested that a Chamber of five judges be formed to hear and determine the case, pursuant to Article 26 of the Statute. By a telegram dated 13 February 1987, Italy informed the Court that it accepted the proposal.

50. The Court, thus having before it a request by the two parties concerning the constitution of a Chamber, unanimously decided by an Order of 2 March 1987 (I.C.J. Reports 1987, p. 3), having duly consulted the Parties to accede to that request. It declared that it had elected as members of the Chamber: President Nagendra Singh; Judges Shigeru Oda, Roberto Ago, Stephen M. Schwebel and Sir Robert Jennings.

51. In the same Order of 2 March 1987, the Court, taking account of the views of the parties, fixed the time-limits for the initial pleadings at 15 May 1987 for the Memorial of the United States and 16 November 1987 for the Counter-Memorial of Italy. The United States filed its Memorial, and Italy its Counter-Memorial, within the prescribed time-limit.

52. On 17 November 1987 the inaugural public sitting of the Chamber was held.

53. By an Order of the same date (I.C.J. Reports 1987, p. 185), the Chamber of the Court fixed 18 March 1988 as the time-limit for the filing of a Reply by the United States and 18 July 1988 for the filing of a Rejoinder by Italy. Both the Reply and the Rejoinder were filed within the prescribed time-limits.

C. Request for advisory opinion

54. On 2 March 1988, the General Assembly of the United Nations adopted resolution 42/229 B whereby it requested the International Court of Justice to give an advisory opinion on the following question:

"In the light of facts reflected in the reports of the Secretary-General [A/42/915 and Add.1], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [resolution 169 (II)], under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"

55. The letter of the Secretary-General, transmitting to the Court the request for an advisory opinion and certified copies of the English and French texts of the said resolution, was received in the Registry by facsimile on 4 March 1988 and by post on 7 March 1988.

56. By an Order of 9 March 1988 (I.C.J. Reports 1988, p. 3), the Court, having regard to the fact that the decision to request an advisory opinion was made "bearing in mind the constraints of time" (cf. resolution 42/229 B), found that an early answer to the request for advisory opinion would be desirable, as contemplated by Article 103 of the Rules of Court, and that all necessary steps should be taken to accelerate the procedure. By that Order the Court decided that the United Nations and the United States of America were considered likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute, and fixed 25 March 1988 as the time-limit within which the Court would be prepared to receive written statements from them and from any other State party to the Statute which desired to submit a written statement on the question (I.C.J. Reports 1988, p. 3). By the same Order the Court decided to hold hearings, opening on 11 April 1988, at which oral comments on written statements might be submitted by the United Nations, the United States and such other States as might have presented written statements. Judge Schwebel appended a separate opinion to the Order (ibid., pp. 6-7).

57. In accordance with Article 65, paragraph 2, of the Statute, the Secretary-General of the United Nations transmitted to the Court a dossier of documents likely to throw light upon the question.

58. Written statements were filed, within the time-limit fixed, by the United Nations, the United States of America, the German Democratic Republic and the Syrian Arab Republic.

59. On 11 April 1988, a public sitting was held, at which the United Nations Legal Counsel, Mr. Carl-August Fleischhauer, made an oral statement to the Court on behalf of the Secretary-General. Certain Members of the Court put questions to Mr. Fleischhauer, which were answered at a further public sitting held on 12 April 1988.

60. At a public sitting held on 26 April 1988, the Court delivered its Advisory Opinion (I.C.J. Reports 1988, p. 12), the operative part of which reads as follows:

"The Court,

"Unanimously,

"Is of the opinion that the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947, is under an obligation, in accordance with section 21 of that Agreement, to enter into arbitration for the settlement of the dispute between itself and the United Nations."

Judge Elias appended a declaration to the Advisory Opinion (ibid., p. 36). Separate opinions were appended to the Advisory Opinion by Judges Oda (ibid., pp. 37-41), Schwebel (ibid., pp. 42-56) and Shahabuddeen (ibid., pp. 57-64).

IV. VISITS AND CONTACTS

A. Visits of heads of State

61. On 20 October 1987, the President of the Republic of El Salvador, His Excellency Mr. José Napoléon Duarte, visited the Court. The Vice-President of the Republic of Peru, His Excellency Dr. Luis Alberto Sánchez, visited the Court on 21 October 1987. They were received in private by President Nagendra Singh and Members of the Court.

B. Contacts with other judicial bodies

62. On 1 June 1988, a delegation of the Court paid a visit to the Court of Justice of the European Communities in Luxembourg.

V. LECTURES ON THE WORK OF THE COURT

63. Many talks and lectures on the Court were given by the President, by Members of the Court and by officials of the Registry in order to improve public understanding of the judicial settlement of international disputes, the jurisdiction of the Court and its function in advisory cases.

VI. ADMINISTRATIVE QUESTIONS

64. The committees constituted by the Court to facilitate the performance of its administrative tasks, which met several times during the period under review, were composed as follows as from 24 February 1988 (for their composition before that date, see the previous report):

(a) The Budgetary and Administrative Committee: the President, the Vice-President and Judges Taslim Olawale Elias, Stephen M. Schwebel, Mohammed Bedjaoui, Nikolai K. Tarassov and Gilbert Guillaume;

(b) The Committee on Relations: Judges Nagendra Singh, Ni Zhengyu and Jens Evensen;

(c) The Library Committee: Judges Shigeru Oda, Sir Robert Jennings and Ni Zhengyu.

65. The Rules Committee, constituted by the Court in 1979 as a standing body is, as at 24 February 1988, composed of Judges Manfred Lachs, Kéba Mbaye, Shigeru Oda, Roberto Ago, Sir Robert Jennings, Ni Zhengyu, Nikolai K. Tarassov and Mohamed Shahabuddeen.

VII. PUBLICATIONS AND DOCUMENTS OF THE COURT

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

67. The publications of the Court include at present three annual series: Reports of Judgments, Advisory Opinions and Orders (which are also published separately when they are made), a Bibliography of works and documents relating to the Court, and a Yearbook (in the French version: Annuaire). The most recent publications in the first two series are I.C.J. Report, 1987 and Bibliography No. 39.

68. Even before the termination of a case, the Court may, after ascertaining the views of the parties, make the pleadings and documents available on request to the Government of any State entitled to appear before the Court. The Court may also, after ascertaining the views of the parties, make them accessible to the public on or after the opening of the oral proceedings. The documentation of each case is published by the Court after the end of the proceedings, under the title Pleadings, Oral Arguments, Documents. The most recent volume issued in this series relates to the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya).

69. In the series Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. The latest issue (No. 4) appeared after the revision of the Rules adopted by the Court on 14 April 1978.

70. The Rules of Court have been translated into unofficial Arabic, Chinese, German, Russian and Spanish versions.

71. The Court distributes press communiqués, background notes and a handbook in order to keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction. The handbook was updated on the occasion of the Court's fortieth anniversary, and its third edition appeared at the end of 1986 in French and English.

72. More comprehensive information on the work of the Court during the period under review will be found in the I.C.J. Yearbook 1987-1988 to be issued in due course.

The Hague, 18 August 1988

(Signed) José María RUDA
President