

**REPORT
OF THE
INTERNATIONAL COURT
OF JUSTICE**

1 August 1983 - 31 July 1984

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-NINTH SESSION

SUPPLEMENT No. 4 (A/39/4)



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UNITED NATIONS

New York, 1984

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.

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I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows: President T. O. Elias; Vice-President J. Sette-Camara; Judges M. Lachs, P. D. Morozov, Nagendra Singh, J. M. Ruda, H. Mosler, S. Oda, R. Ago, A. El-Khani, S. M. Schwebel, Sir Robert Jennings, G. Ladreit de Lacharrière, K. Mbaye and M. Bedjaoui.

2. The Registrar of the Court is Mr. Santiago Torres Bernárdez. The term of office of Mr. A. Pillepich as Deputy-Registrar expired on 10 April 1984. On 6 March 1984, the Court elected Mr. Eduardo Valencia-Ospina to be its Deputy-Registrar as from 11 April 1984.

3. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Proce-

dures. On 23 January 1984, this Chamber was constituted as follows:

Members

President T. O. Elias; Vice-President J. Sette-Camara; Judges Nagendra Singh, A. El-Khani and G. Ladreit de Lacharrière.

Substitute Members

Judges K. Mbaye and M. Bedjaoui.

4. The Court learned with regret of the deaths of Mr. E. C. Armand-Ugon, a Member of the Court from 1952 to 1961, Mr. I. Forster, a Member of the Court from 1964 to 1982, and Mr. L. Ignacio-Pinto, a Member of the Court from 1970 to 1979.

II. JURISDICTION OF THE COURT

A. JURISDICTION OF THE COURT IN CONTENTIOUS CASES

5. On 31 July 1984, the 158 Member States of the United Nations, together with Liechtenstein, San Marino and Switzerland, were parties to the Statute of the Court.

6. On 2 September 1983, the Government of Malta filed with the Secretary-General a declaration of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2 of the Statute; this declaration referred in part to the Maltese declaration of 29 November 1966. On 28 February 1984, the Government of Israel informed the Secretary-General that it was amending the declaration of acceptance of the compulsory jurisdiction of the Court which it had filed on 17 October 1956. On 6 April 1984, the Government of the United States of America informed the Secretary-General that it was modifying the declaration of acceptance of the compulsory jurisdiction of the Court which it had filed on 26 August 1946.

7. There are now 47 States which recognize (a number of them with reservations) the jurisdiction of the Court as compulsory in accordance with declarations filed under Article 36, paragraphs 2 and 5, of the Statute. They are: 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 and Uruguay. The texts of the declarations filed by these States appear in Chapter IV, Section II, of *I.C.J. Yearbook 1983-1984*.

8. Since 1 August 1983, six treaties providing for the jurisdiction of the Court in contentious cases and registered with the Secretariat of the United Nations have been brought to the knowledge of the Court: Convention on the registration of inland vessels concluded on 25 January 1965, International Convention on travel contracts concluded on 23 April 1970, Agreement between Greece and Italy on the delimitation of the respective continental shelves of the two States concluded on 24 May 1977, Treaty of Amity, Commerce and Navigation concluded between Japan and the Philippines on 10 May 1979, Convention on the Elimination of All Forms of Discrimination against Women concluded on 18 December 1979 and General Peace Treaty concluded on 30 October 1980 between Honduras and El Salvador.

9. Lists of treaties and conventions in force which provide for the jurisdiction of the Court appear in Chapter IV, Section III, of *I.C.J. Yearbook 1983-1984*. 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

10. 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;

World Health Organization;
International Bank for Reconstruction and Development;
International Finance Corporation;
International Development Association;
International Monetary Fund;
International Civil Aviation Organization;
International Telecommunication Union;
World Meteorological Organization;

International Maritime Organization;
World Intellectual Property Organization;
International Fund for Agricultural Development;
International Atomic Energy Agency.

11. The international instruments which make provision for the advisory jurisdiction of the Court are listed in Chapter IV, Section I, of *I.C.J. Yearbook 1983-1984*.

III. JUDICIAL WORK OF THE COURT

12. During the period under review the Court held 15 public and 23 private sittings. It delivered a Judgment and made an Order in the contentious case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*. It delivered two Orders in the contentious case concerning *Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)*. During the same period, the Chamber constituted to deal with the contentious case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* held 26 public and 13 private sittings. It made one Order in this case.

A. CONTINENTAL SHELF (LIBYAN ARAB JAMAHIRIYA/MALTA)

13. On 26 July 1982, the Governments of the Libyan Arab Jamahiriya and Malta notified jointly to the Registrar a Special Agreement concluded between them on 23 May 1976 and in force since the exchange on 20 March 1982 of the instruments of ratification. The Special Agreement requests the Court to decide the following question:

“What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III.”

The Article III referred to provides for negotiation after the case with a view to reaching agreement on the delimitation in accordance with the Court's decision.

14. On 27 July 1982, the Vice-President of the Court made an Order whereby, having regard to a provision of the Special Agreement between the Parties, he fixed 26 April 1983 as the time-limit for the filing of a Memorial by each Party (*I.C.J. Reports 1982*, p. 554). The Memorials were filed within the prescribed time-limit and, by an Order of 26 April 1983, the President fixed 26 October 1983 as the time-limit for the filing of the Counter-Memorials (*I.C.J. Reports 1983*, p. 3). The latter were filed within the prescribed time-limit.

15. Each State has appointed a Judge *ad hoc* in accordance with Article 31 of the Statute of the Court. The Libyan Arab Jamahiriya chose Mr. E. Jiménez de Aréchaga, and Malta chose Mr. J. Castañeda.

16. On 24 October 1983, the Italian Government filed an application for permission to intervene under Article 62 of the Statute. That Article reads as follows:

“1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

“2. It shall be for the Court to decide upon this request.”

The Government of Italy indicated in its application that the object of its intervention in the case concerning delimitation of the continental shelf between the Libyan Arab Jamahiriya and Malta was to enable it to participate in the proceedings to the full extent necessary to defend its rights over certain areas claimed by the Parties, so that the Court might be able to take those rights into account in its decision.

17. In accordance with Article 83 of the Rules, the Governments of the Libyan Arab Jamahiriya and Malta submitted written observations on this application. As objections were raised to Italy's request for intervention, the Court held, in accordance with Article 84 of the Rules, public sittings during which speeches were made by Counsel for Italy, the Libyan Arab Jamahiriya and Malta.

18. On 21 March 1984 the Court delivered at a public sitting a Judgment whose operative paragraph reads as follows (*I.C.J. Reports 1984*, p. 3):

“*The Court*,

“by eleven votes to five,

“finds that the Application of the Italian Republic, filed in the Registry of the Court on 24 October 1983, for permission to intervene under Article 62 of the Statute of the Court, cannot be granted.

“In favour: President Elias; Judges Lachs, Morozov, Nagendra Singh, Ruda, El-Khani, de Lacharrière, Mbaye, Bedjaoui; Judges *ad hoc* Jiménez de Aréchaga and Castañeda;

“Against: Vice-President Sette-Camara; Judges Oda, Ago, Schwebel and Sir Robert Jennings.”

Judges Morozov, Nagendra Singh and Mbaye and Judge *ad hoc* Jiménez de Aréchaga appended separate opinions to the Judgment (*ibid.*, pp. 30-70). Vice-President Sette-Camara and Judges Oda, Ago, Schwebel and Sir Robert Jennings appended dissenting opinions to the Judgment (*ibid.*, pp. 70-160).

19. After the decision refusing Italy permission to intervene, the proceedings continued. On 21 March 1984, the President made an Order fixing at 12 July 1984 the time-limit for the filing of Replies by the Libyan Arab Jamahiriya and Malta (*I.C.J. Reports 1984*, p. 162), both States having expressed the wish to submit a further pleading as provided in their Special Agreement. The Agents of the Parties each filed their respec-

tive Replies within the time-limit and the case thus became ready for hearing. The documentation which the Parties have submitted to the Court in order to substantiate their claims is very voluminous (some 3,400 pages).

B. DELIMITATION OF THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA (CANADA/UNITED STATES OF AMERICA)

20. On 25 November 1981, the Government of Canada and the Government of the United States notified to the Court a Special Agreement, concluded by them on 29 March 1979, and having entered into force on 20 November 1981, by which they submitted to a chamber of the Court a question as to the course of the maritime boundary dividing the continental shelf and fisheries zones of the two Parties in the Gulf of Maine area.

21. The Special Agreement provided for the submission of the dispute to a five-member chamber to be constituted after consultation with the Parties, pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court. These are respectively the Articles providing for the establishment of a chamber to deal with a particular case and for the right of a Party, when there is no judge of its nationality upon the bench, to choose a judge *ad hoc* to sit in the case.

22. The Parties were consulted. The Court had already been notified in a letter from the Parties accompanying the submission of the case that, since the Court did not include upon the bench a judge of Canadian nationality, the Government of Canada intended to choose a judge *ad hoc*.

23. In the course of the Court's consideration of the Special Agreement notified by the Governments of Canada and the United States of America, various Members of the Court referred to certain problems which they felt likely to give rise to difficulties, in particular on account of certain features which might not be compatible with the Statute and Rules of Court. In the outcome, it was decided that the Acting President would call upon the Agents of the Parties to provide the Court with further explanations or clarifications on several points. The Acting President did so in a letter of 18 December 1981, to which the Parties replied by a letter of 6 January 1982. After consideration of the answers thus supplied, the Court decided to accede to the request by the Governments of Canada and the United States that a special chamber be formed, and held an election on 15 January 1982.

24. On 20 January 1982, by 11 votes to 2 (Judges Morozov and El-Khani), the Court adopted an Order whereby it constituted a special chamber to deal with the question of delimitation of the maritime boundary between Canada and the United States in the Gulf of Maine area, with the composition having resulted from the above-mentioned election: Judges Gros, Ruda, Mosler, Ago and Schwebel. The Order noted that, in application of Article 31, paragraph 4, of the Statute of the Court, the Acting President had requested Judge Ruda to give place in due course to the judge *ad hoc* to be chosen by Canada, and that Judge Ruda had indicated his readiness to do so (*I.C.J. Reports 1982*, p. 3). Judge Oda appended a declaration to the Order (*ibid.*,

p. 10). Judges Morozov and El-Khani appended dissenting opinions (*ibid.*, pp. 11-13).

25. Canada chose Professor Maxwell Cohen as a judge *ad hoc*, and Judge Ruda duly gave place to him.

26. The Chamber constituted to deal with the case elected Judge R. Ago to be its President and is composed as follows: Judge Ago, President; Judges Gros, Mosler and Schwebel; Judge *ad hoc* Cohen.

27. On 29 January 1982, the Chamber held its first public sitting. Judge *ad hoc* Cohen made on that occasion the solemn declaration required by the Statute and Rules of Court.

28. On 1 February 1982, the Parties having confirmed the indications given in the Special Agreement and the Chamber having been consulted, the Court made an Order fixing 26 August 1982 as the time-limit for the filing of Memorials by Canada and the United States. The subsequent procedure was reserved for further decision. The Order was adopted by 10 votes to 2 (Judges Morozov and El-Khani). The judge *ad hoc* was in attendance at the Court's invitation and expressed his support for the Order (*I.C.J. Reports 1982*, p. 15). At the request of one of the Parties, this time-limit was extended on 28 July 1982 by the President of the Chamber to 27 September 1982. The Agents of the Parties filed their Memorials within the time-limit as thus extended.

29. By an Order of 5 November 1982, the President of the Chamber fixed 28 June 1983 as the time-limit for the filing of the Counter-Memorials (*I.C.J. Reports 1982*, p. 560). These pleadings were filed within the prescribed time-limit.

30. By an Order of 27 July 1983, the President of the Chamber authorized the submission of replies by Canada and the United States in the case and fixed 12 December 1983 as the time-limit for their filing (*I.C.J. Reports 1983*, p. 6). These pleadings were filed within the prescribed time-limit. In order to substantiate their claims, the parties submitted to the Chamber a very voluminous documentation (some 9,500 pages).

31. By an Order of 30 March 1984, the Chamber, acceding to a request made by the Parties in accordance with their Special Agreement, appointed a technical expert to assist it in respect of technical matters and, in particular, in preparing the description of the maritime boundary and the charts required.

32. Between 2 April and 11 May 1984, the Chamber heard oral arguments presented on behalf of Canada and the United States at 26 public sittings. At the time of preparation of this report, the Chamber is deliberating on the judgment to be delivered.

C. FRONTIER DISPUTE
(UPPER VOLTA/MALI)

33. On 14 October 1983, the Governments of the Republic of Upper Volta and the Republic of Mali jointly notified to the Registrar a Special Agreement concluded by them on 16 September 1983, having entered into force on that same day and registered with the United Nations Secretariat, by which they submitted to a Chamber of the Court the question of the delimitation of part of the land frontier between the two States. Each Party has appointed an agent.

D. MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICARAGUA V. UNITED STATES OF AMERICA)

34. On 9 April 1984, the Government of Nicaragua filed an Application instituting proceedings against the United States of America, accompanied by a request for the indication of provisional measures, in respect of a dispute concerning responsibility for military and paramilitary activities in and against Nicaragua.

35. On 13 April 1984, by a letter from its Ambassador to the Netherlands, the Government of the United States of America informed the Court that it had appointed an Agent for the purposes of the case while indicating its conviction that the Court was without jurisdiction to deal with the Application and was *a fortiori* without jurisdiction to indicate the provisional measures requested by Nicaragua.

36. Having heard the oral observations of both Parties on the request for provisional measures at public sittings on 25 and 27 April 1984, the Court held on 10 May 1984 a public sitting at which it delivered an Order (*I.C.J. Reports 1984*, p. 169) indicating such measures. The operative terms were as follows:

"The Court,

"A. Unanimously,

"Rejects the request made by the United States of America that the proceedings on the Application filed by the Republic of Nicaragua on 9 April 1984, and on the request filed the same day by the Republic of Nicaragua for the indication of provisional measures, be terminated by the removal of the case from the list;

"B. *Indicates*, pending its final decision in the proceedings instituted on 9 April 1984 by the Republic of Nicaragua against the United States of America, the following provisional measures:

"1. Unanimously,

"The United States of America should immediately cease and refrain from any action restricting, blocking or endangering access to or from Nicaraguan ports, and, in particular, the laying of mines.

"2. By fourteen votes to one,

"The right to sovereignty and to political independence possessed by the Republic of Nicaragua, like any other State of the region or of the world, should be fully respected and should not in any way be jeopardized by any military and paramilitary activities which are prohibited by the principles of international law, in particular the principle that States should refrain in their international relations from the threat or use of force against the territorial integrity or the political independence of any State, and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of a State, principles embodied in the United Nations Charter and the Charter of the Organization of American States.

"In favour: President Elias; Vice-President Sette-Camara; Judges Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Khani, Sir Robert Jennings, da Lacharrière, Mbaye, Bedjaoui.

"Against: Judge Schwebel.

"3. Unanimously,

"The Governments of the United States of America and the Republic of Nicaragua should each of them ensure that no action of any kind is taken which

might aggravate or extend the dispute submitted to the Court.

"4. Unanimously,

"The Governments of the United States of America and the Republic of Nicaragua should each of them ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of whatever decision the Court may render in the case.

"C. Unanimously,

"Decides further that, until the Court delivers its final judgment in the present case, it will keep the matters covered by this Order continuously under review.

"D. Unanimously,

"Decides that the written proceedings shall first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application;

"And reserves the fixing of the time-limits for the said written proceedings, and the subsequent procedure, for further decision."

Judges Mosler and Sir Robert Jennings appended a joint separate opinion to the Order to the Court (*ibid.*, p. 189), and Judge Schwebel appended a dissenting opinion (*ibid.*, pp. 190-207).

37. In accordance with Article 41, paragraph 2, of the Statute of the Court, the Registrar immediately notified the Parties and the Security Council of the indication of these measures.

38. By an Order of 14 May 1984, the President of the Court fixed the following time-limits for the filing of pleadings addressed to the questions of jurisdiction and admissibility: 30 June 1984 for the Memorial of Nicaragua, and 17 August 1984 for the Counter-Memorial of the United States. The Government of Nicaragua filed its Memorial within the time-limit so fixed.

E. APPLICATION FOR THE REVISION AND INTERPRETATION OF THE JUDGMENT OF 24 FEBRUARY 1982 IN THE CASE CONCERNING THE CONTINENTAL SHELF (TUNISIA/LIBYAN ARAB JAMAHIRIYA) (TUNISIA V. LIBYAN ARAB JAMAHIRIYA)

39. On 27 July 1984, the Government of the Tunisian Republic submitted to the Court an application for the revision and the interpretation of the Judgment given by the Court on 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. Tunisia founded its application for revision and interpretation on Articles 60 and 61 of the Statute and Articles 98, 99 and 100 of the Rules of Court. Article 61, paragraph 1, of the Statute is worded as follows:

"1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence."

Article 60 of the Statute reads:

"The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the

judgment, the Court shall construe it upon the request of any party.”

40. To justify its application for revision, the Tunisian Government has invoked the discovery of a new fact. It has requested the Court to declare the application admissible and, in regard to the first sector of the delimitation envisaged by the Court, to revise the delimitation line indicated by the Judgment. In the event of the Court's deciding that the application for revision is not admissible, it has requested the Court to construe certain passages of the Judgment concerning this sector. It has further requested the Court to declare in respect of the

second sector that it is for the experts of the Parties to establish the exact co-ordinates of the most westerly point of the Gulf of Gabes, which is mentioned in the operative terms of the Court's Judgment.

41. Pursuant to the Rules of Court, the Vice-President has fixed a time-limit within which the Libyan Arab Jamahiriya will be entitled to present written observations on the Tunisian application, in particular on the subject of the admissibility of the application (Rules, Art. 99, para. 2). The time-limit expires on 15 October 1984.

IV. VISITS AND CONTACTS

A. VISITS OF HEADS OF STATE

42. The Heads of State of two Members of the United Nations — France and Costa Rica — visited the Court. They were accompanied by, among others, the Ministers for Foreign Affairs of their countries.

B. VISITS OF DELEGATIONS OF JUDICIAL BODIES

43. In the framework of its relationship with other judicial organs of the international community, the Court received during the period under consideration

delegations from the Court of Justice of the European Communities, the Inter-American Court of Human Rights and the Judicial Tribunal of the Organization of Arab Petroleum Exporting Countries.

C. OTHER CONTACTS

44. Many talks and lectures on the Court were given by the President, by Members of the Court or by officials of the Registry in order to improve public understanding of its functioning.

V. ADMINISTRATIVE QUESTIONS

45. To facilitate the performance of its administrative tasks, the Court has constituted the following committees, which met several times during the period under review:

- the Budgetary and Administrative Committee, composed of President T. O. Elias, Vice-President J. Sette-Camara, Judges M. Lachs, Nagendra Singh and S. M. Schwebel;
- the Rules Committee, composed of Judges M. Lachs, P. D. Morozov, J. M. Ruda, H. Mosler, S. Oda, R. Ago and Sir Robert Jennings;

- the Committee on Relations, composed of Judges P. D. Morozov, G. Ladreit de Lacharrière and K. Mbaye;
- the Library Committee, composed of Judges J. M. Ruda, H. Mosler, S. Oda and Sir Robert Jennings.

46. The Court has taken note that, by resolution 38/239 of December 1983, the General Assembly adopted a revised version of the pensions scheme regulations for the Members of the International Court of Justice.

VI. PUBLICATIONS AND DOCUMENTS OF THE COURT

47. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court and the major law libraries of the world. The sale of the Court's 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: 1981) is, with its annual addenda, distributed free of charge. The question of ensuring easier and speedier availability of the Court's publications throughout the world is receiving the particular attention of the Registry.

48. The publications of the Court include three annual series: *Reports of Judgments, Advisory Opinions and Orders*, a *Bibliography* of works and documents relating to the Court, and a *Yearbook*. The most recent

publications in the first two series are *I.C.J. Reports 1983* and *I.C.J. Bibliography No. 36/37*.

49. The documentation of each case is published by the Court after the end of the proceedings, under the title *Pleadings, Oral Arguments, Documents*. However, 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 most recent volume issued in the *Pleadings, Oral Arguments, Documents* series relates to the case concerning *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*.

50. The Court distributes press communiqués, background notes and a handbook to keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction. The handbook has so far been published in English, French, Spanish and German editions.

51. More comprehensive information on the work of the Court during the period under review is contained in the *I.C.J. Yearbook 1983-1984*, published concurrently with the issue of the present report.

(Signed) T. O. ELIAS

President of the International Court of Justice
The Hague, 1 August 1984

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