



**REPORT
OF THE
INTERNATIONAL COURT
OF JUSTICE**

1 August 1974-31 July 1976

**GENERAL ASSEMBLY
OFFICIAL RECORDS: THIRTY - FIRST SESSION
SUPPLEMENT No. 5 (A/31/5)**

UNITED NATIONS



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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.

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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;
Inter-Governmental Maritime Consultative Organization;
World Intellectual Property Organization;
International Atomic Energy Agency.

15. Provision for the advisory jurisdiction of the Court is also made in certain international instruments, listed in Chapter IV of the *I.C.J. Yearbook 1975-1976*.

III. JUDICIAL WORK OF THE COURT

16. During the period under review (August 1974-July 1976) the Court held 36 public sittings and 77 private meetings. It delivered two Judgments and an Advisory Opinion, and made four Orders, in the two *Nuclear Tests* cases and the advisory proceedings concerning *Western Sahara*.

A. NUCLEAR TESTS

17. The Court concluded its consideration of the two cases brought against France on 9 May 1973 by Australia and New Zealand, and at a public sitting on 20 December 1974 delivered a Judgment in each (*I.C.J. Reports 1974*, pp. 253 and 457). By 9 votes to 6 the Court found that the claims no longer had any object and that it was therefore not called upon to give a decision thereon. On the same date, the Court made two Orders on the applications by Fiji for permission to intervene (*I.C.J. Reports 1974*, pp. 530 and 535), finding unanimously in each case that these applications lapsed and that no further action thereon was called for on the part of the Court.

B. WESTERN SAHARA

18. By resolution 3292 (XXIX) of 13 December 1974 the General Assembly requested the Court to give 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?"

19. The Secretary-General, pursuant to Article 65, paragraph 2, of the Statute, transmitted to the Court in several instalments, between 18 February and 15 April 1975, a dossier of documents likely to throw light upon these questions.

20. In accordance with Article 66, paragraph 2, of the Statute, the States Members of the United Nations were informed that the Court would be prepared to receive from them written or oral statements furnishing information on the questions submitted.

21. By an Order of 3 January 1975 the President of the Court fixed 27 March 1975 as the time-limit for the submission of written statements (*I.C.J. Reports 1975*, p. 3). Written statements, some accompanied by documents, or letters were received from the Governments of Chile, Colombia, Costa Rica,

Dominican Republic, Ecuador, France, Guatemala, Mauritania, Morocco, Nicaragua, Panama and Spain.

22. Mauritania and Morocco having each submitted a request for the appointment of a judge *ad hoc* to sit in the case, the Court held from 12 to 16 May 1975 five public sittings at which it heard the views hereon of representatives of Mauritania, Morocco, Spain and Algeria. In an Order of 22 May 1975 (*I.C.J. Reports 1975*) the Court found, by 10 votes to 5, that Morocco was entitled to choose a judge *ad hoc* and, by 8 votes to 7, that in the case of Mauritania the applicable conditions were not satisfied. Morocco chose Mr. A. Boni, President of the Supreme Court of the Ivory Coast, who made the solemn declaration and entered upon his functions as judge *ad hoc* on 25 June 1975.

23. From 25 June to 30 July 1975 the Court held 27 public sittings, during which oral statements on the questions submitted to the Court were presented on behalf of Morocco, Mauritania, Zaire, Algeria and Spain.

24. The Court delivered its Advisory Opinion at a public sitting on 16 October 1975 (*I.C.J. Reports 1975*, p. 12). With regard to Question I, the Court decided by 13 votes to 3 to comply with the request for an advisory opinion and was unanimously of opinion that Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain was not a territory belonging to no-one (*terra nullius*). With regard to Question II, the Court decided by 14 votes to 2 to comply with the request for an advisory opinion and was of opinion by 14 votes to 2 that there were legal ties between this territory and the Kingdom of Morocco of the kinds indicated in paragraph 162 of the Opinion, and by 15 votes to 1 that there were legal ties between that territory and the Mauritanian entity of the kinds indicated in the aforesaid paragraph, which is worded as follows:

"The materials and information presented to the Court show 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 show the existence of rights, including some rights relating to the land, which constituted 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 is that the materials and information presented to it do 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 has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolo-

nization 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.”

IV. STATUTE AND RULES OF COURT; ADMINISTRATIVE MATTERS

A. PROPOSED AMENDMENTS TO THE STATUTE

25. On the proposal of the Court, the General Assembly had included in the agenda of its twenty-fourth and subsequent sessions an item entitled “Amendment of Article 22 of the Statute of the International Court of Justice (Seat of the Court) and consequential amendments to Articles 23 and 28”. At each of these sessions the Assembly decided to postpone consideration of the items until the following regular session.¹ At its 2236th plenary meeting, held on 21 September 1974, it decided, on the recommendation of the General Committee, to request the Secretary-General to include this item in the provisional agenda of its thirty-first session.

B. REVISION OF THE RULES OF COURT AND OF THE RESOLUTION CONCERNING ITS INTERNAL JUDICIAL PRACTICE

26. From February 1973 to February 1976 the Committee on the Revision of the Rules was composed as follows: Judges Dillard, Ignacio-Pinto, Morozov, Jiménez de Aréchaga, Sir Humphrey Waldock and Ruda. On 17 February 1976 it was recomposed as follows: Judges Lachs, Morozov, Sir Humphrey Waldock, Mosler, Elias and Tarazi.

27. On 16 October 1975 the Court decided to review its procedure for the conduct of deliberations. Accordingly the Committee on the Revision of the Rules presented recommendations for the revision of

¹ See in particular the report of the International Court of Justice 1968-1969 [*General Assembly, Official Records, Twenty-fourth Session, Supplement No. 5 (A/7605 and Corr.1)*], paras. 32 and 33 and Annex; and 1969-1970 [*General Assembly, Official Records, Twenty-fifth Session, Supplement No. 5 (A/8005)*], paras. 26-30.

the Resolution of 5 July 1968 concerning the Internal Judicial Practice of the Court.² On 12 April 1976 the Court adopted a revised text of this Resolution. The text of the Resolution as now in force is annexed to the present report.

28. At the Court's request the Committee on the Revision of the Rules has been undertaking a continuing review of those Articles of the Rules which were not subject to revision in the Rules adopted on 10 May 1972.³ Priority is currently being given to those Articles dealing with Advisory Opinions, Interim Measures of Protection and Intervention.

C. NEW BUILDING

29. In the autumn of 1975 work was begun on the construction of a new building in the grounds of the Peace Palace where the seat of the Court is established at The Hague. This building, which is being constructed at the expense of the Government of the Netherlands, will provide suitable meeting rooms and offices to the Court and its Members. It will also make available more adequate office space, as needed by the Registry. The necessary arrangements will have to be concluded by the United Nations concerning the use of the building, the services to be provided and the contribution to be paid therefor.

30. The Court considers that the new building, which could, it is estimated, be ready for occupation in the second half of 1977, will help to remedy what has long been an unsatisfactory situation.

² See report of the International Court of Justice 1967-1968 [*General Assembly, Official Records, Twenty-third Session, Supplement No. 17 (A/7217)*], paras. 35-38.

³ See report of the International Court of Justice 1971-1972 [*General Assembly, Official Records, Twenty-seventh Session, Supplement No. 5 (A/8705)*], paras. 38-41.

V. PUBLICATIONS AND DOCUMENTS OF THE COURT

31. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court and major law libraries throughout 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. Catalogues, brought annually up to date, are distributed free of charge (latest edition: 1975).

32. The publications of the Court at present comprise 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 1975* and *I.C.J. Bibliography No. 29*.

33. 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 obtaining the view 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, with the consent of the parties, make these documents accessible to the public.

34. The Court sends out press communiqués and background notes to keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction.

35. More comprehensive information on the work of the Court during the period under review is contained in the *I.C.J. Yearbook 1974-1975*, already published, and in the *I.C.J. Yearbook 1975-1976* published concurrently with the issue of the present report.

(Signed) Eduardo JIMÉNEZ DE ARÉCHAGA
President of the International Court of Justice

The Hague, 2 August 1976

Annex

RESOLUTION CONCERNING THE INTERNAL JUDICIAL PRACTICE OF THE COURT (Rules of Court, Article 33)

adopted on 12 April 1976

The Court decides to revise its Resolution concerning the Internal Judicial Practice of the Court of 5 July 1968^a and to adopt the articles concerning its internal judicial practice which are set out in the present Resolution. The Court remains entirely free to depart from the present Resolution, or any part of it, in a given case, if it considers that the circumstances justify that course.

Article 1

(i) After the termination of the written proceedings and before the beginning of the oral proceedings, a deliberation is held at which the judges exchange views concerning the case, and bring to the notice of the Court any point in regard to which they consider it may be necessary to call for explanations during the course of the oral proceedings.

(ii) In cases where two exchanges of oral arguments take place, after the first such exchange has been concluded, a further deliberation is held having the same objects.

(iii) The Court also meets in private from time to time during the oral proceedings to enable judges to exchange views concerning the case and to inform each other of possible questions which they may intend to put in the exercise of their right under Article 57, paragraph 3, of the Rules.

Article 2

After the termination of the oral proceedings, an appropriate period is allowed to the judges in order that they may study the arguments presented to the Court.

Article 3

(i) At the expiration of this period a deliberation is held at which the President outlines the issues which in his opinion will require discussion and decision by the Court. Any judge may then comment on the statement or call attention to any other issue or question which he considers relevant, and may at any time during or at the close of the deliberation cause to be distributed a text formulating a new question or reformulating a question already brought to notice.

(ii) During this deliberation any judge may comment on the pertinence of any issues or questions arising in the case. The President also invites judges to indicate their preliminary impressions regarding any issue or question.

(iii) Judges will be called on by the President in the order in which they signify their desire to speak.

Article 4

(i) At a suitable interval of time after this deliberation, each judge prepares a written note which is distributed to the other judges.

(ii) The written note expresses the judge's views on the case, indicating, *inter alia*:

(a) whether any questions which have been called to notice should be eliminated from further consideration or should not, or need not, be decided by the Court;

^a Prior to 1968, the internal judicial practice of the Court was governed by the Resolution of the Permanent Court of International Justice of 20 February 1931 (as amended on 17 March 1936), by virtue of a decision of the International Court of Justice of 1946 to adopt provisionally the practice of the Permanent Court.

(b) the precise questions which should be answered by the Court;

(c) his tentative opinion as to the answers to be given to the questions in (b) and his reasons therefor;

(d) his tentative conclusion as to the correct disposal of the case.

Article 5

(i) After the judges have had an opportunity to examine the written notes, a further deliberation is held, in the course of which all the judges, called upon by the President as a rule in inverse order of seniority, must declare their views. Any judge may address comments to or ask for further explanations from a judge concerning the latter's statement declaring his views.

(ii) During this deliberation any judge may circulate an additional question or a reformulation of a question already brought to notice.

(iii) On the request of any judge the President shall ask the Court to decide whether a vote shall be taken on any question.

Article 6

(i) On the basis of the views expressed in the deliberations and in the written notes, the Court proceeds to choose a drafting committee by secret ballot and by an absolute majority of votes of the judges present. Two members are elected who should be chosen from among those judges whose oral statements and written notes have most closely and effectively reflected the opinion of the majority of the Court as it appears then to exist.

(ii) The President shall *ex officio* be a member of the drafting committee unless he does not share the majority opinion of the Court as it appears then to exist, in which case his place shall be taken by the Vice-President. If the Vice-President is ineligible for the same reason, the Court shall proceed, by the process already employed, to the election of a third member, in which case the senior of the elected judges shall preside in the drafting committee.

(iii) If the President is not a member of the drafting committee, the committee shall discuss its draft with him before submitting it to the Court. If the President proposes amendments which the committee does not find it possible to adopt, it shall submit the President's proposals to the Court together with its own draft.

Article 7

(i) A preliminary draft of the decision is circulated to the judges, who may submit amendments in writing. The drafting committee, having considered these amendments, submits a revised draft for discussion by the Court in first reading.

(ii) Judges who wish to deliver separate or dissenting opinions make the text thereof available to the Court after the first reading is concluded and within a time-limit fixed by the Court.

(iii) The drafting committee circulates an amended draft of the decision for the second reading, at which the President enquires whether any judge wishes to propose further amendments.

(iv) Judges who are delivering separate or dissenting opinions may make changes in or additions to their opinions only to the extent that changes have been made in the draft decision. During the second reading they inform the Court of any changes in or additions to their opinions which they propose to make for that reason. A time-limit is fixed by the Court for the filing of the revised texts of separate or dissenting opinions, copies of which are distributed to the Court.

Article 8

(i) At or after a suitable interval following upon the termination of the second reading, the President calls upon the judges to give their final vote on the decision or conclusion concerned in inverse order of seniority, and in the manner provided for by paragraph (v) of this Article.

(ii) Where the decision deals with issues that are separable, the Court shall in principle, and unless the exigencies of the particular case require a different course, proceed on the following basis, namely that:

- (a) any judge may request a separate vote on any such issue;
- (b) wherever the question before the Court is whether the Court is competent or the claim admissible, any separate vote on particular issues of competence or admissibility shall (unless such vote has shown some preliminary objection to be well-founded under the Statute and the Rules of Court) be followed by a vote on the question of whether the Court may proceed to entertain the merits of the case or, if that stage has already been reached, on the global question of whether, finally, the Court is competent or the claim admissible.

(iii) In any case coming under paragraph (ii) of this Article, or in any other case in which a judge so requests, the final vote shall take place only after a discussion on the need for separate voting, and whenever possible after a suitable interval following upon such discussion.

(iv) Any question whether separate votes as envisaged in paragraph (ii) of this Article should be recorded in the decision shall be decided by the Court.

(v) Every judge, when called upon by the President to record his final vote in any phase of the proceedings, or to vote upon any question relative to the putting to the vote of the decision or conclusion concerned, shall do so only by means of an affirmative or negative.

Article 9

(i) Although because of illness or other reason deemed adequate by the President, a judge may have failed to attend

part of the public hearing or of the Court's internal proceedings under Articles 1 to 7 inclusive of this Resolution, he may nevertheless participate in the final vote provided that:

- (a) during most of the proceedings, he shall have been, or remained, at the seat of the Court or other locality in which the Court is sitting and exercising its functions for the purposes of the case under paragraph 1 of Article 22 of the Statute;
- (b) as regards the public hearing, he shall have been able to read the official transcript of the proceedings;
- (c) as regards the internal proceedings under Articles 1 to 7 inclusive, he shall have been able at least to submit his own written note, read those of the other judges, and study the drafts of the drafting committee; and
- (d) as regards the proceedings as a whole, he shall have taken a sufficient part in the public hearing and in the internal proceedings under Articles 1 to 7 inclusive to enable him to arrive at a judicial determination of all issues of fact and law material to the decision of the case.

(ii) A judge who is qualified to participate in the final vote must record his vote in person. In the event of a judge who is otherwise in a fit condition to record his vote being unable because of physical incapacity or other compelling reason to attend the meeting at which the vote is to be taken, the vote shall, if the circumstances permit, be postponed until he can attend. If, in the opinion of the Court, the circumstances do not permit of such a postponement, or render it inadvisable, the Court may, for the purpose of enabling the judge to record his vote, decide to convene elsewhere than at its normal meeting place. If neither of these alternatives is practicable, the judge may be permitted to record his vote in any other manner which the Court decides to be compatible with the Statute.

(iii) In the event of any doubt arising as to whether a judge may vote in the circumstances contemplated by paragraphs (i) and (ii) hereof—and if this doubt cannot be resolved in the course of discussion—the matter shall, upon the proposal of the President, or at the request of any other Member of the Court, be decided by the Court.

(iv) When a judge casts his final vote in the circumstances contemplated by paragraphs (i) and (ii) of the present Article, paragraph (v) of Article 8 shall apply.

Article 10

The foregoing provisions shall apply whether the proceedings before the Court are contentious or advisory.

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يُمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم . استعلم عنها من المكتبة التي تتعامل معها
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