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**REPORT
OF THE
INTERNATIONAL COURT
OF JUSTICE**

1 August 1969—31 July 1970

**GENERAL ASSEMBLY
OFFICIAL RECORDS : TWENTY-FIFTH SESSION
SUPPLEMENT No. 5 (A/8005)**

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UNITED NATIONS
New York, 1970

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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1. The present report on the work of the International Court of Justice relates to the period from 1 August 1969 to 31 July 1970. It follows the 1968-1969 report¹ of which the General Assembly took note on 12 December 1969.

I. COMPOSITION OF THE COURT

2. On 27 October 1969 the General Assembly and the Security Council elected as Members of the Court Mr. Dillard, Mr. Ignacio-Pinto, Mr. de Castro, Mr. Morozov and Mr. Jiménez de Aréchaga, to fill the seats which would become vacant on the expiry of the terms of office of President Bustamante y Rivero, Vice-President Koretsky and Judges Tanaka, Jessup and Morelli on 5 February 1970. The five new judges entered into office on 6 February 1970 and, at a public sitting of the Court held on 24 February 1970, made the solemn declaration provided for in Article 20 of the Statute.

3. On 19 February 1970 the Court elected Judge Sir Muhammad Zafrulla Khan as its President and Judge Ammoun as its Vice-President, for a period of three years.

4. The present composition of the Court is thus as follows: President: Sir Muhammad Zafrulla Khan; Vice-President: F. Ammoun; Judges: Sir Gerald Fitzmaurice, L. Padilla Nervo, I. Forster, A. Gros, C. Bengzon, S. Petrén, M. Lachs, C. D. Onyeama, H. C. Dillard, L. Ignacio-Pinto, F. de Castro, P. D. Morozov and E. Jiménez de Aréchaga.

5. With a view to the speedy despatch of business, the Court forms annually a Chamber of Summary Procedure (Statute, Art. 29). This Chamber was constituted on 20 February 1970 as follows:

Members:

President Sir Muhammad Zafrulla Khan, Vice-President Ammoun, Judges Padilla Nervo, Bengzon and Lachs.

Substitute Members:

Judges Ignacio-Pinto and de Castro.

6. There are at present four committees appointed by the Court: the Budgetary and Administrative Committee, the Committee for the Revision of the Rules of Court, the Committee on Relations and the Library Committee.

7. The Court learned with deep regret of the death on 4 December 1969 of Mr. B. Winiarski, Member of the Court from 1946 to 1967 and President from 1961 to 1964.

8. The Registrar of the Court is Mr. S. Aquarone and the Deputy-Registrar is Mr. W. Tait.

II. JURISDICTION OF THE COURT

A. JURISDICTION OF THE COURT IN CONTENTIOUS CASES

9. On 31 July 1970, the 126 States Members of the United Nations, and also Liechtenstein, San Marino and Switzerland, were parties to the Statute of the Court.

10. In addition, the Court is open to the Federal Republic of Germany and the Republic of Viet-Nam, which have filed with the Registry of the Court declarations prescribed for that purpose by Security Council resolution 9 (1946) of 15 October 1946.

11. On 16 March 1970 the Government of Botswana deposited with the Secretary-General a declaration accepting the compulsory jurisdiction of the Court under Article 36 of the Statute. On 7 April 1970 the Government of Canada withdrew its former declaration of acceptance of the compulsory jurisdiction of the Court and deposited a new one.

12. With these changes, there are now 46 States which recognize the jurisdiction of the Court as compulsory, though sometimes with reservations, in relation to any other State accepting the same obligation. They are: Australia, Belgium, Botswana, Cambodia,

Canada, China, Colombia, Denmark, Dominican Republic, El Salvador, Finland, France, 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, Turkey, Uganda, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

13. Since 1 August 1969 four treaties providing for the jurisdiction of the Court in contentious cases have been registered with the Secretariat of the United Nations and brought to the knowledge of the Court: the Agreement relating to Air Services between Denmark and Afghanistan, the Paris International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services, the Paris Convention on the Standardization of Methods of Analyzing and Appreciating Wines, and the Tokyo Convention on Offences and certain other Acts Committed on Board Aircraft. Lists of such treaties and conventions can be found in Chapter IV of the Court's *Yearbook 1969-1970*. 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).

¹ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 5 (A/7605 and Corr.1).*

14. Thirty-nine contentious cases were entered on the Court's General List between 1947 and 1967, which is the last year during which any new contentious case was so entered. However, the number of such cases with which the Court has had to deal can really be reckoned as 24, since in eight of the cases shown on its list the applicant State itself recognized in its Application that the other side had not accepted the Court's jurisdiction, and the cases which have a common origin but which have separate entries on the list can be counted as a single case.

15. In these 24 cases the number of States involved was 33, namely—Albania, Belgium (in 2 cases), Bulgaria, Cambodia, Cameroon, Colombia, Denmark, Ethiopia, Federal Republic of Germany, France (in 7 cases), Greece, Guatemala, Honduras, India, Iran, Israel, Italy, Lebanon (in 2 cases), Liberia, Liechtenstein, Netherlands (in 3 cases), Nicaragua, Norway (in 2 cases), Peru, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, United Arab Republic, United Kingdom of Great Britain and Northern Ireland (in 8 cases) and United States of America (in 4 cases).

B. JURISDICTION OF THE COURT IN ADVISORY PROCEEDINGS

16. The following organizations are at present authorized to request advisory opinions of the Court on legal questions arising within the scope of their activities:

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 Judgments)

International Labour Organisation

Food and Agriculture Organization of the United Nations

United Nations Educational, Scientific and Cultural Organization

International Civil Aviation Organization

International Bank for Reconstruction and Development

International Finance Corporation

International Development Association

International Monetary Fund

World Health Organization

International Telecommunication Union

World Meteorological Organization

Inter-Governmental Maritime Consultative Organization

International Atomic Energy Agency

17. Provision for the advisory jurisdiction of the Court is also made in the international instruments listed in Chapter IV of the Court's *Yearbook 1969-1970*.

18. Between 1947 and 1962 the Court delivered 13 advisory opinions, 11 at the request of the United Nations General Assembly, one at the request of the Executive Board of UNESCO and one at the request of the Assembly of IMCO. In 1970, the Security Council decided to request an advisory opinion of the Court.

III. JUDICIAL WORK OF THE COURT

A. BARCELONA TRACTION, LIGHT AND POWER COMPANY, LIMITED (NEW APPLICATION: 1962)

19. During the period under review the Court gave its Judgment in the second phase of the case concerning the *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*; for this purpose it held one public sitting and 24 private meetings in the periods from 30 September to 17 December 1969 and 5 January to 5 February 1970.

20. This case, which was brought by the Belgian Government against the Spanish Government, arose out of the adjudication in bankruptcy in Spain of a company incorporated in Canada. The object of the claim was to seek reparation for damage alleged by the Belgian Government to have been sustained by Belgian nationals, shareholders in the company, as a result of acts said to be contrary to international law committed towards the company by organs of the Spanish State. The Spanish Government having raised four preliminary objections, the Court, by a Judgment of 24 July 1964 (*I.C.J. Reports 1964*, p. 6), had rejected two of the objections and joined the remaining two to the merits. One of these latter objections was to the effect that the Belgian Government lacked capacity to submit any claim in respect of wrongs done to a Canadian company, even if the shareholders were Belgian; the other was to the effect that local remedies available in Spain had not been exhausted. The written proceed-

ings on the objections joined to the merits and on the merits were closed on 1 July 1968 and hearings were held from 15 April to 22 July 1969. The documentation in the case ran to a total of some 18,000 pages.

21. By its Judgment of 5 February 1970 (*I.C.J. Reports 1970*, p. 3) the Court rejected the Belgian Government's claim, finding that that Government lacked *jus standi* to exercise diplomatic protection of Belgian shareholders in a Canadian company with respect to measures taken against that company in Spain. The Judgment is analysed in detail in Chapter VI of the Court's *Yearbook 1969-1970*.

22. The composition of the Court in this case was as follows: President Bustamante y Rivero; Vice-President Koretsky; Judges Sir Gerald Fitzmaurice, Tanaka, Jessup, Morelli, Padilla Nervo, Forster, Gros, Ammoun, Bengzon, Petrán, Lachs and Onyeama; Judges *ad hoc* Armand-Ugon and Riphagen.

23. The Court gave its decision by 15 votes to 1, 12 votes of the majority being based on the reasons set out in the Judgment. Judges Petrán, Lachs and Onyeama attached declarations to the Judgment and President Bustamante y Rivero and Judges Sir Gerald Fitzmaurice, Tanaka, Jessup, Morelli, Padilla Nervo, Gros and Ammoun attached separate opinions (Judges Tanaka, Jessup and Gros indicating that their views were not based on the reasoning of the Judgment). Judge *ad hoc* Riphagen attached a dissenting opinion.

B. LEGAL CONSEQUENCES FOR STATES OF THE CONTINUED PRESENCE OF SOUTH AFRICA IN NAMIBIA (SOUTH WEST AFRICA) NOTWITHSTANDING SECURITY COUNCIL RESOLUTION 276 (1970)

24. On 29 July 1970, the United Nations Security Council adopted resolution 284 (1970) worded as follows:

"The Security Council,

Reaffirming the special responsibility of the United Nations with regard to the Territory and the people of Namibia,

Recalling Security Council resolution 276 (1970) of 30 January 1970 on the question of Namibia,

Taking note of the report and recommendations submitted by the *Ad Hoc* Sub-Committee established in pursuance of Security Council resolution 276 (1970),

Taking further note of the recommendation of the *Ad Hoc* Sub-Committee on the possibility of request-

ing an advisory opinion from the International Court of Justice,

Considering that an advisory opinion from the International Court of Justice would be useful for the Security Council in its further consideration of the question of Namibia and in furtherance of the objectives the Council is seeking,

1. *Decides* to submit, in accordance with Article 96, paragraph 1, of the Charter of the United Nations, the following question to the International Court of Justice with the request for an advisory opinion which shall be transmitted to the Security Council at an early date:

"What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"

2. *Requests* the Secretary-General to transmit the present resolution to the International Court of Justice, in accordance with Article 65 of the Statute of the Court, accompanied by all documents likely to throw light upon the question."

IV. STATUTE AND RULES OF COURT AND ADMINISTRATIVE MATTERS

25. During the period under review, the Court dealt with administrative questions both in its former composition (before 6 February 1970) and in its new composition (at nine private meetings between 12 and 26 February 1970).

A. PROPOSED AMENDMENT OF THE STATUTE²

26. In 1969 the Court proposed an amendment to Article 22, paragraph 1, of its Statute and related amendments to Article 23, paragraph 2, and Article 28. In Article 22, paragraph 1, it was proposed to add after the words "The seat of the Court shall be established at The Hague" the phrase "or at such other place as shall at any time be approved by the General Assembly on the recommendation of the Court". The Court stressed that it was not recommending that its seat should be established elsewhere than at The Hague. It merely sought that its seat should in principle be determined by the General Assembly, on the Court's own recommendation, at whatever place it might be considered that it could function most effectively. It would thus be, with regard to the determination of its seat, in the same position as other international organs and agencies.

27. On 20 September 1969 the General Assembly decided to include the question in the agenda of its twenty-fourth session and to refer it to the Sixth Committee.

28. On 23 October 1969, by resolution 272 (1969), the Security Council recommended to the General Assembly the adoption of provisions concerning the participation of States which are parties to the Statute but not Members of the United Nations in the procedure for amending the Statute.

29. On 4 December 1969, by resolution 2520 (XXIV), the General Assembly decided that:

² See also *Report of the International Court of Justice, 1968-1969* [Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 5 (A/7605 and Corr.1), paras. 32-33].

"(a) A State which is a party to the Statute of the International Court of Justice, but is not a Member of the United Nations, may participate in the General Assembly in regard to amendments to the Statute in the same manner as the Members of the United Nations;

(b) Amendments to the Statute of the International Court of Justice shall come into force for all States which are parties to the Statute when they have been adopted by a vote of two thirds of the States which are parties to the Statute and ratified in accordance with their respective constitutional processes by two thirds of the States which are parties to the Statute and in accordance with the provisions of Article 69 of the Statute and Article 108 of the Charter of the United Nations."

30. On 12 December 1969, on the recommendation of the Sixth Committee,³ the General Assembly decided to postpone consideration of the question of amendments to Articles 22, 23 and 28 of the Court's Statute and requested the Secretary-General to include the item in the provisional agenda of the twenty-fifth regular session.

B. REVISION OF THE RULES OF COURT⁴

31. In 1967 the Court embarked on the revision of its Rules of Court and appointed a Committee to submit proposals to it for that purpose. It had become apparent that some parts of the Rules of Court adopted by the Court in 1946 no longer fully corresponded to the requirements of a modern international tribunal. The need was felt to adapt them to the changes that had occurred in recent years and to the pace of world

³ See *Report of the Sixth Committee* [Official Records of the General Assembly, Twenty-fourth Session, Annexes, agenda item 93 (A/7847)].

⁴ See also *Report of the International Court of Justice, 1967-1968* [Official Records of the General Assembly, Twenty-third Session, Supplement No. 17 (A/7217 and Corr.1), paras. 28-34].

events. It was thought that the use of the Court would be facilitated by a more precise and complete exposition of its procedure.

32. In 1968 the Court considered and adopted on first reading new Rules concerning its composition, the Presidency, its internal functioning and the aspects of the written and oral proceedings common to all contentious cases. The process of revision of the Rules of Court then had to be broken off on account of the Court's judicial work.

33. The Committee for the Revision of the Rules of Court resumed its work as from 19 May 1970 so as to prepare proposals concerning the parts of the

Rules of Court not yet dealt with by the Court, namely, the Rules applicable to particular proceedings in contentious cases (measures of interim protection, preliminary objections, etc.), judgments, advisory opinions, the Chambers and the Registry.

34. The Court also asked its Members to make further observations on the Rules already adopted on first reading, and on this basis the Committee is preparing proposals with a view to a second reading.

35. The Committee's proposals will be discussed by the Court when it next meets. Pending the conclusion of the work of revision, the 1946 Rules of Court will remain in force in their entirety.

V. PUBLICATIONS AND DOCUMENTS OF THE COURT

36. 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; in addition, the Court participates as appropriate in the system of depository libraries of United Nations publications and in the United Nations programme of assistance in the teaching, study, dissemination and wider appreciation of international law. The sale of the Court's publications is organized by the Sales Sections of the United Nations Secretariat, and they may be obtained throughout the world from any bookseller selling United Nations publications. Catalogues, with annual supplements, are distributed free of charge.

37. 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 volumes of the first two series appeared early in 1970 (*I.C.J. Reports 1969* and *I.C.J. Bibliography No. 23*); the Judgment of 5 February 1970 was published a few days after its delivery in the form of a separate fascicle of *I.C.J. Reports 1970*. The most recent volume in the third of the series referred to above (*I.C.J. Yearbook 1969-1970*) will be published at the same time as this report is issued.

38. The Court also publishes a series entitled *Pleadings, Oral Arguments, Documents* which contains the complete documentation relating to each case submitted to it. The volumes in this series are pub-

lished as soon as practicable after the end of each case. Thus volumes in the *Pleadings, Oral Arguments, Documents* series for the *South West Africa* cases (Vol. XII) and the case concerning the *Barcelona Traction, Light and Power Company, Limited* were published during the period under review. It should be noted that even before the close of a case, the Court may, after obtaining the views of the parties, communicate the pleadings to the government of any State entitled to appear before the Court that so requests. It may also, with the consent of the parties, make the pleadings accessible to the public. This was done in the case concerning the *Barcelona Traction, Light and Power Company, Limited (New Application: 1962)*.

39. The Court is at present engaged on the preparation of other printed publications intended to make its work better known and thus to contribute to the efforts needed from all to promote the development of international justice.

40. To keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction the Court regularly sends out press communiqués, bulletins and background notes.

(Signed) ZAFRULLA KHAN
President of the International Court of Justice

The Hague, 1 August 1970