



**REPORT
OF THE
INTERNATIONAL COURT
OF JUSTICE**

1 August 1970—31 July 1971

**GENERAL ASSEMBLY
OFFICIAL RECORDS : TWENTY-SIXTH SESSION
SUPPLEMENT No. 5 (A/8405)**

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1. The present report on the work of the International Court of Justice relates to the period from 1 August 1970 to 31 July 1971. It follows the 1969-1970 report¹ of which the General Assembly took note on 12 December 1970.

I. COMPOSITION OF THE COURT

2. There has been no change in the composition of the Court since the five judges elected by the General Assembly and Security Council on 27 October 1969 took up their duties.

3. The President and Vice-President of the Court are, respectively, Sir Muhammad Zafrulla Khan and Fouad Ammoun, who were each elected in February 1970 to a three-year term of office.

4. The other Members of the Court are, in order of seniority, Sir Gerald Fitzmaurice, L. Padilla Nervo, I. Forster, A. Gros, C. Bengzon, S. Petrán, M. Lachs, C. 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 22 January 1971 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 deaths on 27 January 1971 of Mr. M. Zoričić, Member of the Court from 1946 to 1958, and on 24 February 1971 of Mr. R. J. Alfaro, Member of the Court from 1959 to 1964 and Vice-President from 1961-1964.

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 1971, the 127 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 in cases covered by declarations which they have filed with the Registry of the Court in accordance with Security Council resolution 9 (1946) of 15 October 1946.

11. On 19 May 1971 the Government of Austria deposited with the Secretary-General a declaration accepting the compulsory jurisdiction of the Court under Article 36 of the Statute.

12. There are thus 47 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, Austria, Belgium, Botswana, Canada, China, Colombia, Denmark, Dominican Republic, El Salvador, Finland, France, Gambia, Haiti, Honduras, India, Israel, Japan, Kenya, Khmer Republic, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Portugal, Somalia, Swazi-

land, Sweden, Switzerland, Turkey, Uganda, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

13. Since 1 August 1970 one treaty providing for the jurisdiction of the Court in contentious cases has been registered with the Secretariat of the United Nations and brought to the knowledge of the Court: the International Health Regulations adopted by the Twenty-second World Health Assembly on 25 July 1969, which came into force on 1 January 1971. Lists of such treaties and conventions are contained in Chapter IV of the Court's *Yearbook 1970-1971*. 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

14. The following organizations are at present authorized to request advisory opinions of the Court on legal questions:

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

¹ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 5 (A/8005).

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

15. Provision for the advisory jurisdiction of the Court is also made in certain international instruments, listed in Chapter IV of the Court's *Yearbook 1970-1971*.

16. Between 1947 and 1971 the Court delivered 14 advisory opinions: 11 at the request of the General Assembly and one at the request of the Security Council of the United Nations, one at the request of the Executive Board of UNESCO and one at the request of the Assembly of IMCO.

III. JUDICIAL WORK OF THE COURT

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

17. On 29 July 1970 the Security Council decided, by resolution 284 (1970), to request an advisory opinion of the Court on the following question:

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

18. In accordance with Article 66, paragraph 2, of the Statute of the Court, the States entitled to appear before the Court were notified that the Court was prepared to receive from them written or oral statements furnishing information on the question.

19. By Orders made on 5 and 28 August 1970 respectively (*I.C.J. Reports 1970*, pp. 359 and 362) the President fixed 23 September 1970 as the time-limit for the submission of written statements and, in response to a request by the Government of South Africa, extended the limit to 19 November 1970. Written statements were received from the Governments of the following States: Czechoslovakia, Finland, France, Hungary, India, Netherlands, Nigeria, Pakistan, Poland, South Africa, United States of America, Yugoslavia. In addition, the Secretary-General of the United Nations transmitted to the Court documents likely to throw light on the question (Statute, Art. 65, para. 2) and a written statement in two instalments.

20. From 27 January to 17 March 1971 the Court held 24 sittings, at which oral statements were presented by Mr. Stavropoulos and Mr. Vickers on behalf of the Secretary-General of the United Nations; Mr. Elias on behalf of the Organization of African Unity; Mr. Castrén on behalf of Finland; Mr. Chagla on behalf of India; Mr. Riphagen on behalf of the Netherlands; Mr. Elias on behalf of Nigeria; Mr. Pirzada on behalf of Pakistan; Mr. Le Tai Trien on behalf of the Republic of Viet-Nam; Mr. Viall, Mr. de Viliers, Mr. Grosskopf, Mr. van Heerden, Mr. Botha and Mr. Wiechers on behalf of South Africa; and Mr. Stevenson on behalf of the United States of America.

21. At a public sitting on 21 June 1971 an Advisory Opinion (*I.C.J. Reports 1971*, pp. 16 ff.) was delivered in which the Court, having stated its reasons, replied in the following terms to the question put by the Security Council:

The Court is of opinion,
by 13 votes to 2,

(1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

by 11 votes to 4,

(2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration;

(3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia.

22. For these proceedings the Court was composed as indicated in paragraphs 3 and 4 above. The President of the Court, Sir Muhammad Zafrulla Khan, appended a declaration to the Advisory Opinion. Vice-President Ammoun and Judges Padilla Nervo, Petrán, Onyeama, Dillard and de Castro appended separate opinions. Judge Sir Gerald Fitzmaurice and Judge Gros appended dissenting opinions.

23. The text of the Advisory Opinion was transmitted immediately to the Secretary-General of the United Nations.

B. ACTION PURSUANT TO THE JUDGMENT IN THE NORTH SEA CONTINENTAL SHELF CASES

24. By its Judgment of 29 February 1969 (*I.C.J. Reports 1969*, p. 3),² the Court indicated the principles and rules of international law applicable to the delimitation of the North Sea continental shelf as between the Federal Republic of Germany, on the one

² See 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. 19-26.

hand, and Denmark and the Netherlands respectively, on the other, beyond the partial boundaries already established. It therefore remained for the Parties, as they had agreed, to negotiate a delimitation in accordance with those principles and rules.

25. Accordingly, from June 1969 to October 1970 they held a series of meetings, at which agreement was reached. Two treaties, between the Federal Republic and each of the other Parties, were signed at Copenhagen on 28 January 1971 together with a tripartite protocol. These treaties, which have still to be ratified

by the parliaments of the three countries, establish a definitive delimitation of the North Sea continental shelf as between the Parties and contain various provisions with regard to implementation. It is in particular stipulated in each treaty that any dispute between the Parties regarding its application shall as far as possible be settled by negotiation, failing which it will be submitted to an arbitral tribunal, to complete the composition of which the President of the International Court of Justice may in certain circumstances be requested to make appointments.

IV. STATUTE AND RULES OF COURT AND ADMINISTRATIVE MATTERS

26. During the period under review, the Court dealt with administrative questions at 10 private meetings, and the work of its committees followed its usual course.

A. REVIEW OF THE ROLE OF THE COURT

27. By a letter dated 14 August 1970,³ Argentina, Australia, Canada, Finland, Italy, Ivory Coast, Japan, Liberia, Mexico, the United Kingdom, the United States of America and Uruguay proposed the inclusion in the agenda of the General Assembly of an item entitled "Review of the role of the International Court of Justice." In an explanatory memorandum these States stressed the urgent need for a study to be undertaken of obstacles to the satisfactory functioning of the Court and ways and means of removing them, and the additional possibilities for the use of the Court that had not been adequately explored.

28. The General Assembly included the question in the agenda of its twenty-fifth session and allocated it to the Sixth Committee. The latter considered the item at sixteen meetings held between 29 October and 18 November 1970 and submitted to the General Assembly a draft resolution⁴ which was unanimously adopted on 15 December 1970 (resolution 2723 (XXV)).

29. In pursuance of paragraph 2 of that resolution the Legal Counsel of the United Nations, by a letter of 2 February 1971, transmitted to the Registrar of the Court the records of the discussions and of the proposals made on the subject in the Sixth Committee, also drawing his attention to paragraph 3 of the resolution. In pursuance of paragraph 1 thereof the Secretary-General, on 5 March 1971, transmitted to all member States and States parties to the Statute of the Court a questionnaire with a view to their presenting by 1 July 1971 their observations and suggestions regarding the role of the Court. By a letter of 10 March 1971 the Legal Counsel communicated a copy of the questionnaire to the Registrar.

30. On 18 June 1971 the President of the Court addressed the following letter to the Secretary-General:

"Allow me to refer to paragraph 3 of General

Assembly resolution 2723 (XXV), by which the Assembly invited the International Court of Justice, should it so desire, to state its views on the question of the role of the Court, in connection with the consideration by the Assembly at its 26th Session of an item entitled 'Review of the role of the International Court of Justice'.

"The Court has considered the Assembly's invitation and has taken note of the discussions in the Sixth Committee and the questionnaire addressed to member States and States parties to the Court's Statute in pursuance of paragraph 1 of resolution 2723 (XXV), which have traced a framework of reference for the review envisaged. The Court is most appreciative of the General Assembly's invitation affording it the opportunity of making its views known and of thus, to the extent of its competence, assisting the Assembly in the preparation of the item. While the Court is fully mindful of the responsibilities entrusted to it by the Charter and its Statute, it does not consider that it could at this stage usefully state its views on the questions involved.

"The reference to the Court of contentious cases and requests for advisory opinions remains a matter for States and for the authorized organs of the United Nations and specialized agencies. In 1970 you yourself recalled, Mr. Secretary-General, as did also the President of the General Assembly, that the problems of the United Nations are above all the problems of States. This is no less true of the role and future of the Court.

"However, if the General Assembly were to consider that the Court could usefully be asked for particular observations on legal questions, the Court would be prepared to meet such requests.

"It may be of interest to recall that the Court, for its part, exercising powers conferred upon it by Article 30 of its Statute, commenced in 1967 a revision of its Rules. On the proposal of a committee appointed for the purpose, the Court has adopted in first reading revised Rules on matters concerning the internal functioning of the Court and the procedure applicable in contentious cases."

31. Under the terms of paragraphs 4 and 5 of General Assembly resolution 2723 (XXV) the Secretary-General is to prepare a comprehensive report in the light of the opinions expressed by States and the Court, and the item has been included in the provisional agenda of the twenty-sixth session of the Assembly.

³ *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 96 (A/8042 and Add.1 and 2).

⁴ See report of the Sixth Committee [*Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 96 (A/8238)].

B. PROPOSED AMENDMENT OF THE STATUTE⁵

32. On the proposal of the Court, the General Assembly had included in the agenda of its twenty-fourth session an item entitled "Amendment to Article 22 of the Statute of the International Court of Justice (Seat of the Court) and consequential amendments to Articles 23 and 28". Subsequently it decided to postpone consideration of the item and requested the Secretary-General to include it in the provisional agenda of the twenty-fifth session.

33. On 18 September 1970, on the recommendation of the General Committee, the General Assembly decided that the item should be included in the agenda of its twenty-fifth session and be allocated to the Sixth Committee.⁶ On 8 December 1970, on the recommendation of the Sixth Committee, the General Assembly decided to postpone consideration of the item once more, and requested the Secretary-General to include it in the provisional agenda of its twenty-sixth session.

C. REVISION OF THE RULES OF COURT

34. As indicated in earlier Reports,⁷ the Court embarked in 1967 on the revision of its Rules of Court and appointed a Committee to submit proposals to it for that purpose. In 1968, after notes on the provisions to be amended had been exchanged between the judges and a draft had been prepared by Sir Gerald Fitzmaurice, the Committee drew up and submitted to the Court an initial series of proposals. The Court then provisionally adopted new rules concerning its composition, the Presidency, its internal functioning and the common procedural features of all contentious cases. The process of revision then had to be broken off on account of the Court's judicial work.

35. In February 1970 it was agreed that Members of the Court would present further observations on the rules provisionally adopted as well as on the texts not yet adopted. The Committee for the Revision of the Rules of Court met from 19 May to 26 August 1970. On the basis of the work already accomplished by the Court and by the Committee, and in the light of the observations submitted individually by Members of the Court, the Committee prepared revised drafts of the rules provisionally adopted and drew up, in preparation for a first reading, drafts of new rules to be applicable to particular proceedings in contentious cases (provisional measures, preliminary objections, etc.), and concerning advisory opinions and the Registry.

V. PUBLICATIONS AND DOCUMENTS OF THE COURT

40. 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

⁵ See also reports 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 and 33, and 1969-1970 [*Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 5 (A/8005)*], paras. 26-30.

⁶ See report of the Sixth Committee [*Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 89 (A/8201)].

⁷ See in particular 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.

36. The Committee is to meet again in August 1971 in order to draw up, on the basis of the preparatory work carried out in 1968 and of the observations submitted individually by Members of the Court in 1970, its proposals for new rules concerning judgments, orders and Chambers. These proposals are to be discussed when the Court is reconvened. Pending the conclusion of the work of revision, the 1946 Rules of Court will remain in force in their entirety.

D. TWENTY-FIFTH ANNIVERSARY OF THE UNITED NATIONS

37. The President and the Members of the Court then present in New York attended meetings of the special session of the General Assembly held in commemoration of the twenty-fifth anniversary (14-24 October 1970).

38. In The Hague, two events took place at the Peace Palace with the assistance of the Court. The first was a conference of experts held on 22 and 23 October and organized by the Netherlands Committee for the Twenty-fifth Anniversary of the United Nations on the theme of "Peace, justice and progress". Her Majesty the Queen of the Netherlands presided over the opening ceremony. The second event was an exhibition of United Nations postage-stamps organized by the Netherlands "United Nations/United Europe" Philatelic Association with the help of the United Nations postal administration (23-25 October 1970). Visitors to the exhibition numbered approximately 4,000.

E. PRECEDENCE

39. By a letter of 26 February 1971, the Netherlands Minister for Foreign Affairs informed the President of the Court that the Netherlands Government had decided to apply the following order of precedence: The President of the Court will take precedence over all diplomats, ambassadors and ministers, accredited to Her Majesty the Queen of the Netherlands; the Dean of the Diplomatic Corps will come immediately after the President and be followed by the Vice-President of the Court, and thereafter the precedence will proceed alternately between the regular diplomatic corps and the Members of the Court, it being recognized that in the event of a vacancy on either side the next judge or ambassador, as the case might be, would be promoted to the vacancy.

system of depositary 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.

41. 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 1971 (*I.C.J. Reports 1970* and *I.C.J. Biblio-*

graphy No. 24); the Advisory Opinion of 21 June 1971 was published a few days after its delivery in the form of a separate fascicle of *I.C.J. Reports 1971*. The most recent volume in the third of the series referred to above (*I.C.J. Yearbook 1970-71*) will be published at the same time as this report is issued.

42. The Court also publishes a series entitled *Pleadings, Oral Arguments, Documents* which contains the documentation relating to each case submitted to it. The volumes in this series are published as soon as practicable after the end of each case. The volumes appearing during the period under review related to the case concerning the *Barcelona Traction, Light and*

Power Company, Limited (one volume), and the case concerning the *Barcelona Traction, Light and Power Company, Limited (New Application: 1962)* (Vols. I-III).

43. The Court regularly sends out press communiqués, bulletins 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.

(Signed) ZAFRULLA KHAN
President of the International Court of Justice
The Hague, 1 August 1971

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