

**REPORT
OF THE
INTERNATIONAL COURT
OF JUSTICE**

1 August 1985-31 July 1986

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIRST SESSION

SUPPLEMENT No. 4 (A/41/4)



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New York, 1986

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.

[25 August 1986]

CONTENTS

	<u>Page</u>
I. Composition of the Court	1
II. Jurisdiction of the Court	2
A. Jurisdiction of the Court in contentious cases	2
B. Jurisdiction of the Court in advisory proceedings	2
III. Judicial work of the Court	4
A. Contentious cases before the Court	4
1. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)	4
2. Application for 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)	12
3. Border and transborder armed actions (Nicaragua v. Costa Rica)	14
4. Border and transborder armed actions (Nicaragua v. Honduras) .	15
B. Contentious case before a Chamber	16
Frontier dispute (Burkina Faso/Mali)	16
C. Request for advisory opinion	18
Application for review of Judgment No. 333 of the United Nations Administrative Tribunal	18
IV. Fortieth Anniversary of the Court	19
V. Fortieth Anniversary of the United Nations	20
VI. Lectures on the work of the Court	21
VII. Administrative questions	22
VIII. Publications and documents of the Court	23

I. COMPOSITION OF THE COURT

1. On 1 August 1985, the composition of the Court was as follows: President, Nagendra Singh; Vice-President, Guy Ladreit de Lacharrière; Judges: Manfred Lachs, José Maria Ruda, Taslim Olawale Elias, Shigeru Oda, Roberto Ago, José Sette-Camara, Stephen M. Schwebel, Sir Robert Jennings, Kéba Mbaye, Mohammed Bedjaoui, Ni Zhengyu, Jens Evensen and Nikolai K. Tarassov.

2. During the period under review, Judge P. D. Morozov resigned for health reasons. On 9 December 1985, the General Assembly and the Security Council elected Mr. N. K. Tarassov to replace him. At a public sitting of the Court on 17 February 1986, the new Judge made the solemn declaration provided for in article 20 of the Statute.

3. The Registrar of the Court is Mr. Santiago Torres Bernárdez. The Deputy-Registrar is Mr. Eduardo Valencia-Ospina.

4. In accordance with article 20 of the Statute, the Court forms annually a Chamber of Summary Procedure. On 19 February 1986, this Chamber was constituted as follows:

Members

President, Nagendra Singh; Vice-President, G. Ladreit de Lacharrière.

Judges

J. M. Ruda, K. Mbaye and Ni Zhengyu.

Substitute Members

Judges Sir Robert Jennings and J. Evensen.

5. On 3 April 1985, the Court constituted a Chamber to deal with the case of the Frontier Dispute (Burkina Faso/Mali). The composition of this Chamber was as follows: President, M. Bedjaoui; Judges: M. Lachs and J. M. Ruda; and Judges ad hoc F. Luchaire and G. Abi-Saab.

6. The Court learned with regret of the deaths of several former Members: Sir Muhammad Zafrulla Khan, a Member of the Court from 1954 to 1961 and from 1964 to 1973, and President from 1970 to 1973; Mr. L. Padilla Nervo, a Member of the Court from 1964 to 1973; Mr. Wellington Koo, a Member of the Court from 1957 to 1967 and Vice-President from 1964 to 1967; Mr. P. C. Jessup, a Member of the Court from 1961 to 1970; and Mr. P. D. Morozov, a Member of the Court from 1970 to 1985.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

7. On 31 July 1986, the 159 Member States of the United Nations, together with Liechtenstein, San Marino and Switzerland, were parties to the Statute of the Court.

8. On 10 September 1985, the Government of Canada filed with the Secretary-General a declaration of acceptance of the compulsory jurisdiction of the Court under article 36, paragraph 2, of the Statute, replacing the declaration made by Canada on 7 April 1970. On 8 October 1985, the Government of the United States of America informed the Secretary-General that it was withdrawing the declaration of acceptance of the compulsory jurisdiction of the Court which it had filed on 26 August 1946 and amended on 6 April 1984. On 21 November 1985, the Government of Israel informed the Secretary-General that it was withdrawing the declaration of acceptance of the compulsory jurisdiction of the Court which it had filed on 17 October 1956 and amended on 28 February 1984. On 2 December 1985, the Government of Senegal filed with the Secretary-General a declaration of acceptance of the compulsory jurisdiction of the Court, replacing the declaration made by Senegal on 3 May 1985. On 22 May 1986, the Government of Honduras filed with the Secretary-General a declaration of acceptance of the compulsory jurisdiction of the Court, replacing the declaration made by Honduras on 10 March 1960.

9. There are now 46 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, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Portugal, Senegal, Somalia, Sudan, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland and Uruguay. The texts of the declarations filed by these States appear in chapter IV, section II, of the I.C.J. Yearbook 1985-1986.

10. 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 1985-1986. 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

11. 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 Judgments), the following organizations are at present authorized to request advisory opinions of the Court on legal questions:

International Labour Organisation;

Food and Agriculture Organization of the United Nations;

United Nations Educational, Scientific and Cultural Organization;
International Civil Aviation Organization;
World Health Organization;
World Bank;
International Finance Corporation;
International Development Association;
International Monetary Fund;
International Telecommunication Union;
World Meteorological Organization;
International Maritime Organization;
World Intellectual Property Organization;
International Fund for Agricultural Development;
United Nations Industrial Development Organization;
International Atomic Energy Agency.

12. The international instruments which make provision for the advisory jurisdiction of the Court are listed in chapter IV, section I, of the I.C.J. Yearbook 1985-1986.

III. JUDICIAL WORK OF THE COURT

13. During the period under review, the Court held 13 public and 49 private sittings. In the contentious case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), the Court delivered its Judgment on the merits. It delivered its Judgment in the contentious case of the Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya). The Chamber constituted to deal with the contentious case concerning the Frontier Dispute (Burkina Faso/Mali) held 14 public and 10 private sittings. It made two Orders, including an Order indicating provisional measures.

14. One of the questions considered by the Court, relating to the organization of its judicial work, was the possibility of constituting a chamber for the purpose of dealing with cases concerning problems of the environment. The Court took the view that it was not necessary to set up a standing special chamber, but emphasized that it was able to respond rapidly to requests for the constitution, pursuant to article 26, paragraph 2, of the Statute, of a special chamber to which any case, and therefore any environmental case, could be submitted.

A. Contentious cases before the Court

1. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

15. 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.

16. 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 was appointing 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 fortiori without jurisdiction to indicate the provisional measures requested by Nicaragua.

17. Having held public sittings on 25 and 27 April 1984 to hear the oral observations of both Parties on the request for provisional measures, 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 provisions of the Order are 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 Charter of the United Nations 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, de 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 of the Court (ibid., p. 189) and Judge Schwebel appended a dissenting opinion (ibid., pp. 190-207).

18. 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.

19. 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 (I.C.J. Reports 1984, p. 209). These pleadings were filed within the prescribed time-limits.

20. On 15 August 1984, two days before the expiration of the time-limits allowed for the filing of pleadings relating to jurisdiction and admissibility, the Republic of El Salvador filed a Declaration of Intervention in the case under the terms of Article 63 of the Statute. This Article reads as follows:

"1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

"2. Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it."

In its Declaration, the Government of El Salvador stated that the purpose of its intervention was to enable it to maintain that the Court had no jurisdiction to entertain Nicaragua's application. In this connection, it referred, inter alia, to certain multilateral treaties on which Nicaragua relies in its dispute with the United States.

21. Having regard to the written observations on that Declaration submitted by the Parties in accordance with Article 83 of the Rules of Court, on 4 October 1984 the Court made an Order of which the operative provisions are as follows (I.C.J. Reports 1984, p. 215):

"The Court,

"(i) By nine votes to six,

"Decides not to hold a hearing on the Declaration of Intervention of the Republic of El Salvador.

"In favour: President Elias, Vice-President Sette-Camara, Judges Lachs, Morozov, Nagendra Singh, Oda, El-Khani, Mbaye, Bedjaoui.

"Against: Judges Ruda, Mosler, Ago, Schwebel, Sir Robert Jennings, de Lacharrière.

"(ii) By fourteen votes to one,

"Decides that the declaration of intervention of the Republic of El Salvador is inadmissible inasmuch as it relates to the current phase of the proceedings brought by Nicaragua against the United States of America.

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

"Against Judge Schwebel."

22. From 8 to 18 October 1984, the Court held 10 public sittings during which speeches were made on behalf of Nicaragua and the United States on the questions of jurisdiction and admissibility. The Judge ad hoc appointed by Nicaragua under Article 31 of the Statute of the Court, Mr. C. A. Colliard, participated in the work of the Court from this stage of the proceedings.

23. At a public sitting held on 26 November 1984, the Court delivered its Judgment (I.C.J. Reports 1984, p. 392). The operative provisions are as follows:

"The Court,

"(1) (a) Finds, by eleven votes to five, that it has jurisdiction to entertain the Application filed by the Republic of Nicaragua on 9 April 1984, on the basis of Article 36, paragraphs 2 and 5, of the Statute of the Court;

"In favour: President Elias; Vice-President Sette-Camara; Judges Lachs, Morozov, Nagendra Singh, Ruda, El-Khani, de Lacharrière, Mbaye, Bedjaoui; Judge ad hoc Colliard;

"Against: Judges Mosler, Oda, Ago, Schwebel and Sir Robert Jennings;

"(b) Finds, by fourteen votes to two, that it has jurisdiction to entertain the Application filed by the Republic of Nicaragua on 9 April 1984, in so far as that Application relates to a dispute concerning the interpretation or application of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Nicaragua signed at Managua on 21 January 1956, on the basis of Article XXIV of that Treaty;

"In favour: President Elias; Vice-President Sette-Camara; Judges Lachs, Morozov, Nagendra Singh, Mosler, Oda, Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui; Judge ad hoc Colliard;

"Against: Judges Ruda and Schwebel.;

"(c) Finds, by fifteen votes to one, that it has jurisdiction to entertain the case;

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

"Against: Judge Schwebel;

"(2) Finds, unanimously, that the said Application is admissible."

Judges Nagendra Singh, Ruda, Mosler, Oda, Ago and Sir Robert Jennings appended separate opinions to the Judgment (ibid., pp. 444-557). Judge Schwebel appended a dissenting opinion to the Judgment (ibid., pp. 558-637).

24. By a letter dated 18 January 1985, the Agent of the United States made it known that, notwithstanding the Judgment of 26 November 1984, in the view of the United States "the Court is without jurisdiction to entertain the dispute and that the Nicaraguan Application of 9 April 1984 is inadmissible" and that accordingly "the United States intends not to participate in any further proceedings in connection with this case". On 22 January 1985, the Agent of Nicaragua informed the President that his Government maintained its application and availed itself of the rights provided for in Article 53 of the Statute whenever one of the Parties does not appear before the Court or fails to defend its case.

25. By an Order dated 22 January 1985 (I.C.J. Reports 1985, p. 3), the President fixed time-limits for the filing of pleadings on the merits. The Government of Nicaragua filed its Memorial within the prescribed time-limit (30 April 1985). No Counter-Memorial was filed by the Government of the United States within the time-limit allotted to it, which expired on 31 May 1985, and no extension of such time-limit was requested by that Government.

26. Between 12 and 20 September 1985, the Court held nine public sittings during which speeches were made on behalf of Nicaragua. Five witnesses called by Nicaragua gave evidence before the Court. The United States was not represented at the hearings.

27. On 27 June 1986, the Court delivered its Judgment at a public sitting (I.C.J. Reports 1986, p. 14). The operative provisions of the Judgment are as follows:

"The Court,

" (1) By eleven votes to four,

"Decides that, in adjudicating the dispute brought before it by the Application filed by the Republic of Nicaragua on 9 April 1984, the Court is required to apply the "multilateral treaty reservation" contained in proviso (c) to the declaration of acceptance of jurisdiction made under Article 36, paragraph 2, of the Statute of the Court by the Government of the United States of America deposited on 26 August 1946;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Oda, Ago, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui and Evensen; Judge ad hoc Colliard;

"Against: Judges Ruda, Elias, Sette-Camara and Ni.

" (2) By twelve votes to three,

"Rejects the justification of collective self-defence maintained by the United States of America in connection with the military and paramilitary activities in and against Nicaragua, the subject of this case;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(3) By twelve votes to three,

"Decides that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camera, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(4) By twelve votes to three,

"Decides that the United States of America, by certain attacks on Nicaraguan territory in 1983-1984, namely, attacks on Puerto Sandino on 13 September and 14 October 1983; an attack on Corinto on 10 October 1983; an attack on Potosi Naval Base on 4/5 January 1984; an attack on San Juan del Sur on 7 March 1984; attacks on patrol boats at Puerto Sandino on 28 and 30 March 1984; and an attack on San Juan del Norte on 9 April 1984; and further by those acts of intervention referred to in subparagraph (3) hereof which involve the use of force, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to use force against another State;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camera, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(5) By twelve votes to three,

"Decides that the United States of America, by directing or authorizing overflights of Nicaraguan territory, and by the acts imputable to the United States referred to in subparagraph (4) hereof, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to violate the sovereignty of another State;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camera, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(6) By twelve votes to three,

"Decides that, by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(7) By fourteen votes to one,

"Decides that, by the acts referred to in subparagraph (6) hereof, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Nicaragua, signed at Managua on 21 January 1956;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judge Schwebel.

"(8) By fourteen votes to one,

"Decides that the United States of America, by failing to make known the existence and location of the mines laid by it, referred to in subparagraph (6) hereof, has acted in breach of its obligations under customary international law in this respect;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen. Judge ad hoc Colliard;

"Against: Judge Oda.

"(9) By fourteen votes to one,

"Finds that the United States of America, by producing in 1983 a manual entitled "Operaciones psicológicas en guerra de guerrillas", and disseminating it to contra forces, has encouraged the commission by them of acts contrary to general principles of humanitarian law; but does not find a basis for concluding that any such acts which may have been committed are imputable to the United States of America as acts of the United States of America;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judge Oda.

"(10) By twelve votes to three,

"Decides that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has committed acts calculated to deprive of its object and purpose the Treaty of Friendship, Commerce and Navigation between the Parties, signed at Managua on 21 January 1956;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(11) By twelve votes to three,

"Decides that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has acted in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the Parties, signed at Managua on 21 January 1956;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(12) By twelve votes to three,

"Decides that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(13) By twelve votes to three,

"Decides that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law enumerated above;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judges Oda, Schwebel and Sir Robert Jennings.

"(14) By fourteen votes to one,

"Decides that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of the Treaty of Friendship, Commerce and Navigation between the Parties, signed at Managua on 21 January 1956;

"In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judge Schwebel.

"(15) By fourteen votes to one,

"Decides that the form and amount of such reparation, failing agreement between the Parties, will be settled by the Court, and reserves for this purpose the subsequent procedure in the case;

In favour: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

"Against: Judge Schwebel.

"(16) Unanimously,

"Recalls to both Parties their obligation to seek a solution to their disputes by peaceful means in accordance with international law."

Separate opinions were appended to the Judgment by Judge Nagendra Singh, President, and by Judges Lachs, Ruda, Elias, Ago, Sette-Camara and Ni. Dissenting opinions were appended to the Judgment by Judges Oda, Schwebel and Sir Robert Jennings.

2. Application for 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)

28. On 27 July 1984, the Government of the Republic of Tunisia 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 founds 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."

29. To justify its application for revision the Government of Tunisia invoked the discovery of a new fact. It 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 was not admissible, it requested the Court to construe certain passages of the Judgment concerning this sector. It further requested the Court to declare in respect of the second sector

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

30. Pursuant to the Rules of Court, the Vice-President fixed a time-limit within which the Libyan Arab Jamahiriya would be entitled to present written observations on the Tunisian application, in particular on the subject of the admissibility of the application (Rules of Court, Art. 99, para. (2)). These observations were filed within the prescribed time-limit, which expired on 15 October 1984.

31. Both States chose a judge ad hoc under Article 31 of the Statute of the Court. Tunisia appointed Madame S. Bastid, and the Libyan Arab Jamahiriya appointed Mr. E. Jiménez de Aréchaga.

32. Between 13 and 18 June 1985 the Court held six public sittings during which speeches were made on behalf of Tunisia and the Libyan Arab Jamahiriya.

33. The composition of the Court was as follows: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Schwebel, Mbaye, Bedjaoui, Ni; Judges ad hoc Mrs. Bastid and Mr. Jiménez de Aréchaga.

34. On 10 December 1985, the Court delivered its Judgment at a public sitting (I.C.J. Reports 1985, p. 192). The operative provisions are as follows:

"The Court,

"A. Unanimously,

"Finds inadmissible the request submitted by the Republic of Tunisia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 24 February 1982;

"B. Unanimously,

"(1) Finds admissible the request submitted by the Republic of Tunisia for interpretation, under Article 60 of the Statute of the Court, of the Judgment of 24 February 1982 as far as it relates to the first sector of the delimitation contemplated by that Judgment;

"(2) Declares, by way of interpretation of the Judgment of 24 February 1982, that the meaning and scope of that part of the Judgment which relates to the first sector of the delimitation are to be understood according to paragraphs 32 to 39 of the present Judgment;

"(3) Finds that the submission of the Republic of Tunisia of 14 June 1985 relating to the first sector of the delimitation, cannot be upheld;

"C. Unanimously,

"Finds that the request of the Republic of Tunisia for the correction of an error is without object and that the Court is therefore not called upon to give a decision thereon;

"D. Unanimously,

"(1) Finds admissible the request submitted by the Republic of Tunisia for interpretation, under Article 60 of the Statute of the Court, of the Judgment of 24 February 1982 as far as it relates to the 'most westerly point of the Gulf of Gabes';

"(2) Declares, by way of interpretation of the Judgment of 24 February 1982:

"(a) That the reference in paragraph 124 of that Judgment to 'approximately 34° 10' 30" north' is a general indication of the latitude of the point which appeared to the Court to be the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes, it being left to the experts of the Parties to determine the precise co-ordinates of that point; that the latitude of 34° 10' 30" was therefore not intended to be itself binding on the Parties but was employed for the purpose of clarifying what was decided with binding force in paragraph 133 C (3) of that Judgment;

"(b) That the reference in paragraph 133 C (2) of that Judgment to 'the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes', and the similar reference in paragraph 133 C (3) are to be understood as meaning the point on that shoreline which is furthest to the west on the low-water mark; and

"(c) That it will be for the experts of the Parties, making use of all available cartographic documents and, if necessary, carrying out an ad hoc survey in loco, to determine the precise co-ordinates of that point, whether or not it lies within a channel or the mouth of a wadi, and regardless of whether or not such point might be regarded by the experts as marking a change in direction of the coastline;

"(3) Finds that the submission of the Republic of Tunisia, 'that the most westerly point of the Gulf of Gabes lies on latitude 34° 05' 20" N (Carthage)', cannot be upheld;

"E. Unanimously,

"Finds that, with respect to the submission of the Republic of Tunisia of 14 June 1985, there is at the present time no cause for the Court to order an expert survey for the purpose of ascertaining the precise co-ordinates of the most westerly point of the Gulf of Gabes."

Separate opinions were appended to the Judgment by Judges Ruda, Oda and Schwebel, and by Judge ad hoc Madame Bastid (Ibid., pp. 232-252).

3. Border and transborder armed actions (Nicaragua v. Costa Rica)

35. On 28 July 1986, the Republic of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Republic of Costa Rica. Nicaragua bases its Application on Article XXXI of the Pact of Bogotá and on the declaration whereby Costa Rica accepted the jurisdiction of the Court under the circumstances contemplated in Article 36 of the Statute of the Court.

36. In its Application, Nicaragua records specific border and transborder armed actions of increasing frequency and intensity since 1982 organized by contras on its territory from Costa Rica. It mentions various attempts on its part to achieve a peaceful solution attributing the failure of these to the attitude of the Costa Rican authorities. Subject to any possible alterations, it requests the Court to adjudge and declare:

- "(a) That the acts and omissions of Costa Rica in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Costa Rica bears legal responsibility;
- "(b) That Costa Rica is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;
- "(c) That Costa Rica is under an obligation to make reparations to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions."

37. In its application, Nicaragua reserves the right to present to the Court a request for the indication of interim measures of protection.

4. Border and transborder armed actions (Nicaragua v. Honduras)

38. On 28 July 1986, the Republic of Nicaragua filed in the Registry of the Court an application instituting proceedings against the Republic of Honduras. Nicaragua bases its application on article XXXI of the Pact of Bogotá and on the declaration whereby Honduras accepted the jurisdiction of the Court under the circumstances contemplated in Article 36 of the Statute of the Court.

39. In its application, Nicaragua refers not only to border and transborder armed actions - of increasing frequency and intensity since 1980 despite its reiterated protests - organized by contras on its territory from Honduras, but also, among other matters, to assistance being given to the contras by the armed forces of Honduras, to direct participation by the latter in military attacks against its territory, and to threats of force against it emanating from the Government of Honduras. Subject to any possible alterations, it requests the Court to adjudge and declare:

- "(a) That the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this application for which the Republic of Honduras bears legal responsibility;
- "(b) That Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;
- "(c) That Honduras is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of

obligations under the pertinent rules of customary international law and treaty provisions."

40. In its application, Nicaragua reserves the right to present to the Court a request for the indication of interim measures of protection.

B. Contentious case before a Chamber

Frontier dispute (Burkina Faso/Mali)

41. On 14 October 1983, the Governments of the Republic of Upper Volta (since re-named Burkina Faso) 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.

42. The Special Agreement provided for the seisin of a chamber under Article 26, paragraph 2 of the Statute of the Court. This Article states that the Court may form a Chamber for dealing with a particular case.

43. On 14 March 1985, the Parties, duly consulted by the President, indicated that they desired the formation of a chamber of five members, of whom two would be judges ad hoc chosen by themselves in accordance with Article 31 of the Statute, and confirmed that they desired the Court to proceed immediately to the formation of the chamber.

44. Both States chose a judge ad hoc under Article 31 of the Statute of the Court. Burkina Faso appointed Mr. F. Luchaire, and Mali appointed Mr. G. Abi-Saab.

45. On 3 April 1985, the Court unanimously adopted an Order whereby it acceded to the request of the two Governments to form a Special Chamber of five judges to deal with the frontier dispute between them (I.C.J. Reports 1985, p. 6). It declared that it had elected Judges Lachs, Ruda and Bedjaoui to form, with the judges ad hoc appointed by the Parties, the Chamber to be seized of the case.

46. The Chamber formed to deal with the case elected as its President Judge M. Bedjaoui. Its composition was as follows: President M. Bedjaoui; Judges M. Lachs and J. M. Ruda; Judges ad hoc F. Luchaire and G. Abi-Saab.

47. On 29 April 1985, the Chamber held its first public sitting at which Judges ad hoc Luchaire and Abi-Saab made the solemn declaration required by the Statute and the Rules of Court.

48. The Parties having confirmed the indications given in the Special Agreement, and the Chamber having been consulted, the President of the Court, by an Order made on 12 April 1985 (I.C.J. Reports 1985, p. 10) fixed 3 October 1985 as the time-limit for the filing of Memorials by both Parties. These pleadings were filed within the prescribed time-limit.

49. By an Order of 3 October 1985, the President of the Chamber fixed 2 April 1986 (I.C.J. Reports 1985, p. 189) as the time-limit for the filing of Counter-Memorials by the Parties.

50. Following grave incidents which brought the armed forces of Burkina Faso and Mali into conflict in the frontier region at the end of 1985, the two Parties made parallel requests to the Chamber for the indication of provisional measures, the official texts of which reached the Registry on 2 January for Burkina Faso and on 6 January 1986 for Mali.

51. The Chamber held a hearing on 9 January 1986 to hear the oral observations of both Parties on the requests for the indication of provisional measures, and on 10 January 1986, at a public sitting, made an Order indicating provisional measures (I.C.J. Reports 1986, p. 3), the operative provisions of which are as follows:

"The Chamber,

"Unanimously,

"1. Indicates, pending its final decision in the proceedings instituted on 20 October 1983 by the notification of the Special Agreement between the Government of the Republic of Upper Volta (now Burkina Faso) and the Government of the Republic of Mali, signed on 16 September 1983 and relative to the frontier dispute between the two States, the following provisional measures:

"(a) The Government of Burkina Faso and the Government of the Republic of Mali should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Chamber or prejudice the right of the other Party to compliance with whatever judgment the Chamber may render in the case;

"(b) Both Governments should refrain from any act likely to impede the gathering of evidence material to the present case;

"(c) Both Governments should continue to observe the ceasefire instituted by agreement between the two Heads of State on 31 December 1985;

"(d) Both Governments should withdraw their armed forces to such positions, or behind such lines, as may, within 20 days of the date of the present Order, be determined by an agreement between those Governments, it being understood that the terms of the troop withdrawal will be laid down by the agreement in question and that, failing such agreement, the Chamber will itself indicate them by means of an Order;

"(e) In regard to the administration of the disputed areas, the situation which prevailed before the armed actions that gave rise to the requests for provisional measures should not be modified;

"2. Calls upon the Agents of the Parties to notify the Registrar without delay of any agreement concluded between their Governments within the scope of point 1 (d) above;

"3. Decides that, pending its final judgment, and without prejudice to the application of Article 76 of the Rules, the Chamber will remain seized of the questions covered by the present Order."

52. Pursuant to Article 41, paragraph 2, of the Statute of the Court, the Registrar immediately notified the indication of these measures to the Parties in the case and to the Security Council.

53. In a letter dated 24 January 1986, and pursuant to Article 2 of the above Order for the indication of provisional measures, the co-Agent of Mali transmitted to the Registrar the final communiqué of the first Extraordinary Conference of the Heads of State and Government of the member countries of ANAD (Accord de non-aggression et d'assistance en matière de défense) disseminated on 18 January 1986. The communiqué reports the agreement reached between the two Heads of State on the withdrawal of their respective armed forces on either side of the disputed area.

54. Each of the Parties filed a Counter-Memorial within the time-limit fixed by the Order of the President of the Chamber dated 3 October 1985, at 2 April 1986.

55. The oral proceedings took place between 16 and 26 June 1986. Statements were made during 12 public sittings on behalf of Burkina Faso and Mali. At the time of preparation of this report, the Chamber is deliberating on the case.

C. Request for Advisory Opinion

Application for review of Judgement No. 333 of the United Nations Administrative Tribunal

56. On 10 September 1984, the Court received a request for an advisory opinion submitted by the Committee on Applications for Review of Judgements of the Administrative Tribunal of the United Nations, in respect of Judgement No. 333, delivered at Geneva on 8 June 1984 by the Administrative Tribunal in the case of Yakimetz v. Secretary-General of the United Nations. On 23 August 1984, at the request of the interested party, the Committee had decided to request an advisory opinion from the Court, under Article 11 of the Statute of the Administrative Tribunal.

57. By an Order dated 13 September 1984, the President fixed 14 December 1984 as the time-limit for the submission of written statements by the United Nations and its Member States, in accordance with Article 66, paragraph 2, of the Statute of the Court (I.C.J. Reports 1984, p. 212). By an Order of 30 November 1984, this time-limit was extended to 28 February 1985 (ibid., p. 639). Statements have been submitted by the Governments of the Union of Soviet Socialist Republics, Italy, Canada and the United States of America and on behalf of the Secretary-General of the United Nations. The latter has also transmitted a statement on behalf of the person who was the subject of the judgement delivered by the Administrative Tribunal.

58. The President of the Court fixed 31 May 1985 as the time-limit within which States and the Organization having filed written statements might submit written comments on the statements presented by others, in accordance with Article 66, paragraph 4, of the Statute. Following the request by the applicant to which the Secretary-General saw no objection and by a decision of the President, the time-limit was extended to 1 July 1985.

59. Written comments were submitted by the Government of the United States of America and by the Secretary-General of the United Nations, who also transmitted the comments of the person who was the subject of the judgement delivered by the Administrative Tribunal.

IV. FORTIETH ANNIVERSARY OF THE COURT

60. On 29 April 1986, the Court held a special sitting to commemorate the fortieth anniversary of its inaugural sitting, held on 18 April 1946. This sitting was honoured by the presence of Her Majesty Queen Beatrix and His Royal Highness Prince Claus of the Netherlands, as well as the Prime Minister and the Minister of Justice of the Netherlands. A representative was present on behalf of the Secretary-General of the United Nations. The diplomatic corps, special emissaries of States, representatives of United Nations organs, former Members of the Court and one judge ad hoc took part, as well as many authorities from the Netherlands and the Press. After reading a message addressed to the Court by the President of the Security Council, M. C. de Kémoullaria, President Nagendra Singh delivered the commemorative address. Several Governments sent their good wishes to the Court on the occasion of its fortieth anniversary.

V. FORTIETH ANNIVERSARY OF THE UNITED NATIONS

61. The Court participated in the ceremonies commemorating the fortieth anniversary of the United Nations. A delegation from the Court also went to New York to take part in the commemoration, during which the President of the Court addressed the General Assembly in plenary session, on 25 October 1985.

VI. LECTURES ON THE WORK OF THE COURT

62. 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 the judicial settlement of international disputes and the jurisdiction of the Court in advisory cases.

VII. ADMINISTRATIVE QUESTIONS

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

(a) The Budgetary and Administrative Committee, composed of the President, the Vice-President and Judges T. O. Elias, J. Sette-Camara and S. M. Schwebel;

(b) The Rules Committee, composed of Judges M. Lachs, S. Oda, R. Ago, J. Sette-Camara, Sir Robert Jennings, K. Mbaye and N. K. Tarassov;

(c) The Committee on Relations, composed of Judges M. Bedjaoui, Ni Zhengyu and J. Evensen;

(d) The Library Committee, composed of Judges J. M. Ruda, S. Oda, Sir Robert Jennings and Ni Zhengyu.

64. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the major law libraries of the world. The sale of these publications is organized by the sales sections of the United Nations Secretariat, which are in touch with specialized booksellers and distributors throughout the world. A catalogue (latest edition: 1984) is, with its annual addenda, distributed free of charge. The question of ensuring easier and speedier availability of the publications of the Court throughout the world is receiving the particular attention of the Registry.

65. The publications of the Court include at present 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 1985 and I.C.J. Bibliography No. 38.

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

67. In the volume Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. The latest edition appeared after the revision of the Rules adopted by the Court on 14 April 1978. The Court has recently entrusted to the Registrar the task of assembling, in view of a possible publication, the travaux préparatoires relating to the revised version of the Rules.

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

69. More comprehensive information on the work of the Court during the period under review is contained in the I.C.J. Yearbook 1985-1986, published concurrently with the issue of the present report.

(Signed) NAGENDRA SINGH

President of the International Court of Justice

The Hague, 1 August 1986

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