



REPORT OF THE INTERNATIONAL COURT OF JUSTICE

1 August 1967—31 July 1968

GENERAL ASSEMBLY

**OFFICIAL RECORDS : TWENTY-THIRD SESSION
SUPPLEMENT No. 17 (A/7217)**

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CONTENTS

	<i>Page</i>
I. <i>Composition of the Court</i>	1
II. <i>Jurisdiction of the Court</i>	1
A. Jurisdiction of the Court in contentious proceedings	1
B. Jurisdiction of the Court in advisory proceedings	2
C. Role of the President of the Court in regard to arbitration and conciliation	2
III. <i>Judicial activity of the Court</i>	2
A. Barcelona Traction, Light and Power Company, Limited (New Application: 1962)	2
B. North Sea Continental Shelf	3
IV. <i>Administrative session of the Court</i>	3
A. Visit by the Secretary-General of the United Nations	3
B. Revision of the Rules of Court	3
C. Resolution concerning the internal judicial practice of the Court	4
D. Incompatibility of functions	4
E. Relations of the Court	5
V. <i>Publications of the Court</i>	5
VI. <i>The Court's programme of work</i>	5

1. The present report on the work of the International Court of Justice relates to the period from 1 August 1967 to 31 July 1968.

I. COMPOSITION OF THE COURT

2. There has been no change in the composition of the Court since the triennial election held by the General Assembly and the Security Council on 3 November 1966. The next triennial renewal of the composition of the Court will affect five Members of the Court whose terms of office expire on 5 February 1970.

3. The President and the Vice-President of the Court are respectively J. L. Bustamante y Rivero (Peru) and V. M. Koretsky (USSR), who were elected in April 1967 for a period of three years.

4. The other Members of the Court at present are, in order of seniority:

Sir Gerald Fitzmaurice (United Kingdom of Great Britain and Northern Ireland);

Mr. K. Tanaka (Japan);

Mr. C. Jessup (United States);

Mr. G. Morelli (Italy);

Sir Muhammad Zafrulla Khan (Pakistan);

Mr. L. Padilla Nervo (Mexico);

Mr. I. Forster (Senegal);

Mr. A. Gros (France);

Mr. F. Ammoun (Lebanon);

Mr. C. Bengzon (Philippines);

Mr. S. Petrén (Sweden);

Mr. M. Lachs (Poland); and

Mr. C. D. Onyeama (Nigeria).

5. With a view to the speedy dispatch of business, the Court forms annually a Chamber of Summary Procedure (Statute, Art. 29). This Chamber was formed on 1 April 1968 with the same membership as in the previous year, namely:

Members:

Mr. Bustamante y Rivero;

Mr. Koretsky;

Sir Gerald Fitzmaurice;

Mr. Jessup;

Mr. Morelli.

Substitute members:

Mr. Tanaka;

Mr. M. Lachs.

6. Since 1946, forty-two persons have exercised the functions of Member of the Court and twenty other persons have sat as judges *ad hoc*.

7. The Court learned with deep regret of the death on 5 January 1968 of M. J. Basdevant, judge from 1946 to 1964, President from 1949 to 1952.

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

II. JURISDICTION OF THE COURT

A. JURISDICTION OF THE COURT IN CONTENTIOUS PROCEEDINGS

9. On 31 July 1968, the 124 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 deposited with the Registry of the Court the declaration prescribed for that purpose by resolution 9 (1946) of the Security Council dated 15 October 1946.

11. On 31 August 1967, the Turkish Government informed the Secretary-General of the United Nations of the renewal of its declaration of acceptance of the compulsory jurisdiction of the Court under Article 36 of the Statute. With this renewal, the number of States recognizing the jurisdiction of the Court as compulsory, in relation to any other State accepting the same obligation, is at present forty-three; of these a number have

attached reservations. Such a declaration of acceptance has been made by the following States:

Australia, Belgium, Cambodia, Canada, China, Colombia, Denmark, Dominican Republic, El Salvador, Finland, France, Gambia, Haiti, Honduras, India, Israel, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Portugal, Somalia, Sudan, Sweden, Switzerland, Turkey, Uganda, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

It should be noted that twenty-five other States had accepted for a certain period the compulsory jurisdiction of the present Court or of the Permanent Court of International Justice which preceded it, but have withdrawn their acceptance or have not renewed it.

12. Since 1 August 1967, six *treaties or conventions* providing for the jurisdiction of the Court in contentious

proceedings and registered with the Secretariat of the United Nations have been brought to the knowledge of the Court. Lists of such treaties or conventions can be found in Chapter IV of the Court's *Yearbook 1967-1968*. 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). Some of the instruments in these two categories are bilateral and relate in all to more than fifty States; others are multilateral.

B. JURISDICTION OF THE COURT IN ADVISORY PROCEEDINGS

13. 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, Committee on Application for Review of Administrative Tribunal Judgements)

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

14. The jurisdiction of the Court in advisory proceedings is also the subject of international instruments, the two most recent of which were registered with the Secretariat of the United Nations in 1967 and to which references will be found in Chapter IV of the Court's *Yearbook 1967-1968*.

C. ROLE OF THE PRESIDENT OF THE COURT IN REGARD TO ARBITRATION AND CONCILIATION

15. During the period under consideration, forty-four international treaties or agreements providing for the appointment by the President of the Court, in the event of disagreement between the contracting parties, of arbitrators, umpires, members of conciliation commissions, etc., have been brought to the knowledge of the President. The number of instruments of this kind which have been reported since 1945 exceeds 800.

III. JUDICIAL ACTIVITY OF THE COURT

16. Since 1947, thirty-nine contentious cases, in which thirty-eight States in all were concerned, have been brought before the Court, which has delivered with regard to them twenty-nine judgements and 137 orders. At present three contentious cases remain pending on its List. No request for an advisory opinion has been transmitted during the period under consideration.

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

17. This case was instituted by Belgium against Spain. In it compensation is sought for the damage claimed to have been caused to Belgian nationals, shareholders in the Canadian Company, Barcelona Traction, Light and Power Company, Limited, by the conduct of various organs of the Spanish State. A previous case which was brought before the Court in 1958 had been removed from the List in 1961 after discontinuance of the proceedings by Belgium. A new Application was filed in June 1962. The Belgian Government having set out its claim in a Memorial, the Spanish Government raised four preliminary objections on which the Belgian Government was invited to present written observations and submissions and on which the two Parties presented their oral arguments in public hearings before the Court. In its Judgement of 24 July 1964 (*I.C.J. Reports 1964*, p. 6) the Court rejected two of the preliminary objections and joined the other two to the merits. One of the objections thus joined to the merits relates to the nationality of the Barcelona Traction Company and to the

nature of the Belgian interests in that company, while the second is concerned with the non-exhaustion of local remedies.

18. After delivery of the judgement the written proceedings were resumed on the objections joined to the merits and on the merits. Three pleadings have been filed:

- (a) Counter-Memorial of the Spanish Government (time-limit for filing fixed as 1 July 1965 and extended to 31 December 1965, at the request of the Government concerned and without objection by the opposing Party);
- (b) Reply by the Belgian Government (time-limit for filing fixed as 30 November 1966 and extended to 24 April and then to 16 May, 1967, at the request of the Government concerned and without objection by the opposing Party);
- (c) Rejoinder of the Spanish Government (time-limit for filing fixed as 24 October 1967 and extended to 31 May and then to 1 July 1968, at the request of the Government concerned and without objection by the opposing Party).

The extensions of the time-limit for the filing of the rejoinder were the subject of Orders of 15 September 1967 and 24 May 1968 (*I.C.J. Reports 1967*, p. 12, and 1968, p. 13). In the second of these Orders, the Court noted with regret that the time-limits originally fixed for the filing of the pleadings had not been observed, whereby the written proceedings had been considerably pro-

longed. It should be noted in this connexion that, as the written pleadings are filed in one of the official languages of the Court, the latter has subsequently to arrange for their translation into the other language.

19. The rejoinder is the last written pleading. (It brings the total in the written pleadings to more than 12,000 printed pages.) The next stage in the case will be the oral proceedings devoted to the oral arguments of the Parties on the objections joined to the merits and on the merits, after which the Court will enter upon the deliberations and will deliver its judgement.

B. NORTH SEA CONTINENTAL SHELF

20. These two cases, in which Denmark and the Netherlands respectively are opposed to the Federal Republic of Germany, are concerned with the delimitation of the Continental Shelf of the North Sea between these States, beyond the lines of delimitation partially determined by a Convention of 9 June 1965 between Denmark and the Federal Republic and a Treaty of 1 December 1964 between the Netherlands and the Federal Republic.

21. On 2 February 1967 two Special Agreements were concluded at Bonn, by which Denmark and the Netherlands agreed respectively with the Federal Republic of Germany: (a) to ask the Court what principles and rules of international law are applicable to the delimitation in question; (b) and then to proceed to effect such delimitation between them by agreement in pursuance of the decision of the Court. On the same day, the three States signed a Protocol by which it was agreed that the Netherlands Government would notify the two Special Agreements to the Court and that, for the purpose of appointing a judge *ad hoc*, the Danish and Neth-

erlands Governments would be considered as parties in the same interest.

22. The Netherlands Government notified the Special Agreements to the Court on 20 February 1967. In accordance with the provisions of these Special Agreements and of two Orders of 8 March 1967 (*I.C.J. Reports 1967*, pp. 3 and 6), the Government of the Federal Republic of Germany filed two Memorials on 21 August 1967 and the Danish and Netherlands Governments each presented a Counter-Memorial on 20 February 1968. In implementation of two Orders of 1 March 1968 (*I.C.J. Reports 1968*, pp. 3 and 6), the Government of the Federal Republic filed two Replies on 31 May 1968.

23. Meanwhile, the Government of the Federal Republic had chosen Mr. H. Mosler and the Danish and Netherlands Governments had chosen Mr. M. Sørensen to sit as judges *ad hoc* in the two cases. These appointments had not given rise to any objection on the part of the respective opposite Parties. By an Order of 26 April 1968 (*I.C.J. Reports 1968*, p. 9), the Court, having regard to the provisions of the Protocol of 2 February 1967, the choice of a single judge *ad hoc* by the Danish and Netherlands Governments and the fact that the submissions in the Counter-Memorials were in almost identical terms, found that these two Governments are in the same interest. In consequence, the Court joined the proceedings in the two North Sea Continental Shelf cases.

24. In the same Order, the Court fixed 30 August 1968 as the date on which the Danish and Netherlands Governments are to file a common Rejoinder. On this date, the written proceedings will be closed and the Court will be in a position to fix the date for the opening of the oral proceedings in public hearings.

IV. ADMINISTRATIVE SESSION OF THE COURT

25. The Court held an administrative session of sixty-two meetings from 1 April to 5 July 1968.

26. The agenda for this session included, as it does each year, the election of the members of the Chamber of Summary Procedure¹ and of the Budgetary and Administrative Committee,² the preparation of the budget, the closure of the accounts, the appointment of officials of the Registry and other questions of an administrative character.

A. VISIT BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

27. Early in its administrative session, the Court received an official visit from the Secretary-General of the United Nations. It was the first visit by the present Secretary-General, who had been unable to accept an invitation extended to him the previous year. The Secretary-General visited the Court at its seat in the Peace Palace on 7 and 9 April 1968. The visit offered an opportunity for a lengthy exchange of views between the Secretary-General and the Members of the Court on

questions concerning the United Nations and the Court as the principal judicial organ of the United Nations (Charter, Article 92).

B. REVISION OF THE RULES OF COURT

28. The existing Rules of Court (*I.C.J., Acts and Documents*, 2nd ed., pp. 54-83) were adopted by the Court on 6 May 1946. They form a separate instrument distinct from the Statute, which constitutes an integral part of the Charter of the United Nations. The Rules of Court are, however, drawn up in application of a provision of the Statute, which states: "The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure" (Statute, Art. 30, para. 1).

29. The Rules of Court are intended to set forth the detailed means of application of the Statute by furnishing the Court with certain rules concerning its internal functioning and, even more, by supplying parties before the Court with information which is indispensable for them in regard to questions of procedure. The existing Rules deal in succession, in eighty-five articles, with the constitution of the Court (judges and assessors, the Presidency, the Registry, Chambers), its functioning, its procedure in contentious cases (institution of proceed-

¹ See paragraph 5 above.

² The President, the Vice-President, Sir Gerald Fitzmaurice, Mr. Jessup and Mr. Gros.

ings, preliminary measures, written and oral proceedings, interim protection, preliminary objections, counter-claims, interventions, appeals, settlements and discontinuance, procedure before the Chambers, judgements, requests for the revision or interpretation of a judgement) and advisory opinions.

30. Some parts of these 1946 Rules no longer fully correspond to the requirements of a modern international tribunal. The need is felt to adapt them to the changes that have occurred in recent years and to the pace of world events. The use of the Court would be facilitated by a more precise and complete exposition of its procedure.

31. Some of the existing shortcomings may be traced to the Statute of the Court and others to the origin of the Rules themselves. The first model of the Rules was furnished in 1922 by the Permanent Court of International Justice. In fact, almost immediately after its creation, that Court drew up a brief set of Rules, which it amplified in 1926 in the light of its experience during the early years. Later, a revision of its Statute, carried out under the auspices of the League of Nations, led it to revise its Rules again on two occasions, in 1931 and 1936.

32. In 1946, when it succeeded the Permanent Court, the International Court of Justice considered that the best solution was to adopt the text drawn up a few years earlier by its predecessor whilst making a few changes apart from those which had become indispensable as a result of the replacement of the League of Nations by the United Nations. It seemed to the Court desirable to wait, before undertaking any revision of the Rules, until it had acquired longer experience. But the Court never lost sight of the problem: suggestions were put forward by several of its Members on various occasions between 1947 and 1963. Following an exchange of views initiated by a proposal made by the Vice-President, the Court set up on 19 May 1967 a Committee for the Revision of the Rules of Court, composed of five judges.³

33. Notes on the provisions to be amended were exchanged between the judges from July to November 1967. A draft prepared by Sir Gerald Fitzmaurice served as the basis for the work of the Committee, which met in February 1968 and embodied its initial conclusions and proposals in two reports which were submitted to the Court in April and June 1968. From 1 May to 28 June the Court considered and adopted on first reading the proposed new Rules concerning its composition, the Presidency, its internal functioning and the rules for written and oral proceedings common to all contentious cases.

34. The Committee is at present continuing its work on the other parts of the Rules of Court: rules applicable to particular (incidental) proceedings in contentious cases (measures of interim protection, preliminary objections, etc.), judgements, advisory opinions, the Chambers, the Registry. After the Committee has completed this work, the Court will be in a position to resume its examination of the new Rules of Court. Pending final approval by the Court, the 1946 Rules will remain in force in their entirety.

³ Sir Gerald Fitzmaurice, Mr. Jessup, Mr. Gros, Mr. Ammoun and Mr. Lachs.

C. RESOLUTION CONCERNING THE INTERNAL JUDICIAL PRACTICE OF THE COURT

35. The Resolution concerning the internal judicial practice of the Court, like the Rules of Court, is drawn up in application of Article 30, paragraph 1, of the Statute. It is intended for the use of the Court alone and is concerned with the method by which the Court proceeds in each case to hold its deliberations in private and to prepare its decision.

36. The Permanent Court of International Justice had in this regard adopted in 1931 a resolution, which it had amended in 1936 and which the International Court of Justice had decided to adopt in 1946.

37. On 22 July 1964, the Court set up a Committee of three judges to review the methods and procedures of the Court.⁴ In February 1965, this Committee submitted to the Court a report on the revision of the resolution concerning its judicial practice. The Court considered this report in March 1965, after which the Committee submitted to it a supplementary report which the Court discussed in April 1966 and May 1967. It resumed its consideration of the matter during its last administrative session and reached agreement on 5 July 1968 on the terms of a new resolution.

38. The new resolution, based on many years of experience, is designed to render its deliberations more efficient and more rapid. The full text of the resolution will be found in chapter V of the Court's *Yearbook 1967-1968*.

D. INCOMPATIBILITY OF FUNCTIONS

39. The Statute of the Court contains three Articles (16, 17 and 24) which are relevant to a determination of functions which are incompatible with the office of a judge and of circumstances in which a Member of the Court should refrain from participating in a case.

40. In 1947 a Committee on Incompatibility of Functions composed of three Members of the Court prepared a report, which the Court considered without, however, taking any formal decision. It was agreed that whenever a judge was in doubt as to whether it would be permissible for him to retain or accept certain functions, he might ask for the advice of the President and, if necessary, of the Court. This has in fact occurred on several occasions.

41. In May 1967 the Court considered it necessary to re-examine its practice in the light of present conditions and recent experience. On 10 May it appointed a new Committee of three Members⁵ to study the question and make recommendations to it. The Committee submitted a report in March 1968 which the Court considered during its recent administrative session and adopted on 3 July 1968.

42. The recommendations approved by the Court relate to the following matters: other forms of peaceful settlement of disputes; scientific activities; public function and occupation of a professional nature; private activities.

⁴ Sir Gerald Fitzmaurice, Mr. Jessup and Mr. Gros.

⁵ Sir Gerald Fitzmaurice, Mr. Gros and Mr. Ammoun.

E. RELATIONS OF THE COURT

43. The Court considers that, as the principal judicial organ of the United Nations, it can and should make an important and continuing contribution to the accomplishment of the purposes and principles of the Charter. To attain this objective its true role and its work should be better known and understood. On the other hand the Court realizes that it would be useful for it to follow more closely developments within international organizations and institutions and their work.

44. With this in mind the Court appointed on 28 April 1967 a Committee on Relations⁶ to submit pro-

⁶ Sir Gerald Fitzmaurice, Sir Muhammad Zafrulla Khan, Mr. Ammoun and Mr. Lachs.

posals to it and to draw up a programme of work in this field. After the presentation of a report, which was adopted on 24 May 1968, the Court decided to transform the Committee into a standing committee of the Court.

45. The Committee's report was concerned, in the first place, with the relations of the Court with other international organs and bodies, including the specialized agencies and international conferences, particularly those entrusted with the codification of international law.

46. At the same time, it has been decided to review all the publications and documents issued by the Court, so as to ensure that their scope and distribution meet present needs as fully as possible.

V. PUBLICATIONS OF THE COURT

47. The publications of the Court at present comprise three annual series: *Reports of Judgements, Advisory Opinions and Orders*; *Bibliography* of works and documents relating to the Court; and *Yearbook*. The most recent volumes of the first two series appeared early in 1968 (*I.C.J. Reports 1967*, and *I.C.J. Bibliography No. 21*) and the last volume of the third (*I.C.J. Yearbook 1967-1968*) will appear at the same time as the present report.

48. The Court publishes also, after their final settlement, the documents in each of the cases which are submitted to it (*I.C.J. Pleadings*). Before the close of a case, it may, after obtaining the views of the parties,

communicate the pleadings to the government of any State entitled to appear before the Court which so requests; it may also, with the consent of the parties, make these documents available to the general public after the opening of the oral proceedings.

49. 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. They are sold by the Sales Section of the United Nations Secretariat and may also be obtained from specialized book-sellers and agents throughout the world. A Catalogue of these publications is distributed free of charge and is brought up to date each year.

VI. THE COURT'S PROGRAMME OF WORK

50. The next session of the Court will open at the beginning of October 1968.

(Signed) J. L. BUSTAMANTE
President of the International Court of Justice
The Hague, 1 August 1968

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