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A

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СОТРУДНИЧЕСТВО МЕЖДУ ОРГАНИЗАЦИЕЙ ОБЪЕДИНЕННЫХ НАЦИЙ И АФРО-АЗИАТСКИМ КОНСУЛЬТАТИВНО-ПРАВОВЫМ КОМИТЕТОМ

Письмо Постоянного представителя Непала при Организации Объединенных Наций на имя Генерального секретаря от 24 сентября 1985 года

По поручению моего правительства, выступающего в качестве нынешнего Председателя Афро-азиатского консультативно-правового комитета (ААКПК), имею честь передать Вашему Превосходительству исследование по вопросу о возможной более широкой роли Международного Суда 1/. Данное исследование было проведено ААКПК в целях содействия более широкому применению Суда в контексте резолюции 37/10 Генеральной Ассамблеи, принятой 15 ноября 1982 года, и ее более ранней резолюции 3232 (XXIX), принятой в 1974 году. Данный вопрос обсуждался на двадцать четвертой сессии Комитета, состоявшейся в феврале 1985 года в Катманду, и тогда же Комитет решил просить мое правительство направить Вашему Превосходительству копию этого исследования для распространения по пункту 31 повестки дня Генеральной Ассамблеи.

Джай Пратап РАНА
Постоянный представитель

1/ Имеется только на английском языке.

ANNEX

ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Possible wider use of the Court by agreement of States Parties

Introduction

The General Assembly Resolution 36/38 adopted on the occasion of the twenty-fifth Anniversary of the Asian-African Legal Consultative Committee (AALCC) had envisaged further strengthening of the co-operation between the United Nations and the AALCC as also widening the scope of such co-operation and for this purpose it requested the Secretary-General to carry out consultations with the Secretary-General of the AALCC. In pursuance of the aforesaid resolution, consultations were held for identifying areas where co-operation between the United Nations and the AALCC could be further promoted and one of the areas considered in this context was in relation to possible wider use of the procedures available under the Statute and the revised Rules of the International Court of Justice for settlement of legal disputes amongst States Parties.

The matter was briefly discussed at a Meeting of Legal Advisers of the Member States of the AALCC held at the United Nations in November 1983. The Meeting had recommended that the AALCC Secretariat should prepare a study on the question of possible wider use of the Court by a compromis- where States Parties may so agree and that the study should be presented at the Committee's next Session for consideration.

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It may be stated that even though the International Court of Justice is the principal judicial organ of the United Nations and its Member States are ipso facto parties to the Statute of the Court, there has been considerable reluctance in the matter of accepting the Court's compulsory jurisdiction and even in referring disputes by agreement of parties. Whilst such reluctance can be said to be attributable in some measure to the attitude of a large number of states against acceptance of compulsory procedures, there would appear to be other reasons as well. A broad survey would indicate that whilst the practice of resort to the Court, whether for advisory opinion or in contentious proceedings, was not uncommon during the first two decades of the Court, the later years reveal a lesser number of references being made to the Court and the gradual preference for ad hoc tribunals constituted by agreement of parties for settlement of disputes. Attempts have therefore been made from time to time to enhance the image of the Court and to invite attention of States to consider possibilities of the wider use of the procedures available under the Statute and the Rules of the Court. Steps in this direction had been taken by the Court itself, first in introducing certain amendments in its Rules in 1972[1] and later

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1. The Rules of procedure of the Court were amended on May 10,1972 and came into force on September 1,1972. The amended Rules of the Court were first applied in the Nuclear Test Cases and the Trial of Pakistani Prisoners of War Cases.

in undertaking a revision which was completed in April 1978[2]. The purpose of these amendments and revisions was to make the procedures more flexible and also to allow the possibility of the forum for settlement of disputes being constituted through agreement of parties if they chose to avail of the procedure for their disputes being settled through a Chamber of the Court. In the United Nations itself, after several years of deliberations for enhancing the role of the Court, the General Assembly adopted a resolution on November 12,1974 [3232(XXIX)], inter alia, drawing the attention of the States to the advantage of inserting in treaties, clauses providing for the submission of disputes which may arise from the interpretation or application of such treaties to the International Court of Justice and called upon States to keep under review the possibility of identifying cases in which use could be made of the Court. The same resolution whilst drawing attention to the possibility of making use of Chambers, as provided in Articles 26 and 29 of the Statute and in the Rules of the Court, recommended that the United Nations organs and specialised agencies should study the advisability of referring legal questions that have arisen or may arise in the course of their activities to the Court for advisory opinion. The General Assembly by another resolution on the Peaceful Settlement of Disputes [3283(XXIX)], adopted on December 12,1974, urged Member States to recognise the desirability, inter alia , of studying the possibility of accepting the compulsory jurisdiction of the Court in accordance with Article 36 of its Statute. More

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2. The Rules of procedure were revised on April 14,1978 and entered into force on July 1,1978 and as of that date replaced the Rules adopted in 1946 as amended in 1972. The Rules as amended in 1972, however, continued to apply to one case viz. the Aegean Sea Continental Shelf case as the same had been submitted to the Court before July 1,1978.

recently, the General Assembly by its Resolution (37/10) of November 15,1982, whilst adopting the Manila Declaration on Peaceful Settlement of Disputes, had drawn the attention of States to the facilities offered by the Court for settlement of legal disputes especially since the revision of its Rules. The Manila Declaration had reiterated that recourse to judicial settlement of disputes through the Court should not be considered an unfriendly act between States.

Matters falling within the purview of the Court

The competence of the International Court of Justice to hear and determine cases is regulated by the Statute of the Court and the Rules framed thereunder. These contemplate basically four types of proceedings, namely:-

(i) Advisory opinion under Article 65 of the Statute on any legal question at the request of a body authorised to do so under the Charter of the United Nations;

(ii) Determination of matters specially provided for in the Charter of the United Nations and in treaties or conventions in force which are brought before the Court by means of a written application by a State party to the treaty or convention under Article 36(1) of the Statute;

(iii) Legal disputes referred by States which have made declarations under Article 36(2) of the Statute in relation to any other state which have deposited similar declarations;

(iv) All cases which are referred by parties under a special agreement in accordance with Article 36(1) of the Statute.

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Advisory opinions

Article 65 of the Statute of the Court contemplates that the Court may give advisory opinion on any legal question at the request of a body authorised by or in accordance with the Charter of the United Nations to make such a request. Article 96 of the Charter provides that advisory opinions may be asked of the Court by the General Assembly or the Security Council and other organs of the United Nations and specialised agencies which may at any time be so authorised by the General Assembly on legal questions arising within the scope of their activities.[3]

Uptil now 18 questions have been referred for advisory opinion of the Court which have included a number of matters relating to South West Africa, interpretation of the United Nations Charter as also certain treaties and conventions. Of these, 12 advisory opinions were requested by the General Assembly[4] and one

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3. For a list of the organs of the United Nations and the specialized agencies thereof authorised to seek an advisory opinion of the Court, see International Court of Justice, Yearbook 1982-83(No.37) (hereinafter cited as the I.C.J.Yearbook 1982-83) pp.47-48.

4. The General Assembly has requested 12 advisory opinions of the Court in the following 11 cases: Conditions of Admission of a State of Membership in the United Nations (Article 4 of Charter); Reparation for Injuries Suffered in the Service of the United Nations; Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase; id., Second Phase; Competence of the General Assembly for the Admission of A State to the United Nations; International Status of South West Africa; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide; Effect of Awards of Compensation Made by the United Nations Administrative Tribunal; Voting Procedure on questions Relating to Reports and Petitions concerning the Territory of South West Africa; Admissibility of Hearings of Petitioners by the Committee on South West Africa; Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter); Western Sahara.

each had been solicited by the Security Council[5], the United Nations Educational Scientific and Cultural Organisation (UNESCO)[6], the World Health Organization (WHO)[7], the International Maritime Organization (IMO)[8] and three by the Committee on Application for Review of the United Nations Administrative Tribunal.[9] The third

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5. The Security Council requested an advisory opinion of the Court concerning the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).

6. The Executive Board of UNESCO requested an advisory opinion of the Court concerning Judgments of the Administrative Tribunal of the ILO upon complaints made against UNESCO.

7. The World Health Assembly requested an advisory opinion of the Court concerning Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt.

8. The Assembly of this organization requested an advisory opinion of the Court concerning the Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization.

9. The Committee on Applications for Review of Administrative Tribunal Judgements requested an advisory opinion in the following cases: Application for Review of Judgement No.158 of the United Nations Administrative Tribunal; Application for Review of Judgement No.273 of the United Nations Administrative Tribunal; Application for Review of Judgement No.333 of the United Nations Administrative Tribunal.
See I.C.J. Communique No.84/27 of September 14,1984.

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advisory opinion by the Committee on Application for Review of the United Nations Administrative Tribunal was solicited recently and the matter is now pending before the Court.

Matters specially provided in treaties and conventions

Article 36, paragraph 1 of the Statute of the Court provides for the Court's competence to hear and adjudicate upon all matters specially provided for in treaties and conventions in force[10]. The recently concluded Convention on the Law of the Sea contemplates resort to the International Court of Justice as one of the possible modalities for settlement of disputes relating to the interpretation or application of the Convention (Articles 286 and 287 of the Convention). The Court is also competent to decide disputes arising out of interpretation or application of various instruments relatable to the UN and its specialised agencies.[11]

It would be noticed from a glance at the list of treaties and conventions given in the ICJ Yearbook that the general trend noticeable during the fifties in incorporating a provision in the treaty or convention itself for settlement of disputes concerning

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10. A list of bilateral treaties and multilateral conventions which contain clauses providing for the disputes concerning their application and interpretation are given in the I.C.J.Yearbook No.37, 1982-83 at pp.90-106.

11. For a complete list of categories of instruments providing for the contentious or advisory jurisdiction of the Court see I.C.J. Yearbook 1982-83 pp. 50-55.

interpretation or application of the treaty or convention by the Court had been gradually on the decline. Indeed in almost all multilateral instruments adopted during the sixties in Codification Conferences the provision for possible reference of disputes to the International Court of Justice had to be incorporated and placed in the Optional Protocol thereto. This device was employed, inter alia, in the Vienna Convention on Diplomatic Relations, 1961; the Vienna Convention on Consular Relations, 1963; the Vienna Convention on Law of Treaties, 1969; as also in the International Covenant on Civil and Political Rights[12]. This was in view of the fac that the provision on Court's jurisdiction was not acceptable to a large number of States participating in the Codification Conferences. In fact during the seventies there had been very few treaties which have contained a clause for reference of disputes to the ICJ, and the position has not improved notwithstanding the General Assembly Resolution 3232 (XXIX) which had drawn the attention of States to the advantage of inserting in treaties clauses providing for the submission to the Court of disputes which may arise from the interpretation or application of such treaties.

Legal disputes under Article 36(2) of the Statute

Article 36(2) of the Statute of the Court provides that the States parties may at any time declare that they recognise as compulsory, ipso facto, and without special agreement, in relation

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12. See the Optional Protocol to the International Covenant on Civil and Political Rights, 1966, Annex to General Assembly Resolution 2200 (XXI) of December 16, 1966, adopted by the General Assembly on December 19, 1966.

to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation. Paragraph (3) of this article provides that such declaration may be made unconditionally or on condition of reciprocity on the part of several or certain states or for a certain time. At present there are altogether 47 states[13] which have deposited declarations under the provisions of Article 36(2) of the Statute of the Court[14] that are in force. This includes

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13. Australia, Austria, Barbados, Belgium, Botswana, Canada, Colombia, Costa Rica, Democratic Kampuchea, Denmark, Dominican Republic, Egypt, El Salvador, Finland, Gambia, Haiti, Honduras, India, Israel, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Portugal, Somalia, Sudan, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay. For the text of declarations made by these States recognising jurisdiction of the Court see ICJ Yearbook, No.37, 1982-83, at pages 56-89. Only 24 original signatories to the Charter, and therefore ipso-facto parties to the Statute of the Court, accept the compulsory jurisdiction of the Court in accordance with Article 36 paragraph 2 of the Statute. of the Court. Twenty original members of the United Nations have never accepted, in express terms, the compulsory jurisdiction of the Court.

14. Nine other declarations, whether expressly or by virtue of Article 36, paragraph 5 of the Statute of the Court have expired or been terminated without being subsequently renewed. These were the declarations of Brazil, Bolivia, Taiwan, France, Guatemala, Iran, South Africa, Thailand and Turkey.

18 States in the Asian-African region, namely, Botswana, Cambodia, Egypt, Gambia, India, Japan, Kenya, Liberia, Malawi, Mauritius, Nigeria, Pakistan, Philippines, Somalia, Sudan, Swaziland, Togo and Uganda. Out of these the declarations made by Nigeria and Uganda were practically with no reservations and substantive reservations were contained in the declarations deposited by India, Pakistan, Mauritius and the Philippines. In the remaining cases the declarations contained some reservations.

From the initial stages of the functioning of the Court in 1946 upto the presen: 42 cases[15] had been brought before the

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15. (1) Corfu Channel Case; (2) Fisheries case (U.K. v.Norway) (3) Protection of French Nationals and Protected persons in Egypt; (4) Haya de la Torre; (5) Rights of Nationals of the USA in Morocco; (6) Ambatielos; (7) Anglo-Iranian Oil Company; (8) Nottebohm; (9) Monetary Gold Removed from Rome in 1923; (10) Electricite de Beyrouth Company; (11-12) Treatment in Hungary of Aircraft and Crew of USA; (13) Aerial Incident of March 10,1953; (14-15) Antarctica Cases; (16) Aerial Incident of 7 October 1952; (17) Certain Norwegian Loans; (18) Rights of Passage over Indian Territory; (19) Application of the Convention of 1902 governing the Guardianship of Infants; (20) Interhandel; (21) Aerial Incident of 27 July 1955; (22) Aerial Incident of 27 July 1955 (USA v.Bulgaria); (23) Aerial Incident of 27 July 1955 (U.K. v.Bulgaria); (24) Arbitral Award made by the King of Spain on 23 September 1906; (25) Aerial Incident of 4 September 1954; (26) Barcelona Traction, Light and Power Co. Ltd.,; (27) Campagnie do port, des Quais et des Entrepots de beyrouth and Societe radio orient; (28) Aerial Incident of 7 November 1954; (29) Temple of Preah Vihear; (30-31) South West Africa; (32) Northern Cameroons; (33) Barcelona Traction, Light and Power Company Limited (New Application, 1962); (34) Jurisdiction of the ICAO Council (India v.Pakistan); (35-36) Fisheries Jurisdiction (UK v.Iceland, FRG v.Iceland); (37-38) Nuclear Test Cases (Australia v.France)(New Zealand v. France); (39) P.O.W.Case (India v.Pakistan); (40)Aegear Sea Continental Shelf Case (Greece v.Turkey); (41) Diplomatic and Consular Staff in Iran (USA v.Iran); (42) Nicaragua v.USA.

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Court, as contentious proceedings apart from those by virtue of special agreements. Out of these in eight cases the Court found that it could take no further steps upon the application as it was admitted by the applicant state that the opposing party did not accept the Court's jurisdiction[16]. In eight other cases the question of jurisdiction was raised or the opposite party did not enter an appearance, but the Court had proceeded to judgment either upholding or denying jurisdiction.[17]

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16. In the following eight cases, the Court found that it could take no further steps upon an Application in which it was admitted that the opposing party did not accept its jurisdiction. Treatment in Hungary of Aircraft and Crew of United States of America (United States v.Hungary) (United States v. USSR); Aerial Incident of 10 March 1953 (United States v. Czechoslovakia); Antarctica (United Kingdom v. Chile and United Kingdom v. Argentina); Aerial Incident of 7th October 1952 (United States v. USSR); Aerial Incident of 4 September 1954 (United States v. USSR); Aerial Incident of 7 November 1954 (United States v. USSR).

17. Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan); Fisheries Jurisdiction (United Kingdom v. Iceland; FRG v. Iceland); Nuclear Tests (Australia v. France; New Zealand v. France); Trial of Pakistani Prisoners of War (India v. Pakistan); Aegean Sea Continental Shelf (Greece v. Turkey) and the United States Diplomatic and Consular Staff in Tehran (USA v. Iran)

It would be noticed that out of the 42 contentious proceedings filed with the Court more than one half were instituted during the decade, 1950 - 1960, whereas in the decade following only four cases were instituted.[18] In the seventies a total of ten cases were instituted.[19] Since the second half of the past decade, the Court was concerned only with two contentious proceedings instituted without special agreement. In one case the Court held that it had no jurisdiction[20] and in the other case the Court gave judgment in favour of the applicant in the absence of the opposite party.[21]

Cases referred to the Court by agreement of parties

Article 36, paragraph 1 of the Statute provides for the competence of the Court to decide all cases which the parties refer to it. Such cases normally come before the Court by notification to the registry of an agreement known as the Compromis or 'Special agreement' concluded by the parties specially for the purpose. There have so far been nine cases which have been submitted to the Court by means of a special

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18. South West Africa (Ethiopia v. South Africa and Liberia v. South Africa); Northern Cameroons (Cameroon v. United Kingdom); Barcelona Traction, Light and Power Company Limited (New Application , 1962) (Belgium v. Spain) and Continental Shelf cases (FRG v. Denmark, FRG v. Netherlands)

19. Appeal Relating to the ICAO Council (India v. Pakistan); Fisheries Jurisdiction Case (UK v. Iceland; FRG v. Iceland) Trial of Pakistani Prisoners of War (India v. Pakistan) Nuclear Test Cases (Australia v. France; New Zealand v. France); Aegean Sea Continental Shelf Case (Greece V.Turkey); and United States Diplomatic and Consular Staff in Tehran (USA v. Iran)

20. See the Aegean Sea Continental Shelf Case (Greece v.Turkey).

21. United States Diplomatic & Consular Staff in Tehran (USA v. Iran)

agreement, namely:-

Asylum (Colombia/Peru)	1949-1950
Minquiers and Ecrehos (France/United Kingdom)	1951-1953
Sovereignty over Certain Frontier Land (Belgium/Netherlands)	1957-1959
North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)	1967-1969
Continental Shelf (Tunisia/Libyan Arab Jamahiriya)	1978-1982
Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) (Case referred to a Chamber)	1981-1984
Continental Shelf (Libyan Arab Jamahiriya/ Malta)	1982
Settlement of Land Boundaries between Upper Volta and Mali (case referred to a Chamber)	September 1983

It would be noticed that out of the nine cases three were instituted during the past six years. In two of these cases a member state of the AALCC is a party.

Recommendation of the Legal Advisers

The Meeting of Legal Advisers, after a general review of the prevailing trend in the attitude of states towards possible resort to the International Court of Justice, considered that for the present it would be more fruitful to concentrate thinking on the possibility of references being made to the Court by agreement of states parties. In this connection the meeting took note of the fact that a number of states in recent years had concluded

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agreements referring disputes for settlement by ad hoc tribunals over a wide range of matters. It was felt that if the Governments could be convinced of the Court being an equally efficacious forum for the purpose, it might be possible to promote a wider use of the facilities offered by the Court. The meeting also noted that the revised Rules of the Court contemplated the possibility of a forum of parties' choice if they were agreed upon their disputes being settled by a Chamber of the Court, which was amply borne out by the constitution of the Chamber in the Gulf of Maine case (United States vs. Canada). The Legal Advisers were of the view that this was a matter which should be brought specifically to the notice of governments and that a paper should be prepared bringing out the relative advantages that may ensue by resort to the Court in preference to ad hoc tribunals.

Cases referred to ad hoc tribunals

It is not possible to monitor all cases where states have resorted to ad hoc tribunals for settlement of their disputes since little publicity is attached to some of the cases or they are not considered sufficiently important to be commented upon in the legal literature. Moreover, the broadening of governmental functions in areas which do not fall strictly within the domain of public international law makes it difficult to trace those classes of cases where a governmental organ is nominated as party to the dispute and not the state itself. Among the disputes submitted to ad hoc tribunals either in accordance with the provisions of a special agreement concluded by the parties for the purpose or in accordance with the provisions of an earlier agreement providing for settlement of disputes by arbitration since the year 1955, the following may be regarded as more

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important:

(a) France, Great Britain and the United States of America vs. Federal Republic of Germany, 1955-1969

Issue: Property, Rights and Interests in Germany.

(b) Argentina - Chile Frontier Arbitration, 1965-66

Issue: Boundary

(c) Lac Lanoux Arbitration, 1957

Issue: Use of International Rivers

(d) Italy vs. United States of America, 1965

Issue: Interpretation of Air Transport Service Agreement of February 6, 1948.

(e) Great Britain v. European Atomic Energy Community, 1966

Issue: Taxation liability of European Employees working in the United Kingdom.

(f) Rann of Kutch (India v. Pakistan) Award, 1965

Issue: Territorial Dispute.

(g) Canada v. United States of America, 1968

Issue: Claims of United States citizens for real and property damage occurred along the South shore of Lake Ontario ("Gut Dam").

(h) Kingdom of Greece v. Federal Republic of Germany, 1972

Issue: Claims originating from judgments of the Greek-German Arbitral Tribunal.

(i) Austria - Germany Award, 1972

Issue: Interpretation of Treaty.

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(j) France - United States Air Transport Arbitration 1963 - 1978 (in two phases)

1st Award in 1963; and

2nd Award in 1978.

(k) Rio-Encventro, 1965-68

(l) Beagle Channel Arbitration, (Argentina-Chile)

(m) France - British Continental Shelf Arbitration, 1978

(n) Dubai - Sharjah Frontier Delimitation Arbitration

(o) Young Plan Loan Arbitration (Federal Republic of Germany v. Belgium, France, United Kingdom and the United States of America, 1980.

(p) Iran-United States of America Arbitration

(On going)

Issue: Settlement of claims.

It may be stated that the disputes referred to the Iran - US Claims Tribunal, established as a part of the package contained in the Algiers Accords of 19 January 1981[22] are voluminous in number[23] and the Tribunal constituted is basically in the

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22. For the text of the Agreement see International Legal Materials vol.20 (1981). Also reprinted in Indian Journal of International Law, vol.23(1983), p.615.

23. The caseload of the Iran - United States Claim Tribunal numbered over 4,000 as of late 1983, including 20 interpretive disputes, 100 official claims between the two governments for breach of contract, 445 bank claims, 650 claims each of US $ 250,000 or more, and 2,795 claims for less than US $ 250,000 each which the Department of State filed on behalf of US nationals and several hundred claims by Iran and Iranian nationals.

nature of a Claims Commission.[24]

Some General Observations

It would be noticed that in all the cases mentioned above, the issues were basically of a legal nature and the tribunals constituted were composed of persons with legal background and experience. Indeed, in at least two of these cases the Tribunal was composed of sitting Judges of the International Court of Justice. It may well be that the parties concerned had chosen to have recourse to ad hoc procedures in order to have a tribunal of their own choosing and also perhaps due to the fact that a coram of three to five Judges might be more appropriate to deal with individual disputes than a full Court of fifteen Judges. The Rules of the Court appeared to have taken such factors into consideration as practical realities in contemplating that a dispute referred to the Court may be heard by a Chamber composed of five to seven Judges and also in providing in the revised version of the Rules for the parties to have a say in the selection of the Chamber. The experience with some of the ad hoc procedures in more recent cases has given rise to some thinking whether it might not be more advantageous to have recourse to the International Court of Justice under a special agreement especially under the Chamber

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24. It is the first mixed Claims Commission in which the United States has participated since World War II. See David P.Steward & Laura B.Sherman: "Developments at the Iran-United States Claims Tribunal: 1981-83" in Virginia Journal of International Law, Vol.24 No.1(1983) p.1 at 7. Also see Davis R.Robinson: "Recent Developments at the Iran-United States Claims Tribunal" in International Lawyer, Vol.17 (1983), p.661 et seq.

procedure where the parties may now have a choice in the constitution of the Chamber under the revised Rules of the Court. This would appear to be borne out by the agreement reached between the USA and Canada to have recourse to the Court for delimitation of their maritime boundaries in the Gulf of Maine and by request made to the Court in 1981 for the constitution of a Chamber in accordance with Article 26, paragraph 2 of the Statute of the Court and the revised Rules of procedure thereof. A similar request would also appear to have been made by Mali and Upper Volta in September 1983. There has been some criticism about the manner in which the Chamber of the Court was constituted in the Gulf of Maine case but the comments made on that score would not seem to detract in any way from the viability of the Chamber procedure for settlement of disputes where the parties resort to the Court by special agreement and request for the constitution of a Chamber.

Before embarking on a discussion about the relative merits as between ad hoc procedures and an approach to the Court under its revised Rules, it may be pertinent to point out that the main drawback, which has been experienced with ad hoc procedures, relate to delays in proceedings and the finality of the award. In addition, such factors as unduly heavy costs, choice of applicable rules and in some cases the difficulty in the matter of selection of arbitrators have posed serious problems. For example, in the Beagle Channel Arbitration it had taken more than six years for the award to be made after the parties, Argentina and Chile, had reached an agreement on July 22, 1971 to have their disputes settled through arbitration. After the award was announced on April 18,1977, one of the parties decided to denounce the award as null and void under international law.

The parties then went to the mediation of His Holiness the Pope John Paul II and the matter was finally resolved through a bilateral treaty signed on 28th October 1984[25]. In the Iran-US Arbitration, which has already lasted for four years, the end is yet nowhere in sight, the proceedings being stalled from time to time by resignation of arbitrators and various forms of procedural delays. Even in the cases where awards have been made, they have been the subject matter of challenge before municipal courts.

Applicable procedures under the Rules of the Court

It might be appropriate at this stage to refer briefly to the applicable procedures before the International Court of Justice in cases where recourse is sought to the Court by agreement of parties which have direct relevance to the question of time element in proceedings, finality of the judgment and the costs involved.

(i) The Rules of the Court contemplate a special agreement or compromis concluded between the parties and the same being filed with the Registry of the Court.[26]

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25. See United Nations News letter, Vol.35, No.38, UNIC, New Delhi, November 3,1984.

26. See Article 40 of the Statute of the Court and Articles 39,40, paragraphs 2 & 3 of the Rules of Procedure of the Court in ICJ Acts and Documents, No.4 (1978).

No fees are required to be paid nor any deposit of costs to be made for instituting the proceedings.

(ii) Simultaneously with the filing of the compromis with the Registry each of the parties is required to appoint its Agent for the purpose of representing it before the Court in the proceedings.[27] The Agent so appointed is usually the diplomatic representative of the country at the Hague or an official of the Ministry of Foreign Affairs.

(iii) After an Agent has been duly nominated by both the parties, an approach might be made to the President of the Court if it is desired that the matter should be heard by a Chamber of the Court. It may be stated that unless such a request is made the case would need to be heard by the full Court of fifteen Judges. Even though it may be possible to make a request at a later stage of proceedings until the closure of the written proceedings[28] and before the oral hearings commence, it would be desirable to do so at the earliest stage in order to ensure a better streamlining of the proceedings. It would be for consideration of the parties whether to have recourse to a Chamber or to allow the normal procedure to take its course. Whilst it might be desirable to contemplate a case to be heard by the full Court, in cases where questions of international law need to be authoritatively settled, it might be thought more appropriate to have resort to a Chamber where principles already settled are to be applied in a

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27. See Article 42 of the Statute of the Court and Article 40, paragraph 3 of the Rules of Procedure of the Court.

28. See Article 17, paragraph 1 of the Rules of Procedure of the Court.

particular dispute. There may be also other reasons for which the parties may have their preference for the case to be heard by a Chamber, particularly where they desire a smaller forum or to have a say in the constitution of the forum. It may be mentioned that the Statute of the Court envisages constitution of three types of Chambers, namely:-

(a) Special Chamber of summary procedures;[29]

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29. The Chamber of Summary Procedure is to be constituted in accordance with the provisions of Article 29 of the Statute of the Court. There is a fundamental difference between the special Chamber of Summary Procedure constituted in accordance with Article 29 of the Statute of the Court and the Chambers constituted under Article 26 of the Statute of the Court and Articles 16 and 17 of the Rules of Procedure of the Court. It is mandatory that the Court form the Chamber of Summary Procedure for Article 29 of the Statute provides in part:

> "(T)he Court shall form annually a Chamber of Summary Procedure composed of five judges which at the request of the parties, may hear and determine cases by summary procedure ...." (Emphasis added).

And further Article 15 paragraph 1 of the Rules of the Court, provides inter alia:

> "The Chamber of Summary Procedure to be formed annually under Article 29 of the Statute shall be composed of five members of the Court comprising the President and Vice-President of the Court, acting ex-officio, and three other members elected in accordance with Article 18, paragraph 1, of these Rules....."

The Constitution of Chamber of Summary Procedure then is compulsory and this Chamber for a long time remained to be the only Chamber constituted by the Court. Albeit this Chamber is constituted annually with a view to the speedy dispatch of business, the Court has yet to receive an application praying for speedier dispatch by summary procedure.

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(b) Chambers constituted for dealing with particular categories of cases;[30]

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30. Albeit the Statute of the Court(has since 1945) envisaged and provided for the composition of Chambers for dealing with a particular category of cases, e.g. labour cases and cases relating to transit and communications or a particular case the Rules of Procedure as adopted in May 6,1946 left the matter of constitution of these types of Chambers entirely upto the Court and did not envisage, let alone recognize, the role of State parties in constitution of such Chambers, particularly the Chamber to be constituted to deal with a particular case. This the Rules of Procedure of the Court as amended on May 10, 1972 and then revised on April 14, 1978 did.

Article 26 paragraph 1 of the Court stipulates inter alia that the Court may, from time to time, form one or more Chambers, composed of three or more judges as the Court may determine for dealing with particular categories of cases .... Accordingly Article 16, paragraph 1 of the Rules of Procedure of the Court lays down that where the Court decides to form one or more of the Chambers provided for in Article 26 paragraph 1 of the Statute it shall determine the particular category of cases for each Chamber is constituted, the numbers of its members the date on which they will enter upon their duties and the period for which they will serve. In electing members of Chambers from among the Members of the Court, formed for a particular category of cases due regard is to be had to any special knowledge, expertise or previous experience which any member of the Court may have in relation to the category of case for which the Chamber is being formed to deal with.

The pith and substance of the foregoing is that it is within the purview of the Court to determine the category of cases to deal with which case or cases a Chamber or Chambers as the case may be formed or constituted. Further, the Court having decided to form a Chamber or Chambers, as the case may be, to deal with a particular case or cases it is for the Court to determine the number of members which shall constitute the Chamber etc. Although it is within the discretion of the Court to determine the categories of cases to deal with which a Chamber may be constituted it would be entirely erroneous to infer that Chambers may be constituted only to deal with labour cases and disputes involving transport and communications. These categories of cases have been listed in the Statute by way of illustration and are not intended to limit the discretion of the Court in determining the category of cases for which the Chamber may be constituted.

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(c) Ad hoc Chambers constituted for dealing with a particular case.

Of these, the last category would probably seem to be more suited if it is desired to have resort to a Chamber for settling a dispute which had been referred to the Court by means of a compromis. In the event of the parties being agreed that the dispute referred should be heard by an ad hoc Chamber, its constitution would be governed by the provisions of Article 17 of the revised rules of the Court, the relevant clauses of which provide as follows:

> "2. When the parties have agreed, the President shall ascertain their views regarding the composition of the Chamber, and shall report to the Court accordingly. He shall also take such steps as may be necessary to give effect to the provisions of Article 31, paragraph 4, of the Statute.
>
> 3. When the Court has determined, with the approval of the parties, the number of its Members who are to constitute the Chamber, it shall proceed to their election, in accordance with the provisions of Article 18, paragraph 1, of these Rules. The same procedure shall be followed as regards the filling of any vacancy that may occur on the Chamber.
>
> 4. Members of a Chamber formed under this Article who have been replaced, in accordance with Article 13 of the Statute following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached."

It would be seen that in the constitution of an ad hoc Chamber, the parties referring the dispute would have an adequate voice and indeed in the Gulf of Maine case all the members of the Court constituting the Chamber had

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been selected at the instance of the parties.[31]

(iv) Soon after the parties have entered an appearance before the Court it is expected that a time limit would be set by the Court for filing of their respective pleadings.[32] In the event a request is to be made for the matter to be heard by a Chamber, such pleadings would be confined to the filing of a memorial and counter-memorial, that is to say, one set of pleadings by each party.[33] But if a request for a Chamber has not been made, the parties would also be entitled to file their replies to the memorial and counter-memorial[34], but this would be dispensed with when the matter is to be heard by a Chamber. It is not obligatory that the pleadings shall be in printed form unless the parties so agree or the Court directs to that effect.

(v) After the pleadings by the parties have been completed, a date would be set for oral hearing whether it is before the full Court or a Chamber of the Court[35]. At the oral hearings, the Agents appointed by the parties will appear and they may be assisted by counsel.[36]

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31. See ICJ Communique No.82/1 of 26 January 1982.

32. Article 92 of the Rules of Procedure of the Court.

33. Ibid. paragraph 1

34. This is so because the proceedings would in that event be governed by the Rules of Procedure applicable to contentious cases. See Part III of the Rules of the Court: Proceedings in Contentious cases particularly Articles 44 to 53.

35. The oral proceedings may be dispensed with if the parties so agree and the Chamber of the Court consents. See Article 92, paragraph 3 of the Rules of Procedure of the Court.

36. See Article 42 of the Statute of the Court. Also see note 27 and accompanying text.

(vi) At the completion of the oral hearing the judgment will follow and it would be delivered on a date to be set for the purpose. The judgment delivered by a Chamber has the same effect as the judgment of the full court.[37] The judgment is binding on the parties[38].

The procedures set above may be modified by agreement of parties, for example, they may do away with oral hearings altogether[39] and they may even propose to modify the rules of the Court regarding the pleadings to be filed by the parties.[40]

An impression has some how or other gained ground over the years that the proceedings before the International Court of Justice are of so complex a nature that they can be handled only by European experts as a result of which governments are found vying with each other in engagement of the services of lawyers from the European capitals for preparation of their pleadings and particularly for presentation of oral arguments. It needs to be emphasised that the proceedings before the Court could in most cases be handled by the parties' own legal experts and once this is understood and accepted the proceedings before the Court would cease to be a nightmare in terms of legal costs which it has been for some years.

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37. Article 27 of the Statute of the Court.

38. Article 59 of the Statute and Article 94, paragraph 2 of the Rules of the Court.

39. Article 92, paragraph 3 of the Rules of procedure of the Court.

40. See the provisions of Article 101 of the Rules of procedure of the Court.

Relative merits of ad hoc tribunal and Chamber procedure of ICJ

Turning now to the respective merits as between ad hoc arbitration and recourse to the International Court of Justice in so far as Governments are concerned, the following may be mentioned:

(i) Composition of the forum

One of the principal reasons behind the attitude of governments in favour of ad hoc procedures is the general reluctance to any form of compulsory jurisdiction and to have their disputes settled by tribunals of their own choice. This may now be taken care of in relation to the International Court of Justice by reason of the fact that if the parties agree on the dispute being settled by an ad hoc Chamber under the Statute and the Rules of the Court, the parties themselves would have a clear voice in the constitution of the Chamber. In the matter of constitution of ad hoc tribunals, it is generally the case that a third of the number of members be nominated by each of the parties, whilst the remaining number are to be appointed by agreement of parties, failing which by a designated authority. The appointment of "neutral members" has at times presented problems leading to delay in commencing or continuation of proceedings. On the other hand, if a Chamber of the Court is preferred, the appointment of the members would be governed by specific rules, which while allowing a sufficient say to the parties, would ensure constitution of a Chamber without delay. Even though the choice is to be made out of the fifteen Judges constituting the Court, it is to be noted that they have all been selected by an elective process to ensure their eminence, integrity

and impartiality[41]. In fact in two recent cases the ad hoc tribunals have been constituted with the sitting judges of the Court.

(ii) Rules of Procedure

One of the matters which has proved to be time consuming in ad hoc procedures is for the members of the Court and the parties to reach agreement on the procedural and substantive rules to be applied in the proceedings. In one case where the parties had agreed upon the application of the UNCITRAL Arbitration Rules, which are primarily meant for application in commercial matters, frequent procedural wrangles have set at naught the expedition that was required[42]. Even in the case of ad hoc tribunal contemplated in the Law of the Sea Convention, it is provided that the tribunal shall determine its rules and procedures assuring to each party a full opportunity to be heard and to present its case[43]. These difficulties could be avoided if a recourse is

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41. See Articles 4 to 17 of the Statute of the Court.

42. The Iran-United States Arbitral Tribunal. In fact the Iran-US Arbitral Tribunal is the first to function under the UNCITRAL Rules - with modifications to conform those rules to the special circumstances of this arbitration. See Stewart & Sherman op. cit note 16. Also see Robinson op.cit note 16.

43. The provisions of Articles 287(1)(c) and (d) of the Law of the Sea Convention, contemplate the constitution of two Arbitral Tribunals. An Arbitral Tribunal constituted in accordance with Annex VII and a special Arbitral Tribunal constituted in accordance with Annex VIII of the Convention. Article 5 of Annex VII (Arbitration) lays down inter alia that the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case. Article 4 of Annex VII applies mutatis mutandis to the special arbitral tribunal constituted in accordance with Annex VIII of the Convention. This is so stipulated in Article 4 of Annex VIII of the Law of the Sea Convention, 1982.

made to a Chamber of the Court where specific rules could be applied unless the parties agree upon a procedure which they would wish to be followed in preference to those indicated in the Rules.

(iii) Place of proceedings

One of the arguments advanced in favour of ad hoc procedures is that the parties may choose their own venue for arbitration and it would not be necessary to have recourse to any fixed place. This is also possible if recourse is made to a Chamber of the Court under Article 28 of the Statute of the International Court of Justice.[44] In any event, experience shows that even in the case of ad hoc tribunals the places preferred by parties are usually the European capitals.

(iv) Custody of records

Experience has shown that in cases of ad hoc procedures, a Secretariat needs to be established for custody of records, filing of documents and provision of secretarial service for the tribunal. Establishment of a secretariat invariably leads to enormous expenditure which could be avoided by reference to a Chamber of the Court.

(v) Finality of the proceedings

It has been seen that among a number of cases where ad hoc procedures have been resorted to, there has been no means to ensure the finality of the award. In the Beagle Channel case

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44. Article 28 of the Statute reads "The Chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague."

the award was denounced by one of the parties as null and void; in the Iran-US Arbitration, awards have been challenged before municipal courts and even in the Rann of Kutch Award Case there were proceedings before municipal courts for the declaration of the nullity of the Award. In the event of the parties choice in favour of the Court, finality of the judgment is clearly assured under the terms of the Statute of the Court[45] and in this connection it may be mentioned that the judgment of a Chamber has the same status as the judgment of the Court itself[46].

(vi) Costs

The cost element may perhaps appear to be the dominant factor in favour of resort to the Chamber proceedures of the Court in so far as the countries in the Asian-African region are concerned. It is a matter within common knowledge that if an ad hoc tribunal is to be constituted with legal experts of repute, large sums would need to be paid by way of their fees and expenses. At the prevailing rates of fees, no arbitrator would seem to be willing to serve without a fee ranging between US $ 1000 and US $ 2000 per diem. Even in the case of long-term appointments such as in the Iran-US Arbitral Tribunal, the fees paid to the arbitrators are in the range of US $ 100,000 to 120,000 per annum. In addition a Secretariat, whose size would vary according to the work-load in the arbitration,

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45. Article 60 of the Statute of the Court stipulates that "The judgment is final and without appeal. In the event of a dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

46. See Article 27 of the Statute. Also see Note 37 supra and accompanying text.

would also be needed to be financed to service the Tribunal. These enormous costs can be completely avoided if Chamber procedures of the International Court of Justice were availed of.

Further should a case before the Court or a Chamber thereof require the services of assessors and experts the Statute and Rules of Procedure of the Court provides that assessors may participate in the Court's judicial deliberations. The assessors, however, have no right to vote.[47] Witnesses and experts who appear at the instance of the Court to conduct an enquiry or to give an expert opinion are paid out of the funds of the Court[48].

Conclusion

In sum the submission of a dispute to a chamber of the Court has the following merits vis-a-vis seeking settlement by ad hoc arbitration. The parties are afforded as much, if not more, recognition in the constitution of the Chamber as they are in the composition of an arbitral tribunal or court of arbitration. Secondly, the specific rules of procedure to be applied are clear and distinct and are not left to be determined by the arbitral tribunal. The parties can save the enormous expenses involved in the fees of the arbiters and experts and in the establishment and maintenance of a Secretariat. The Registry of the Court

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47. See Article 30, paragraph 2 of the Statute and Articles 9 and 21, paragraph 2 of the Rules of the Court.

48. See in this regard the provisions of Article 43, paragraph 5 and Article 51 of the Statute and Articles 58 paragraph 2, Articles 62-65 and 68 of the Rules of the Court.

ensures custody of records. The place of proceedings may be elsewhere than at the Hague and finally the judgment is final and binding on the parties.

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Annexure I

RULES OF COURT ADOPTED ON 14 APRIL 1978[1]

PART I: THE COURT - SECTION 'C': THE CHAMBERS

Article 15

1. The Chamber of Summary Procedure to be formed annually under Article 29 of the Statute shall be composed of five Members of the Court, comprising the President and Vice-President of the Court, acting ex officio, and three other members elected in accordance with Article 18, paragraph 1, of these Rules. In addition, two Members of the Court shall be elected annually to act as substitutes.

2. The election referred to in paragraph 1 of this Article shall be held as soon as possible after the sixth of February in each year. The members of the Committee shall enter upon their functions on election and continue to serve until the next election; they may be re-elected.

3. If a member of the Chamber is unable, for whatever reason, to sit in a given case, he shall be replaced for the purposes of that case by the senior in precedence of the two substitutes.

4. If a member of the Chamber resigns or otherwise ceases to be a member, his place shall be taken by the senior in precedence of the two substitutes, who shall thereupon become a full member of the Chamber and be replaced by the election of another substitute. Should vacancies exceed the number of available substitutes, elections shall be held as soon as possible in respect of the vacancies still existing after the substitutes have assumed full membership and in respect of the vacancies in the substitutes.

Article 16

1. When the Court decides to form one or more of the Chambers provided for in Article 26, paragraph 1, of the Statute, it shall determine the particular category of cases for which each Chamber is formed, the number of its members, the period for which they will serve, and the date at which they will enter upon their duties.

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1. International Court of Justice: Acts and Documents concerning the Organization of the Court, No. 4, 1978, p.93 et. seq.

2. The members of the Chamber shall be elected in accordance with Article 18, paragraph 1, of these Rules from among the Members of the Court, having regard to any special knowledge, expertise or previous experience which any of the Members of the Court may have in relation to the category of case the Chamber is being formed to deal with.

3. The Court may decide upon the dissolution of a Chamber, but without prejudice to the duty of the Chamber concerned to finish any cases pending before it.

Article 17

1. A request for the formation of a Chamber to deal with a particular case, as provided for in Article 26, paragraph 2, of the Statute, may be filed at any time until the closure of the written proceedings. Upon receipt of a request made by one party, the President shall ascertain whether the other party assents.

2. When the parties have agreed, the President shall ascertain their views regarding the composition of the Chamber, and shall report to the Court accordingly. He shall also take such steps as may be necessary to give effect to the provisions of Article 31, paragraph 4, of the Statute.

3. When the Court has determined, with the approval of the parties, the number of its Members who are to constitute the Chamber, it shall proceed to their election, in accordance with the provisions of Article 18, paragraph 1, of these Rules. The same procedure shall be followed as regards the filling of any vacancy that may occur on the Chamber.

4. Members of a Chamber formed under this Article who have been replaced, in accordance with Article 13 of the Statute following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.

Article 18

1. Elections to all Chambers shall take place by secret ballot. The Members of the Court obtaining the largest number of votes constituting a majority of the Members of the Court composing it at the time of the election shall be declared elected. If necessary to fill vacancies, more than one ballot shall take place, such ballot being limited to the number of vacancies that remain to be filled.

2. If a Chamber when formed includes the President or Vice-President of the Court, or both of them, the President or Vice-President, as the case may be, shall preside over that Chamber. In any other event, the Chamber shall elect its own president by secret ballot and by a majority of votes of its members. The Member of the Court who, under this paragraph, presides over the Chamber at the time of its formation shall continue to preside so long as he remains a member of that Chamber.

3. The president of a Chamber shall exercise, in relation to cases being dealt with by that Chamber, all the functions of the President of the Court in relation to cases before the Court.

4. If the president of a Chamber is prevented from sitting or from acting as president, the functions of the presidency shall be assumed by the member of the Chamber who is the senior in precedence and able to act.

SECTION C. PROCEEDINGS BEFORE THE COURT

Subsection 1. Institution of Proceedings

Article 38

1. When proceedings before the Court are instituted by means of an application addressed as specified in Article 40, paragraph 1, of the Statute, the application shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute.

2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.

3. The original of the application shall be signed either by the agent of the party submitting it, or by the diplomatic representative of that party in the country in which the Court has its seat, or by some other duly authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent authority of the applicant's foreign ministry.

4. The Registrar shall forthwith transmit to the respondent a certified copy of the application.

5. When the applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case.

Article 39

1. When proceedings are brought before the Court by the notification of a special agreement, in conformity with Article 40, paragraph 1, of the Statute, the notification may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to the other party.

2. In each case the notification shall be accompanied by an original or certified copy of the special agreement. The notification shall also, in so far as this is not already apparent from the agreement, indicate the precise subject of the dispute and identify the parties to it.

Article 40

1. Except in the circumstances contemplated by Article 38, paragraph 5, of these Rules, all steps on behalf of the parties after proceedings have been instituted shall be taken by agents. Agents shall have an address for service at the seat of the Court to which all communications concerning the case are to be sent. Communications addressed to the agents of the parties shall be considered as having been addressed to the parties themselves.

2. When proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, shall inform the Court of the name of its agent.

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3. When proceedings are brought by notification of a special agreement, the party making the notification shall state the name of its agent. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification, or as soon as possible thereafter, shall inform the Court of the name of its agent if it has not already done so.

Article 41

The institution of proceedings by a State which is not a party to the Statute but which, under Article 35, paragraph 2, thereof, has accepted the jurisdiction of the Court by a declaration made in accordance with any resolution adopted by the Security Council under that Article[1], shall be accompanied by a deposit of the declaration in question, unless the latter has previously been deposited with the Registrar. If any question of the validity or effect of such declaration arises, the Court shall decide.

Article 42

The Registar shall transmit copies of any application or notification of a special agreement instituting proceedings before the Court to: (a) the Secretary-General of the United Nations; (b) the Members of the United Nations; (c) other States entitled to appear before the Court.

Article 43

Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.

Subsection 2. The Written Proceedings

Article 44

1. In the light of the information obtained by the President under Article 31 of these Rules, the Court shall make the necessary orders to determine, inter alia, the number and the order of filing of the pleadings and the time-limits within which they must be filed.

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1. The resolution now in force was adopted on 15 October 1946

2. In making an order under paragraph 1 of this Article, any agreement between the parties which does not cause unjustified delay shall be taken into account.

3. The Court may, at the request of the party concerned, extend any time-limit, or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid, if it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views.

4. If the Court is not sitting, its powers under this Article shall be exercised by the President, but without prejudice to any subsequent decision of the Court. If the consultation referred to in Article 31 reveals persistent disagreement between the parties as to the application of Article 45, paragraph 2, or Article 46, paragraph 2, of these Rules, the Court shall be convened to decide the matter.

Article 45

1. The pleadings in a case begun by means of an application shall consist in the following order, of: a Memorial by the applicant; a Counter-Memorial by the respondent.

2. The Court may authorize or direct that there shall be a Reply by the applicant and a Rejoinder by the respondent if the parties are so agreed, or if the Court decides, proprio motu or at the request of one of the parties, that these pleadings are necessary.

Article 46

1. In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Court, after ascertaining the views of the parties, decides otherwise.

2. If the special agreement contains no such provision, and if the parties have not subsequently agreed on the number and order of pleadings, they shall each file a Memorial and Counter-Memorial, within the same time-limits. The Court shall not authorize the presentation of Replies unless it finds them to be necessary.

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Article 47

The Court may at any time direct that the proceedings in two or more cases be joined. It may also direct that the written or oral proceedings, including the calling of witnesses, be in common; or the Court may, without effecting any formal joinder, direct common action in any of these respects.

Article 48

Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits.

Article 49

1. A Memorial shall contain a statement of the relevant facts, a statement of law, and the submissions.

2. A Counter-Memorial shall contain: an admission or denial of the facts stated in the Memorial; any additional facts, if necessary; observations concerning the statement of law in the Memorial; a statement of law in answer thereto; and the submissions.

3. The Reply and Rejoinder, whenever authorized by the Court, shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.

4. Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.

Article 50

1. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of the contentions contained in the pleading.

2. If only parts of a document are relevant, only such extracts as are necessary for the purpose of the pleading in question need be annexed. A copy of the whole document shall be deposited in the Registry, unless it has been published and is readily available.

3. A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

Article 51

1. If the parties are agreed that the written proceedings shall be conducted wholly in one of the two official languages of the Court, the pleadings shall be submitted only in that language. If the parties are not so agreed, any pleading or any part of a pleading shall be submitted in one or other of the official languages.

2. If in pursuance of Article 39, paragraph 3, of the Statute a language other than French or English is used, a translation into French or English certified as accurate by the party submitting it, shall be attached to the original of each pleading.

3. When a document annexed to a pleading is not in one of the official languages of the Court, it shall be accompanied by a translation into one of these languages certified by the party submitting it as accurate. The translation may be confined to part of an annex, or to extracts therefrom, but in this case it must be accompanied by an explanatory note indicating what passages are translated. The Court may however require a more extensive or a complete translation to be furnished.

Article 52[1]

1. The original of every pleading shall be signed by the agent and filed in the Registry. It shall be accompanied by a certified copy of the pleading, documents annexed, and any translations, for communication to the other party in accordance with Article 43, paragraph 4, of the Statute, and by the number of additional copies required by the Registry, but without prejudice to an increase in that number should the need arise later.

2. All pleadings shall be dated. When a pleading has to be filed by a certain date, it is the date of the receipt of the pleading in the Registry which will be regarded by the Court as the material date.

3. If the Registrar arranges for the printing of a pleading at the request of a party, the text must be supplied in sufficient time to enable the printed pleading to be filed in the Registry before the expiration of any time-limit which may apply to it. The printing is done under the responsibility of the party in question.

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[1] The agents of the parties are requested to ascertain from the Registry the usual format of the pleadings, and the conditions on which the Court may bear part of the cost of printing.

4. The correction of a slip or error in any document which has been filed may be made at any time with the consent of the other party or by leave of the President. Any correction so effected shall be notified to the other party in the same manner as the pleading to which it relates.

Article 53

1. The Court, or the President if the Court is not sitting, may at any time decide, after ascertaining the views of the parties, that copies of the pleadings and documents annexed shall be made available to a State entitled to appear before it which has asked to be furnished with such copies.

2. The Court may, after ascertaining the views of the parties, decide that copies of the pleadings and documents annexed shall be made accessible to the public on or after the opening of the oral proceedings.

Subsection 3. The Oral Proceedings

Article 54

1. Upon the closure of the written proceedings, the case is ready for hearing. The date for the opening of the oral proceedings shall be fixed by the Court, which may also decide, if occasion should arise, that the opening or the continuance of the oral proceedings be postponed.

2. When fixing the date for, or postponing, the opening of the oral proceedings the Court shall have regard to the priority required by Article 74 of these Rules and to any other special circumstances, including the urgency of a particular case.

3. When the Court is not sitting, its powers under this Article shall be exercised by the President.

Article 55

The Court may, if it considers it desirable, decide pursuant to Article 22, paragraph 1, of the Statute that all or part of the further proceedings in a case shall be held at a place other than the seat of the Court. Before so deciding, it shall ascertain the views of the parties.

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Article 56

1. After the closure of the written proceedings, no further documents may be submitted to the Court by either party except with the consent of the other party or as provided in paragraph 2 of this Article. The party desiring to produce a new document shall file the original or a certified copy thereof, together with the number of copies required by the Registry, which shall be responsible for communicating it to the other party and shall inform the Court. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document.

2. In the absence of consent, the Court, after hearing the parties, may, if it considers the document necessary, authorize its production.

3. If a new document is produced under paragraph 1 or paragraph 2 of this Article, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

4. No reference may be made during the oral proceedings to the contents of any document which has not been produced in accordance with Article 43 of the Statute or this Article, unless the document is part of a publication readily available.

5. The application of the provisions of this Article shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

Article 57

Without prejudice to the provisions of the Rules concerning the production of documents, each party shall communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Court to obtain. This communication shall contain a list of the surnames, first names, nationalities, descriptions and places of residence of the witnesses and experts whom the party intends to call, with indications in general terms of the point or points to which their evidence will be directed. A copy of the communication shall also be furnished for transmission to the other party.

Article 58

1. The Court shall determine whether the parties should present their arguments before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.

2. The order in which the parties will be heard, the method of handling the evidence and of examining any witnesses and experts, and the number of counsel and advocates to be heard on behalf of each party, shall be settled by the Court after the views of the parties have been ascertained in accordance with Article 31 of these Rules.

Article 59

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted. Such a decision or demand may concern either the whole or part of the hearing, and may be made at any time.

Article 60

1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain.

2. At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Court and transmitted to the other party.

Article 61

1. The Court may at any time prior to or during the hearing indicate any points or issues to which it would like the parties specially to address themselves, or on which it considers that there has been sufficient argument.

2. The Court may, during the hearing, put questions to the agents, counsel and advocates, and may ask them for explanations.

3. Each judge has a similar right to put questions, but before exercising it he should make his intention known to the President, who is made responsible by Article 45 of the Statute for the control of the hearing.

4. The agents, counsel and advocates may answer either immediately or within a time-limit fixed by the President.

Article 62

1. The Court may at any time call upon the parties to produce such evidence or to give such explanations as the Court may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose.

2. The Court may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings.

Article 63

1. The parties may call any witnesses or experts appearing on the list communicated to the Court pursuant to Article 57 of these Rules. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall so inform the Court and the other party, and shall supply the information required by Article 57. The witness or expert may be called either if the other party makes no objection or if the Court is satisfied that his evidence seems likely to prove relevant.

2. The Court, or the President if the Court is not sitting, shall, at the request of one of the parties or proprio motu, take the necessary steps for the examination of witnesses otherwise than before the Court itself.

Article 66

The Court may at any time decide, either proprio motu or at the request of a party, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Court may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with Article 44 of the Statute.

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Article 67

1. If the Court considers it necessary to arrange for an enquiry or an expert opinion, it shall, after hearing the parties, issue an order to this effect, defining the subject of the enquiry or expert opinion, stating the number and mode of appointment of the persons to hold the enquiry or of the experts, and laying down the procedure to be followed. Where appropriate, the Court shall require persons appointed to carry out an enquiry, or to give an expert opinion, to make a solemn declaration.

2. Every report or record of an enquiry and every expert opinion shall be communicated to the parties, which shall be given the opportunity of commenting upon it.

Article 69

1. The Court may, at any time prior to the closure of the oral proceedings, either proprio motu or at the request of one of the parties communicated as provided in Article 57 of these Rules, request a public international organization, pursuant to Article 34 of the Statute, to furnish information relevant to a case before it. The Court, after consulting the chief administrative officer of the organization concerned, shall decide whether such information shall be presented to it orally or in writing, and the time-limits for its presentation.

2. When a public international organization sees fit to furnish, on its own initiative, information relevant to a case before the Court, it shall do so in the form of a Memorial to be filed in the Registry before the closure of the written proceedings. The Court shall retain the right to require such information to be supplemented, either orally or in writing, in the form of answers to any questions which it may see fit to formulate, and also to authorize the parties to comment, either orally or in writing, on the information thus furnished.

3. In the circumstances contemplated by Article 34, paragraph 3, of the Statute, the Registrar, on the instructions of the Court, or of the President if the Court is not sitting, shall proceed as prescribed in that paragraph. The Court, or the President if the Court is not sitting, may, as from the date on which the Registrar has communicated copies of the written proceedings and after consulting the chief administrative officer of the public international organization concerned, fix a time-limit within which the organization may submit to the Court its observations in writing. These observations shall be communicated to the parties and may be discussed by them and by the representative of the said organization during the oral proceedings.

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4. In the foregoing paragraphs, the term "public international organization" denotes an international organization of States.

SECTION E. PROCEEDINGS BEFORE THE CHAMBERS

Article 90

Proceedings before the Chambers mentioned in Articles 26 and 29 of the Statute shall, subject to the provisions of the Statute and of these Rules relating specifically to the Chambers, be governed by the provisions of Parts I to III of these Rules applicable in contentious cases before the Court.

Article 91

1. When it is desired that a case should be dealt with by one of the Chambers which has been formed in pursuance of Article 26, paragraph 1, or Article 29 of the Statute, a request to this effect shall either be made in the document instituting the proceedings or accompany it. Effect will be given to the request if the parties are in agreement.

2. Upon receipt by the Registry of the request, the President of the Court shall communicate it to the members of the Chamber concerned. He shall take such steps as may be necessary to give effect to the provisions of Article 31, paragraph 4, of the Statute.

3. The President of the Court shall convene the Chamber at the earliest date compatible with the requirements of the procedure.

Article 92

1. Written proceedings in a case before a Chamber shall consist of a single pleading by each side. In proceedings begun by means of an application, the pleadings shall be delivered within successive time-limits. In proceedings begun by the notification of a special agreement, the pleadings shall be delivered within the same time-limits, unless the parties have agreed on successive delivery of their pleadings. The time-limits referred to in this paragraph shall be fixed by the Court, or by the President if the Court is not sitting, in consultation with the Chamber concerned if it is already constituted.

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2. The Chamber may authorize or direct that further pleadings be filed if the parties are so agreed, or if the Chamber decides, proprio motu or at the request of one of the parties, that such pleadings are necessary.

3. Oral proceedings shall take place unless the parties agree to dispense with them, and the Chamber consents. Even when no oral proceedings take place, the Chamber may call upon the parties to supply information or furnish explanations orally.

Article 93

Judgments given by a Chamber shall be read at a public sitting of that Chamber.

SECTION G. MODIFICATIONS PROPOSED BY THE PARTIES

Article 101

The parties to a case may jointly propose particular modifications or additions to the rules contained in the present Part (with the exception of Articles 93 to 97 inclusive), which may be applied by the Court or by a Chamber if the Court or the Chamber considers them appropriate in the circumstances of the case.