

**UNCITRAL WG III – Background Information on a Code of Conduct
Annex: Codes of Conduct & Ethics (Updated July 2019)**

I. Arbitral Institutions

ADR Institution of Canada

- Code of Conduct for Mediators (15 April 2011)

Association of Maritime Arbitrators of Canada (AMAC)

- Association of Maritime Arbitrators Acting under Schedule “D” of AMAC Rules (6 June 2001)

Cámara de Comercio de Lima

- Código de Ética (2008)

Centre for Effective Dispute Resolution (CEDR)

- Code of Conduct for Third Party Neutrals (2018)

China International Economic and Trade Arbitration Commission (CIETAC)

- Code of Conduct for Arbitrators (6 May 1994)

Hong Kong International Arbitration Centre (HKIAC)

- Code of Ethical Conduct (2017)
- Practice Note on the Challenge of an Arbitrator (31 October 2014)

International Chamber of Commerce (ICC) - International Court of Arbitration

- Note to Parties and Arbitration Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration (1 January 2019)
- 2017 Rules ICC Arbitrator Statement Acceptance, Availability, Impartiality and Independence (2017)

International Centre for Dispute Resolution (ICDR)

- ICDR Guidelines for Arbitrators Concerning Exchanges of Information (31 May 2008)

Jamaica International Arbitration Centre (JAIAC)

- Code of Conduct for Arbitrator (2018)

JAMS Mediation, Arbitration, ADR Services

- Arbitrators Ethics Guidelines

London Court of International Arbitration (LCIA)

- LCIA Arbitration Rules, Articles 18.5 and 18.6 & Annex to the LCIA Rules, General Guidelines for the Parties’ Legal Representatives (1 October 2014, reprinted 11 December 2017)
- LCIA Notes for Arbitrators (26 October 2017)

Milan Chamber of Commerce – Chamber of Arbitration

- Arbitration Rules (2019), Code of Ethics of Arbitrators (Effective 1 March 2019)
- Arbitration Rules (2010), Code of Ethics of Arbitrators (Effective 1 January 2010)
- International Arbitration Rules (2004), Code of Ethics of Arbitrators (2004)

National Arbitration FORUM

- Code of Ethical Conduct for Arbitrators (January 2015)

Singapore International Arbitration Centre (SIAC)

- SIAC Code of Ethics for an Arbitrator (2009)
- SIAC Code of Ethics for an Arbitrator (2015)

II. International Tribunals

Caribbean Court of Justice

- Code of Judicial Conduct (25 July 2013)

Court of Justice of the European Union (CJEU)

- CJEU Rules of Procedure (25 September 2012)
- Articles 251-281, Treaty on the Functioning of the European Union (26 October 2012)
- Code of Conduct for Members and former Members of the CJEU (23 December 2016)

European Court of Human Rights (ECtHR)

- ECHR Rules of Court (14 November 2016)

International Court of Justice (ICJ)

- The International Court of Justice: Handbook (31 December 2013)
- Rules of Court (Entered into force on 1 July 1978)

International Criminal Court

- Code of Judicial Ethics (2005)
- Code of Professional Conduct for Counsel (2 December 2005)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

- ICTY Rules of Procedure and Evidence (8 July 2015)

Iran-US Claims Tribunal

- Tribunal Rules of Procedure (3 May 1983)

International Tribunal for the Law of the Sea (ITLOS)

- Rules of the Tribunal (17 March 2009)

Singapore International Commercial Court (SICC)

- Code of Ethics, First Schedule to the Legal Profession (Representation in Singapore International Commercial Court) Rules (Effective from 1 January 2015)

World Trade Organization (WTO)

- Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes (11 December 1996)
- Understanding on Rules and Procedures Governing the Settlement of Disputes
- Working Procedures for Appellate Review (16 August 2010)

Comité Jurídico Interamericano (CJI)

- Principios de Ética Judicial (2005)

Cumbre Judicial Iberoamericana

- Código Iberoamericano de Ética Judicial (2 April 2014)

III. International Organizations and Law Associations

American Arbitration Association (AAA)/American Bar Association (ABA)

- ABA Code of Ethics for Arbitrators in Commercial Disputes (1 March 2004)
- ABA/College of Commercial Arbitrators Annotations to The Code of Ethics for Arbitrators in Commercial Disputes (1 January 2014)
- Model Standard of Conduct for Mediators (September 2005)

International Bar Association (IBA)

- IBA Guidelines on Party Representation in International Arbitration (25 May 2013)
- IBA International Principles on Conduct for the Legal Profession (28 May 2011)
- IBA Guidelines on Conflicts of Interest in International Arbitration (22 May 2004)
- IBA International Code of Ethics (1988)
- Rules of Ethics for International Arbitrators (1987)
- IBA Minimum Standards of Judicial Independence (1982)

Law Society of Ontario

- Adjudicator Code of Conduct

Chartered Institute of Arbitrators (CIArb)

- The Chartered Institute of Arbitrators Code of Professional and Ethical Conduct for Members (October 2009)
- International Arbitration Practice Guideline: Interviews for Prospective Arbitrators (30 August 2016)

Council of Bars and Law Societies of Europe (CCBE)

- Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers (31 January 2008)

CODE OF CONDUCT FOR MEDIATORS

This Code of Conduct for Mediators (the “Code”) applies in its entirety to every Mediator who is a member of the ADR Institute of Canada, Inc. (the “Institute”) or any of its Regional Affiliates, or who accepts from the Institute an appointment as Mediator. While Mediators come from varied professional backgrounds and disciplines, every Mediator must adhere to the Code as a minimum. Being appointed as a Mediator confers no permanent rights on the individual, but is a conditional privilege that may be revoked for breaches of the Code.

The Institute and its Regional Affiliates are empowered to investigate alleged breaches of the Code, and may temporarily suspend any Mediator from any of its rosters or from membership in the Institute pending the outcome of an investigation. The Institute is empowered to cancel membership in the Institute or remove any Mediator from any of its rosters if the Mediator is determined by the Institute, either on its own behalf or upon the recommendation of any of its Regional Affiliates, to be in breach of the Code. It is the objective of the Institute to ensure that complaints are investigated fairly.

1. CODE'S OBJECTIVES

1.1 The Code's main objectives are:

- (a) to provide guiding principles for the conduct of Mediators;
- (b) to promote confidence in Mediation as a process for resolving disputes; and
- (c) to provide protection for members of the public who use Mediators who are members of the Institute.

2. DEFINITIONS

2.1 In the Code:

- (a) “Mediation” means the use of an impartial third party to assist the parties to resolve a dispute, but does not include an arbitration; and
- (b) “Mediator” means an impartial person who is a member of the Institute or accepts from the Institute an appointment as Mediator and who is engaged to assist the parties to resolve a dispute, but does not include an arbitrator unless the arbitrator is acting as a Mediator by consent of the parties.

(c) “Regional Affiliate” means a regionally based alternative dispute resolution (“ADR”) organization designated by the Institute to provide ADR services in a specific region as requested by the Institute.

3. PRINCIPLE OF SELF-DETERMINATION

3.1 It is the right of parties to a Mediation to make their own voluntary and non-coerced decisions regarding the possible resolution of any issue in dispute. Every Mediator shall respect and encourage this fundamental principle of Mediation.

3.2 The Mediator shall provide the parties at or before the first Mediation session with information about the Mediator's role in the Mediation. The Mediator shall discuss the fact that authority for decision-making rests with the parties, not the Mediator.

3.3 The Mediator shall not provide legal or professional advice to the parties. The Mediator may express views or opinions on the matters at issue, and may identify evaluative approaches, and where the Mediator does so it shall not be construed as either advocacy on behalf of a party or as legal or professional advice to a party.

3.4 The Mediator shall, where appropriate, advise unrepresented parties to obtain independent legal advice. The Mediator shall also, where appropriate, advise parties of the need to consult with other professionals to help parties make informed decisions.

4. INDEPENDENCE AND IMPARTIALITY

4.1 Unless otherwise agreed by the parties after full disclosure, a Mediator shall not act as an advocate for any party to the Mediation and shall be and shall remain at all times during the Mediation:

- (a) wholly independent; and
- (b) wholly impartial; and
- (c) free of any personal interest or other conflict of interest in respect of the Mediation.

5. POTENTIAL DISQUALIFICATION

5.1 Before accepting an appointment as Mediator and at all times after accepting such an appointment, a Mediator shall disclose in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality in the Mediation of a dispute.

5.2 Any Mediator who makes a disclosure of any circumstance under section 5.1 shall continue to serve as Mediator if all parties to the dispute waive, in writing, the right to object to any reasonable apprehension of a lack of independence or

impartiality or conflict of interest that arises as a consequence of that disclosure.

6. CONFIDENTIALITY

6.1 The Mediator shall inform the parties and any experts, advisors, and any other persons who accompany a party to a Mediation session of the confidential nature of Mediation.

6.2 The Mediator, the parties, their experts and advisors, and any other persons who accompany a party to a Mediation session shall keep confidential and shall not disclose to any non-party all information, documents, and communications that are created, disclosed, received, or made available in connection with the Mediation except:

- (a) with the parties' written consent;
- (b) when ordered to do so by a court or otherwise required to do so by law;
- (c) when the information/documentation discloses an actual or potential threat to human life;
- (d) in respect of any report or summary that is required to be prepared by the Mediator;
- (e) where the data about the Mediation is for research and education purposes, and where the parties and the dispute are not, nor may reasonably be anticipated to be, identified by such disclosure; or
- (f) where the information is, or the documents are, otherwise available to the public.

6.3 If the Mediator holds private sessions (including breakout meetings and caucuses) with one or more parties, he or she shall discuss the nature of such sessions with all parties before commencing such sessions. In particular, the Mediator shall inform the parties of any limits to confidentiality that may apply to information disclosed during private sessions.

6.4 The Mediator shall maintain confidentiality in the storage and disposal of Mediation notes, records, files, information, documents and communications.

7. QUALITY OF THE PROCESS

7.1 The Mediator shall make reasonable efforts before Mediation is initiated or at the start of the Mediation to ensure that the parties understand the Mediation process.

7.2 The Mediator shall conduct Mediations in a manner that permits the parties to participate effectively in the Mediation and that encourages respect among the parties.

7.3 The Mediator shall acquire and maintain professional skills and abilities required to uphold the quality of the Mediation process.

7.4 The Mediator shall act professionally at all times, and the Mediator shall not engage in

behaviour that will bring the Mediator or the Institute into disrepute.

7.5 A Mediator who considers that a Mediation in which he or she is involved may raise ethical concerns (including, without limitation, the furtherance of a crime or a deliberate deception) may take appropriate action, which may include adjourning or terminating the process.

8. ADVERTISING

8.1 In advertising or offering services to clients or potential clients, the Mediator shall:

- (a) refrain from guaranteeing settlement or promising specific results; and
- (b) provide accurate information about his or her education, background, mediation training and experience, in any oral or written representation or biographical or promotional material.

9. FEES

9.1 The Mediator shall give the parties as soon as practicable after his or her appointment a written statement of a fee structure, likely expenses, and any payment retainer requirements.

9.2 The Mediator's fees shall not be based on the outcome of Mediation, or on whether there was a settlement or (if there was a settlement) on the terms of settlement.

9.3 The Mediator may charge a cancellation or a late/delay fee within the Mediator's discretion, provided the Mediator advises the parties in advance of this practice and the amount of the fee.

10. AGREEMENT TO MEDIATE

10.1 The Mediator and the parties shall prepare and execute a mediation agreement setting out:

- (a) the terms and conditions under which the parties are engaging the Mediator;
- (b) if the National Mediation Rules of the Institute apply to the Mediation, any of the Rules that the parties agree shall not apply to the Mediation; and
- (c) any additional rules that the parties agree shall apply to the Mediation.

11. TERMINATION OR SUSPENSION OF MEDIATION

11.1 The Mediator may suspend or terminate the Mediation if requested, in writing, by one or more of the parties.

11.2 The Mediator may suspend or terminate the Mediation with a written declaration by the Mediator that further efforts at mediation would not be useful at this time.

12. OTHER CONDUCT OBLIGATIONS

12.1 Nothing in the Code replaces or supersedes any other ethical standard or code that may govern the Mediator. Where there are multiple such standards or codes, the Mediator shall be bound by the stricter or strictest of them.

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As amended April 15, 2011

CODE OF CONDUCT FOR ARBITRATORS ACTING UNDER SCHEDULE "D" OF AMAC RULES

A:- GENERAL

1. This Code of Conduct is intended to give guidance as to the practical application of the AMAC Rules of Procedure. It is intended to be read in conjunction with, but always as subsidiary to, those Rules.
2. The object of the arbitration must be to obtain the resolution of the dispute by an impartial tribunal without unnecessary delay or expense.
3. The arbitration should be conducted in a dignified and professional manner. This does not mean that it must be unduly formal, but it must reflect the serious nature of the proceeding.

B:- APPOINTMENT OF ARBITRATORS

1. Before accepting an appointment, the arbitrator should make general enquiries of the lawyer or other representative of the appointing party as to the nature of the dispute(s) and the names and affiliations of the parties. But great care must be taken to avoid any discussion of the substance of the dispute or of the appointing party's position.
2. An appointment should not be accepted in any reference where the arbitrator, or the arbitrator's family or employer or business associates or any other person or entity closely connected with the arbitrator has or may have any interest (financial or otherwise) or where any of them has or may have any association with either of the parties or their counsel which may give rise to any inference of bias or partiality except where such interest or association has been fully disclosed to all interested parties and their approval has been obtained. The arbitrator should understand that it is not enough to be completely impartial: it must also be evident to all of the parties concerned, and to any disinterested bystander, that the arbitrator has no personal or business interest in the outcome.

C:- DIRECT CONTACT WITH PARTIES

1. Beyond the preliminary inquiries mentioned above, an arbitrator should not hold any private discussion with the party appointing him or with its attorney about any aspect of the case other than strictly "housekeeping" matters such as possible dates for hearings.
2. Once an arbitrator has been appointed, he/she should have no contact whatever with any of the parties except in the presence of (or, in correspondence, with copies to) all of the other parties and the other members of the tribunal.
3. An arbitrator's failure to act impartially and independently may be grounds for disqualification.

D:- THIRD ARBITRATOR

1. Where the tribunal consists of three arbitrators, the third arbitrator should act as the chairman of the proceedings and as the spokesman for the tribunal in dealing with the parties.
2. If appointed as an umpire, the third arbitrator should attend all hearings and should also receive copies of all correspondence. He should not participate in any discussions between the other members of the tribunal unless they have failed to agree and have unanimously and formally referred the undecided point to the umpire for his/her sole decision.
3. Where the decision in the reference is to be made by an umpire, the umpire shall also write the Award. Where there is no umpire, the drafting of the Award need not necessarily be done by the third arbitrator, but may be delegated to one of the other arbitrators as most convenient under the circumstances.

E:- PROCESS

1. The tribunal should seek early confirmation from the parties (normally at a preliminary conference) as to the full issues between them if these are not clear from the materials submitted.
2. At the first oral hearing, if any, the tribunal should encourage the parties to give a brief opening statement to summarise the points in dispute, the evidence to be offered and the arguments to be made.
3. If a party raises an objection on any point (whether relating to jurisdiction, discovery, questions put to a witness or otherwise), the tribunal should not hesitate to require the party raising the objection to explain it, and the opposing party to respond. It is not unreasonable for the tribunal to require the parties to submit authority in support of their respective positions.
4. Where no stenographic record is being kept of the proceedings, the tribunal should ensure that a complete written record is kept of any objection made (whether upheld or not) unless such objection is subsequently withdrawn.
5. Where argument is to be presented orally without written submissions, the tribunal should not hesitate to require each party to submit in advance a written "skeleton" argument.

F:- FEES

1. It is desirable that each of the members of a tribunal should charge his/her time at the same rate.
2. It is desirable that the Award should specify only the total fee payable to the tribunal, with allocation between the parties as appropriate. The division of such total fee between the members of the tribunal should normally be a confidential matter. (Similarly, it is desirable that any interim billing should be made by way of a single invoice.)
3. Where the dispute is settled before any significant amount of work has been done by an arbitrator, no charge should be made for his/her services. Where a significant amount of work has been done prior to settlement which is directly related to the issue(s) so settled (e.g. studying documents in preparation for hearings), it is regarded as reasonable to charge for this effort.

G:- THE AWARD

1. Article 28 of the AMAC Rules states that, unless stipulated to the contrary in advance, the parties agree that the Award should be remitted to AMAC for filing and publication. The tribunal should enquire as to the intentions/agreement of the parties in this regard at any early stage in the proceedings.
2. Article 31(2) of the Commercial Arbitration Code, which is incorporated in the AMAC Rules of Procedure, provides that a reasoned Award will be issued unless the parties agree otherwise. The tribunal should enquire as to the intention/agreement of the parties in this regard prior to the close of hearings.
3. The Award should state that, where one party has paid in the first instance that part of the tribunal's fee which is properly payable by the other party, such payment is recoverable from that other party.
4. When an Interim Award is to be issued, it should state clearly which matters are finally decided and which matters remain outstanding.
5. In drafting the Award, it is desirable that the tribunal should expressly reserve jurisdiction to deal with any questions which may arise as to its meaning (for example, as to the precise calculation of interest) and to correct any clerical or arithmetical mistakes which it may contain.

H:- SAVING OF COSTS

1. If either party wishes to have the tribunal deal with liability separately from damages, or with a preliminary point of construction or interpretation of a contract, this should be accepted unless it is evident that the rights of the other party will be prejudiced by such a division.
2. Where two disputes which involve common questions of fact or law are referred to the same tribunal, the tribunal should normally agree to any request for consolidation or concurrent hearings unless it is evident that this may prejudice the rights of any of the parties.

* * * * *

Montreal, 6,6,2001



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Código de Ética

Obligatoriedad

Artículo 1º.-

El Código de Ética del Centro de Arbitraje de la Cámara de Comercio de Lima (en adelante, el Centro) es de observancia para todos los árbitros que actúen como tales por designación de las partes, de terceros, o del Consejo Superior de Arbitraje, integren o no el Registro de Árbitros del Centro.

Normas éticas

Artículo 2º.-

1. Las normas éticas contenidas en este Código, constituyen principios generales con el objetivo de fijar conductas de actuación en el arbitraje. No son limitativas ni excluyentes de otras reglas que durante el arbitraje se puedan determinar o que correspondan a sus profesiones de origen.

2. El contenido de estos principios y conductas, podrá ser complementado conforme al uso y práctica internacional en los arbitrajes comerciales.

Principios fundamentales

Artículo 3º.-

Los árbitros deberán observar una conducta acorde con los siguientes principios:

a. Imparcialidad

Antes de aceptar una designación como árbitro deberá verificar si existe alguna relación de la que pueda surgir un interés directo o indirecto en el resultado de la controversia, o alguna circunstancia que pueda poner en duda su imparcialidad, y en su caso, hacerla conocer a las partes.

b. Independencia

Mientras se está actuando como árbitro, deberá cuidar de mantener la libertad y autonomía en el ejercicio de sus funciones.

c. Neutralidad

Mientras se está actuando como árbitro, deberá evitar cualquier situación que pueda afectar su objetividad, que haga dudar de su neutralidad o que sea susceptible de crear una apariencia de parcialidad o predilección hacia alguna de las partes.

d. Equidad

Deberá conducirse en todo momento con equidad, absteniéndose de resolver sobre la base de inclinaciones subjetivas que puedan implicar un prejuicio. Procurará resolver en la forma más objetiva posible.

e. Autoridad

No debe excederse de su autoridad ni dejar de ejercer la que le compete. El límite mínimo y máximo está marcado por lo que las partes han delegado en él. Ha de procurar no apartarse de él ni por exceso ni por defecto.

f. Integridad

Debe conducirse en todo momento con integridad y transparencia en el arbitraje, de manera de resguardar la confianza que el público en general tiene en este mecanismo. Deberá recordar que en la resolución de un caso sometido a arbitraje, además de aquél, está en juego también la confianza en el arbitraje como mecanismo de solución de controversias.

g. Empeño

Deberá poner el máximo empeño para impedir la formación de incidentes dentro del arbitraje, desalentando o desestimando prácticas dilatorias, articulaciones improcedentes, pruebas irrelevantes y cualquier otra actuación que pueda considerarse desleal o maliciosa.

El procedimiento empleado debe ser equilibrado, cuidando de dar a cada parte las mismas posibilidades de expresarse y argumentar la defensa, tratándolas con igual grado de consideración y respeto.

h. Confidencialidad

Deberá mantener la confidencialidad de las actuaciones y de las decisiones, y no abusará de la confianza que las partes han depositado en él. No debe usar la información confidencial que haya conocido por su posición de árbitro para procurar ventaja personal.

i. Discreción

No debe anunciar por adelantado a nadie las decisiones que probablemente se tomarán en el caso ni dar en forma anticipada su opinión a ninguna de las partes. Su punto de vista sobre la controversia sometida a arbitraje debe ser expresado en el laudo y surgir de él de manera autosuficiente.

j. Diligencia

Deberá dedicar el tiempo y la atención necesarios para el debido cumplimiento de sus funciones de acuerdo con las circunstancias del caso.

k. Celeridad

Cuidará de conducir el arbitraje con celeridad y justicia.

Ámbito de aplicación

Artículo 4º.-

Los principios expuestos en el artículo 3º, además de a los árbitros, también son aplicables a las partes, sus representantes, abogados y asesores; así como a los miembros del Consejo Superior de Arbitraje y funcionarios de la Secretaría General, en lo que corresponda.

Aceptación del nombramiento

Artículo 5º.-

El futuro árbitro aceptará su nombramiento sólo:

- a. Si está plenamente convencido de que podrá cumplir su tarea con imparcialidad e independencia.
- b. Si está plenamente convencido de que podrá resolver las cuestiones controvertidas o litigiosas y que posee un conocimiento adecuado del idioma del arbitraje correspondiente.
- c. Si es capaz de dedicar al arbitraje el tiempo y la atención que las partes tienen derecho a exigir dentro de lo razonable.

Deber de declaración

Artículo 6º.-

1. Todo árbitro está obligado a suscribir una Declaración Jurada al momento de aceptar el cargo, la cual deberá ser entregada a la Secretaría General del Centro.

2. La declaración se hará por escrito y será puesta en conocimiento de las partes para que en un plazo no mayor de cinco (5) días hábiles manifiesten lo que consideren conveniente a su derecho.

3. El futuro árbitro deberá revelar todos los hechos o circunstancias que puedan originar dudas justificadas respecto a su imparcialidad o independencia. Enunciativamente, deberá considerar, entre otros, los siguientes hechos o circunstancias:

a. El tener relación de parentesco o dependencia con alguna de las partes, sus representantes, abogados o asesores.

b. El tener relación de amistad íntima o frecuencia en el trato con alguna de las partes, sus representantes, abogados o asesores.

c. El tener litigios pendientes con alguna de las partes.

d. El haber sido representante, abogado o asesor de una de las partes o haber brindado servicio profesional o asesoramiento o emitido dictamen u opinión o dado recomendaciones respecto del conflicto.

e. El no estar suficientemente capacitado para conocer de la controversia, tomando en cuenta el contenido de la disputa y la naturaleza del arbitraje.

f. Si hubiera recibido beneficios de importancia de alguno de los participantes.

g. Si se diera cualquier otra causal que a su juicio le impusiera abstenerse de participar en el arbitraje por motivos de decoro o delicadeza.

4. El no revelar tales hechos o circunstancias u otros similares dará la apariencia de parcialidad y puede servir de base para su descalificación.

5. El futuro árbitro deberá revelar:

a. Cualquier relación de negocios, presente o pasada, directa o indirecta, según lo indicado en el numeral 3 del artículo 7º con cualquiera de las partes, sus representantes, abogados o asesores, incluso su designación previa como árbitro, por alguna de ellas. En cuanto a las relaciones actuales, el deber de declaración existe cualquiera que sea su importancia. En cuanto a las relaciones habidas con anterioridad, el deber existe sólo respecto de aquellas relaciones desarrolladas en un período no mayor a cinco (5) años previo a la declaración, y que tengan significación atendiendo a los asuntos profesionales o comerciales del árbitro.

b. La existencia y duración de cualquier relación social sustancial mantenida con una de las partes.

- c. La existencia de cualquier relación anterior mantenida con los otros árbitros, desarrollada en un período no mayor a cinco (5) años previo a la declaración, incluyendo los casos de previo desempeño conjunto de la función de árbitro.
 - d. El conocimiento previo que haya podido tener de la controversia o litigio.
 - e. La existencia de cualquier compromiso que pueda afectar su disponibilidad para cumplir sus deberes como árbitro, en la medida en que ello pueda preverse.
 - f. Cualquier otro hecho, circunstancia o relación que a su juicio resultase relevante.
6. El deber de revelar nuevos hechos o circunstancias se mantiene durante todo el arbitraje.

Elementos determinantes de la imparcialidad e independencia

Artículo 7º.-

1. Se produce parcialidad cuando un árbitro favorece indebidamente a una de las partes o cuando muestra predisposición hacia determinados aspectos correspondientes a la materia objeto de controversia o litigio. La dependencia surge de la relación entre el árbitro y una de las partes o una persona estrechamente vinculada a ella.
2. Genera dudas sobre su imparcialidad el hecho de que un árbitro tenga interés material en el resultado de la controversia o del litigio o si ha tomado previamente posición en cuanto a éste. Estas dudas sobre la imparcialidad pueden quedar soslayadas mediante la declaración prevista en el artículo 6º del presente Código.
3. Cualquier relación de negocio en curso, directa o indirecta, que se produzca entre el árbitro y una de las partes, sus representantes, abogados y asesores generará dudas justificadas respecto a la imparcialidad o independencia del árbitro propuesto. Éste se abstendrá de aceptar un nombramiento en tales circunstancias, a menos que las partes acepten por escrito que puede intervenir. Se entiende por relaciones indirectas aquellas relaciones de negocios que un miembro de la familia del futuro árbitro, de su empresa o un socio comercial de él, mantiene con alguna de las partes, sus representantes, abogados y asesores.
4. Las relaciones de negocios habidas y terminadas con anterioridad, no constituirán obstáculo para la aceptación del nombramiento, a menos que sean de tal magnitud o naturaleza que puedan afectar la decisión del árbitro.

Comunicaciones con las partes y sus abogados

Artículo 8º.-

1. Durante el arbitraje, el árbitro debe evitar comunicaciones unilaterales sobre el asunto controvertido con cualquiera de las partes, sus representantes, abogados o asesores. Si tales comunicaciones tienen lugar, el árbitro debe informar de su contenido al Centro, a la otra parte o partes y a los árbitros.
2. Si un árbitro tiene noticia de que otro árbitro ha mantenido contactos indebidos con una de las partes, sus representantes, abogados y asesores, lo pondrá en conocimiento del Centro y de los restantes árbitros para decidir las medidas que deberán adoptarse.
3. Ningún árbitro puede, directa o indirectamente, aceptar favores o atenciones dignas de mención de alguna de las partes, sus representantes, abogados y asesores. Los árbitros deben ser especialmente meticulosos en evitar contactos significativos, sociales o profesionales, con cualquiera de las partes, sus representantes, abogados o asesores, sin la presencia de las partes.

Proceso para la verificación de infracciones

Artículo 9º.-

Para la verificación de infracciones a los deberes previstos por el presente Código y la imposición de las sanciones respectivas, se estará al siguiente procedimiento:

- a. Toda persona natural o jurídica que tenga conocimiento de alguna violación a las normas del presente Código, podrá denunciar la comisión de dichas infracciones ante el Consejo Superior de Arbitraje, a través de la Secretaría General.
- b. La denuncia será puesta en conocimiento del denunciado para que, en un plazo no mayor de cinco (5) días hábiles, formule sus descargos y presente la documentación que estime pertinente.
- c. El Consejo Superior de Arbitraje evaluará los argumentos y documentos presentados por denunciante y denunciado, de ser el caso, y resolverá sobre la aplicación de las sanciones respectivas. El Consejo Superior de Arbitraje podrá disponer la realización de una audiencia previa, con la presencia del denunciante y del denunciado para que presenten sus posiciones.

Sanciones

Artículo 10°.-

1. La infracción a las normas de este Código traerá como consecuencia, según la gravedad de la falta, la imposición al responsable de alguna de las sanciones siguientes:
 - a. Amonestación escrita.
 - b. Suspensión de su derecho a ser elegido como árbitro. El plazo de suspensión se impondrá a criterio del Consejo Superior de Arbitraje.
 - c. Separación del Registro de Árbitros del Centro, según el caso.
 - d. Multa hasta por un monto equivalente a cincuenta (50) Unidades Impositivas Tributarias (UIT).
2. La multa podrá ser impuesta por el Consejo Superior de Arbitraje, sin perjuicio de aplicar otras sanciones contempladas en este Código.
3. La imposición de sanciones se registrará en el Libro de Sanciones del Centro a cargo de la Secretaría General, la que conservará los antecedentes respectivos. Dicho registro y los indicados antecedentes, estarán a disposición de los interesados en la Secretaría General.

Code of Conduct for Third Party Neutrals



2018 Edition

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Code of Conduct for Third Party Neutrals

1. Introduction

This Code of Conduct ('the Code') applies to any person who acts as a Mediator or other neutral third party ('the Neutral') in any dispute resolution procedure ('the Process') conducted under the auspices of the Centre for Effective Dispute Resolution ('CEDR') in relation to an attempt to resolve a dispute or difference ('the Dispute') between all the parties ('the Parties') to the Dispute under the terms of a written agreement signed by the Parties, the Neutral and CEDR ('the Process Agreement') to seek resolution of the Dispute.

This code is consistent with the European Code of Conduct for mediators.

2. Competence and availability

The Neutral assures the Parties that he or she:

- 2.1 possesses the necessary competence and knowledge about the Process to deal with the Dispute, based on proper training and updating of education and practice in the necessary skills, as required by the regulations of the country of practice; and
- 2.2 has sufficient time to prepare properly for and conduct the Process expeditiously and efficiently.
- 2.3 does not present his or her skills or background in all promotional material in any way which is not truthful or professional.

3. Fees and expenses

The Neutral undertakes:

- 3.1 to make clear either directly to the Parties or through CEDR the basis for charging fees and expenses as between CEDR and the Parties for the conduct of the Process before the Process starts; and
- 3.2 not to prolong the Process unnecessarily where there is, in the Neutral's opinion, no reasonable likelihood of progress being made towards settlement of the Dispute through the Process.

4. Independence and neutrality

The Neutral:

- 4.1 will at all times act, and endeavour to be seen to act fairly, independently and with complete impartiality towards the Parties in the Process, without any bias in favour of, or discrimination against, any of the Parties;
- 4.2 will ensure that the Parties and their representatives all have adequate opportunities to be involved in the Process;
- 4.3 will disclose to the Parties any matter of which the Neutral is or at any time becomes aware which could be regarded as being or creating a conflict of interest (whether apparent, potential or real) in relation to the Dispute or any of the Parties involved in the Process, and, having done so, will not act or continue to act as

Neutral in relation to the Dispute unless the Parties specifically acknowledge such disclosure and agree to the Neutral's continuing to act in the Process: such matters include but are not limited to:

- any personal or business relationship with any of the Parties;
- any financial or other interest in the outcome of the Mediation;
- having acted (either personally or through the Neutral's own firm or business) in any capacity other than as a Neutral in another Process for any of the Parties;
- being in prior possession of any confidential information about any of the Parties or about the subject-matter of the Dispute (but excluding any confidential information given to the Neutral by one of the Parties while acting as Neutral in relation to the Dispute)
- any such matters involving a close member of the Neutral's family.

4.4 will not (nor will any member of the Neutral's own firm or business or close family) act for any of the Parties individually in relation to the Dispute either while acting as Neutral or at any time thereafter, without the written consent of all the Parties.

5. Conduct of the Process

- 5.1** The Neutral will observe all the terms of the Process Agreement (especially as regards confidentiality) and will conduct the Process consistent with any relevant CEDR Model Procedure.
- 5.2** The Neutral will ensure that the Parties understand the obligations of the Process Agreement, including obligations relating to confidentiality.
- 5.3** Where there is resolution during the Process, the Neutral will direct the Parties to record any settlement in signed writing and ensure that the signatories acknowledge that by signing they accept and understand the terms of any settlement.

6. Professional Indemnity Insurance

The Neutral will take out professional indemnity insurance in an adequate amount with a responsible insurer against such risks as may arise in the performance of the Neutral's duties in relation to the Dispute before acting as a Neutral.

7. Withdrawing from any Process

- 7.1** The Neutral will withdraw from the Process and cease to act as such in relation to the Dispute if the Neutral:
- is requested to do so by one of the Parties, except where the Parties have agreed to a procedure involving a binding decision by the Neutral to conclude the Process;
 - would be in breach of the Code if continuing to act as the Neutral; or
 - is required by one or more of the Parties to act or refrain from acting in a way which would be in material breach of the Code or in breach of the law.
- 7.2** The Neutral may withdraw from the Process at the Neutral's own discretion and after such consultation with the Parties as the Neutral deems necessary and appropriate (and always subject to the Neutral's obligations as to confidentiality) if:

- any of the Parties is acting in material breach of the Process Agreement;
- any of the Parties is acting in an unconscionable or criminal manner;
- the Neutral decides that continuing the Process is unlikely to result in a settlement;
- any of the Parties alleges that the Neutral is in material breach of the Code.

8. Complaints

The Neutral will respond to, and co-operate with, any complaints procedure initiated by a Party through CEDR in relation to the Process in which the Neutral acted, including attending (without charging a fee or claiming any expenses for attending) any meeting convened by CEDR as part of that complaints procedure.



Arbitrators

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- ▶ Code of Conduct for Arbitrators
- ▶ Rules for Appointment of Arbitrators
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Code of Conduct for Arbitrators

(Adopted on 6 April 1993, as revised on 6 May 1994)

- I. An arbitrator shall hear cases independently and impartially based on facts, in accordance with the law, with reference to international practices and in adherence to the principles of justice and fairness.
- II. An arbitrator shall not represent either party of a case and shall treat both parties with equality.
- III. No one on the Panel of Arbitrators shall serve as the arbitrator of a case if he or she has discussed the case with either party in advance or provided advisory opinions on the case.
- IV. An arbitrator shall not accept gifts from the parties during his or her term of service, or meet either party in private to discuss matters or accept materials relating to the case, except where the arbitrator meets either party separately according to the decision of the Arbitral Tribunal during the mediation process.
- V. If an arbitrator believes that he or she has a stake or other interests in a case that may prevent the case from being heard in an impartial manner, the arbitrator shall disclose his or her relations with the party in question, for instance, immediate family member, debt relationship, property and monetary relations, and business or commercial cooperation relations, and shall request for withdraw voluntarily.
- VI. An arbitrator shall hear cases in strict accordance with the procedures set out in the Arbitration Rules and allow the parties adequate opportunities to present their case.
- VII. On accepting an appointment, an arbitrator shall ensure his or her availability for oral hearings and deliberations. He/she shall not allow any other engagement to affect his or her participation in the case, and shall consult with the Secretariat in advance, if absence is required under exceptional circumstances.
- VIII. An arbitrator shall review all documents and materials of a case carefully to find out the issues at hand.
- IX. Prior to an oral hearing, an arbitrator shall participate in the discussion and finalization of the hearing scheme; the presiding arbitrator shall propose tentative ideas for the hearing scheme to serve as the basis of discussion. Where the tribunal consists of a sole arbitrator, the sole arbitrator shall prepare the hearing scheme properly before the oral hearing starts.
- X. During an oral hearing, an arbitrator shall not show bias and shall pay attention to the methods applied for asking questions and expressing opinions, avoid making premature conclusions on key issues and avoid contention or confrontation with the parties.
- XI. Upon completion of an oral hearing, the presiding arbitrator shall call and preside over deliberations without delay, with opinions on subsequent procedures or the drafting of the arbitral award.

XII. An arbitrator, especially the presiding arbitrator, shall closely follow the progress of proceedings and comply with the deadline for case closure set forth in the Arbitration Rules.

XIII. An arbitrator shall keep the confidentiality of an arbitration and shall not disclose any information related to its substance or procedure , including facts of the case, arbitral proceedings and deliberations of the tribunal; nor shall an arbitrator disclose, in particular, his or her own opinions or the deliberations of the arbitral tribunal to the parties.

XIV. An arbitrator has the right and obligation to attend seminars or events exchanging arbitration experience organized for arbitrators by CIETAC and/or CMAC.

XV. In the event that an arbitrator needs to attend a meeting or event on arbitration, publish an article, or make a speech, in the name of CIETAC and/or CMAC, as appropriate, he or she shall obtain the approval of such Arbitration Commission(s) in advance.

Arbitrators Entrance
Interns Entrance

Guide

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Code of Ethical Conduct

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In some instances the ethics set down in HKIAC's Code of Ethical Conduct herein may be repeated in legislation governing the arbitration, case law or the rules which parties have adopted. In many instances, arbitrators will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of primary professional organisations.

Rule One

An arbitrator has an overriding obligation to act fairly and impartially as between the parties at all stages of the proceedings.

Rule Two

An arbitrator shall be free from bias and shall disclose any interest or relationship likely to affect his or her impartiality or which might reasonably create an appearance of partiality or bias. This is an ongoing duty and does not cease until the arbitration has concluded. Failure to make such disclosure itself may create an appearance of bias and may be a ground for disqualification.

An arbitrator shall not permit outside pressure, fear of criticism or any form of self-interest to affect his or her decisions. An arbitrator shall decide all the issues submitted for determination after careful deliberation and the exercise of his or her own impartial judgment.

An arbitrator in communicating with the parties shall avoid impropriety or the appearance of impropriety. There shall be no private communications between an arbitrator and any party, regarding substantive issues in the case. All communications, other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute, without the agreement of the parties.

An arbitrator shall not accept any gift or substantial hospitality, directly or indirectly, from any party to the arbitration, except in the presence of the other parties and/or with their consent.

Rule Three

An arbitrator shall only accept an appointment if he or she has suitable experience and ability for the case and available time to proceed with the arbitration.

Rule Four

An arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

Arbitrators

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Rule Five

An arbitrator's fees and expenses must be reasonable taking into account all the circumstances of the case. An arbitrator shall disclose and explain the basis of fees and expenses to the parties.

Rule Six

Arbitrators may publicise their expertise and experience but shall not actively solicit appointment as arbitrators.

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http://www.hkiac.org/arbitration/arbitrators/code-of-ethical-conduct[5/4/2018 2:08:01 PM]

Practice Note on the Challenge of an Arbitrator

Effective 31 October 2014

1. This Practice Note shall govern a challenge to an arbitrator (the "Challenged Arbitrator") in arbitrations administered by HKIAC under any of the following rules :
 - (a) 2013 HKIAC Administered Arbitration Rules;
 - (b) 2008 HKIAC Administered Arbitration Rules;
 - (c) any other arbitration rules issued by HKIAC which designate HKIAC to decide challenges to arbitrators;
 - (d) 2010 UNCITRAL Arbitration Rules (with or without paragraph 4 of Article 1 as introduced in 2013);
 - (e) 1976 UNCITRAL Arbitration Rules;

and in any other arbitration in which the parties agree this Practice Note shall apply.

2. This Practice Note replaces the Hong Kong International Arbitration Centre Challenge Rules adopted on 25 March 2008 (the "Challenge Rules") and the Practice Note on the Challenge of an Arbitrator effective on 1 November 2013. This Practice Note shall be treated as the Challenge Rules referred to in Article 11.7 of the 2008 HKIAC Administered Arbitration Rules.
3. An arbitrator may be challenged on any grounds specified in the applicable arbitration rules or law.
4. A party wishing to challenge an arbitrator shall submit, within 15 days after the confirmation of the appointment of the arbitrator has been notified to the challenging party or within 15 days after that party became aware or ought reasonably to have become aware of the circumstances giving rise to the challenge, a Notice of Challenge and any accompanying documents to HKIAC (the "Notice of Challenge"). The Notice of Challenge shall at the same time be sent to all other parties to the arbitration, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal.
5. The Notice of Challenge shall:
 - (f) be in writing and shall state the reasons for the challenge; and
 - (g) be accompanied by payment, by cheque or transfer to the account of HKIAC, of a non-refundable Challenge Registration Fee of HKD 50,000 on account of HKIAC's fees and expenses. If the party submitting the Notice of Challenge fails to pay the Challenge Registration Fee the challenge will be dismissed.
6. HKIAC may, at any time during the challenge proceedings, require the party making the challenge to deposit a further sum or sums to meet its additional fees and expenses, taking

into account, inter alia, the nature of the case and the nature and amount of work performed by HKIAC. That party shall be given the opportunity to make written representations to HKIAC before any decision is made as to the amount of such further sum or sums. If the party which submitted the challenge fails to pay the increased fees and expenses within the time limit fixed by HKIAC, the challenge may be dismissed.

7. If a challenge has been presented to another person or body before a Notice of Challenge is submitted to HKIAC, the party submitting the Notice shall forward to HKIAC a letter requesting HKIAC to make a determination accompanied by a copy of the original challenge and supporting documents. The letter of request shall at the same time be sent to all other parties to the arbitration, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal.
8. Unless the Challenged Arbitrator withdraws or the non-challenging party agrees to the challenge, HKIAC shall determine the challenge.
9. The grounds of a challenge shall, in principle, be limited to those set out in the Notice of Challenge. The challenging party may amend or supplement the grounds of challenge only if HKIAC considers it appropriate to allow such amendment having regard to the circumstances of the case and having consulted with the non-challenging party and the Challenged Arbitrator.
10. Following receipt of a Notice of Challenge pursuant to paragraph 4 above, each other party to the arbitration and the Challenged Arbitrator may submit an Answer to the Notice of Challenge, within such time as HKIAC shall direct.
11. The challenging party shall thereafter be given, within such time as HKIAC shall direct, an opportunity to comment on the Answers to the Notice of Challenge submitted pursuant to paragraph 10.
12. Copies of any Answer to the Notice of Challenge and comments made thereon shall be submitted to HKIAC, all other parties to the arbitration, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal.
13. HKIAC shall determine the challenge on the basis of written evidence and written submissions alone, unless it decides that it is appropriate to hold one or more hearings.
14. HKIAC's determination of the challenge shall be communicated to the parties, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal in writing. HKIAC has no obligation to give reasons for its determination.
15. Notices, documents and decisions submitted or produced in accordance with this Practice Note shall be communicated to the parties, the arbitral tribunal and HKIAC in accordance with any method specified in the arbitration agreement(s) or in any applicable arbitration rules or law.
16. In the event of any discrepancy or inconsistency between this Practice Note and any provision (a) of the arbitration agreement(s), or (b) of any applicable arbitration rules or law, that provision shall prevail.



INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

1 January 2019

NOTE TO PARTIES AND ARBITRAL TRIBUNALS ON THE CONDUCT OF THE ARBITRATION UNDER THE ICC RULES OF ARBITRATION

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I - General Information

1. This Note is intended to provide parties and arbitral tribunals with practical guidance concerning the conduct of arbitrations under the ICC Rules of Arbitration (“Rules”) as well as the practices of the International Court of Arbitration of the International Chamber of Commerce (“Court”).
2. Unless otherwise indicated, this Note applies to all ICC arbitrations regardless of the version of the Rules pursuant to which they are conducted. The numbering of Articles in this Note refers to the 2017 Rules.

A - The ICC International Court of Arbitration and its Secretariat

3. The Court is an administrative body that ensures that ICC arbitrations are conducted in accordance with the Rules. It does not itself resolve disputes (Article 1(2)).
4. The Court is assisted by its Secretariat (Article 1(5)). The Secretariat is directed by the Secretary General, the Deputy Secretary General and the Managing Counsel. It is composed of case management teams each headed by a Counsel.
5. The Secretariat closely monitors the progress of the proceedings and assists the parties and the arbitral tribunals with any questions relating to the conduct of the arbitration. The parties and/or their legal representatives are encouraged to contact the Secretariat with any questions or comments arising from the Rules and/or this Note.
6. At the end of the arbitration, the parties, their representatives and the arbitrators will be invited to submit an evaluation form to the Secretariat.

B - Communications

7. Pursuant to Article 3(1), parties and arbitrators must send copies of all written correspondence directly to all other parties, arbitrators and the Secretariat.
8. The Request for Arbitration (Article 4), the Answer and any counterclaims (Article 5), and any Request for Joinder (Article 7) must be sent to the Secretariat in hard copy as well as in electronic form by email. To the extent possible, any other written documents should be sent to the Secretariat in electronic form by email only. Sending hard copies to the Secretariat is not necessary, even where the arbitral tribunal has asked to be provided with hard copies.
9. The Secretariat will generally send correspondence by email. The parties, their counsel and prospective arbitrators must provide the Secretariat with their email addresses.

II - Parties

A - Where Requests for Arbitration can be Submitted

10. ICC arbitration is commenced upon the Secretariat’s receipt of a Request for Arbitration at any of its offices (Articles 4(1) of the Rules and 5(3) of Appendix II). For the purposes of Articles 4(1) of the Rules and 5(3) of Appendix II, the Secretariat maintains offices in Paris, Hong Kong, New York, Sao Paulo and Singapore, as well as a representative office in

Abu Dhabi Global Market. Offices in New York, Sao Paulo and Singapore are hosted by independent legal entities affiliated with ICC.

11. Upon receipt of the Request for Arbitration, the Secretary General will assign the case to one of the Secretariat's case management teams in any of the Secretariat's offices. The case file may be transferred to an office of the Secretariat other than the office in which the Request for Arbitration was filed.

B - Representation

12. The parties must inform the Secretariat and the arbitral tribunal of the name(s) and address(es) of their representative(s). The parties must promptly inform the Secretariat and the arbitral tribunal of any changes in their representation.

C - Joinder of Additional Parties

13. Requests for Joinder of a party are similar to Requests for Arbitration (Article 7). When a Request for Joinder is submitted, the additional party becomes a party to the arbitration and may raise pleas pursuant to Article 6(3). No additional party may be joined after the confirmation or appointment of an arbitrator, unless the parties and the additional party agree otherwise. Thus, a party to an arbitration wishing to join an additional party must file its Request for Joinder before any arbitrator is confirmed or appointed under the Rules.

D - Communication of Reasons for Court Decisions

14. Upon request of any party, the Court may communicate the reasons for (i) a decision made on the challenge of an arbitrator pursuant to Article 14; (ii) a decision to initiate replacement proceedings and subsequently to replace an arbitrator pursuant to Article 15(2); and (iii) decisions pursuant to Articles 6(4) and 10.
15. For arbitrations conducted under the Rules in effect prior to the entry into force of the 2017 Rules, a request for communication of reasons must be made jointly by all parties.
16. Any request for the communication of reasons must be made in advance of the decision in respect of which reasons are sought. For decisions pursuant to Article 15(2), a party shall address its request to the Court when invited to comment pursuant to Article 15(3).
17. The Court has full discretion to accept or reject a request for communication of reasons.

III - Arbitral Tribunal

A - Statement of Acceptance, Availability, Impartiality and Independence

18. All arbitrators, including emergency arbitrators, have the duty to act at all times in an impartial and independent manner (Articles 11 and 22(4)).
19. The Court requires all prospective arbitrators to complete and sign a Statement of Acceptance, Availability, Impartiality and Independence ("Statement") (Article 11(2)).

20. The parties have a legitimate interest in being fully informed of all facts or circumstances that may be relevant in their view in order to be satisfied that an arbitrator or prospective arbitrator is and remains independent and impartial or, if they so wish, to explore the matter further and/or take the initiatives contemplated by the Rules.
21. An arbitrator or prospective arbitrator must therefore disclose in his or her Statement, at the time of his or her appointment and as the arbitration is ongoing, any circumstance that might be of such a nature as to call into question his or her independence in the eyes of any of the parties or give rise to reasonable doubts as to his or her impartiality. Any doubt must be resolved in favour of disclosure.
22. A disclosure does not imply the existence of a conflict. On the contrary, arbitrators who make disclosures consider themselves to be impartial and independent, notwithstanding the disclosed facts, or else they would decline to serve. In the event of an objection or a challenge, it is for the Court to assess whether the matter disclosed is an impediment to service as arbitrator. Although failure to disclose is not in itself a ground for disqualification, it will however be considered by the Court in assessing whether an objection to confirmation or a challenge is well founded.
23. Each arbitrator or prospective arbitrator must assess what circumstances, if any, are such as to call into question his or her independence in the eyes of the parties or give rise to reasonable doubts as to his or her impartiality. In making such assessment, an arbitrator or prospective arbitrator should consider all potentially relevant circumstances, including **but not limited to** the following:
 - The arbitrator or prospective arbitrator or his or her law firm represents or advises, or has represented or advised, one of the parties or one of its affiliates.
 - The arbitrator or prospective arbitrator or his or her law firm acts or has acted against one of the parties or one of its affiliates.
 - The arbitrator or prospective arbitrator or his or her law firm has a business relationship with one of the parties or one of its affiliates, or a personal interest of any nature in the outcome of the dispute.
 - The arbitrator or prospective arbitrator or his or her law firm acts or has acted on behalf of one of the parties or one of its affiliates as director, board member, officer, or otherwise.
 - The arbitrator or prospective arbitrator or his or her law firm is or has been involved in the dispute, or has expressed a view on the dispute in a manner that might affect his or her impartiality.
 - The arbitrator or prospective arbitrator has a professional or close personal relationship with counsel to one of the parties or the counsel's law firm.
 - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates.
 - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a related case.
 - The arbitrator or prospective arbitrator has in the past been appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm.
24. In assessing whether a disclosure should be made, an arbitrator or prospective arbitrator should consider relationships with non-parties having an interest in the outcome of the arbitration. The Secretariat may in this respect assist prospective arbitrators by identifying relevant entities and individuals in the arbitration. Such an indication does not release an arbitrator or prospective arbitrator from his or her duty to disclose with respect to other relevant entities and individuals he or she may be aware of. In case of doubt with respect to

such an indication made by the Secretariat, an arbitrator or prospective arbitrator is encouraged to consult the Secretariat.

25. The duty to disclose is of an ongoing nature and it therefore applies throughout the duration of the arbitration.
26. Although an advance declaration or waiver in relation to possible conflicts of interest arising from facts and circumstances that may arise in the future may or may not in certain circumstances be taken into account by the Court, it does not discharge an arbitrator from his or her ongoing duty to disclose.
27. When completing his or her Statement and identifying whether he or she should make a disclosure, both at the outset of the arbitration and subsequently, an arbitrator or prospective arbitrator should make reasonable enquiries in his or her records, those of his or her law firm and, as the case may be, in other readily available materials.
28. For the scope of disclosures, an arbitrator will be considered as bearing the identity of his or her law firm, and a legal entity will include its affiliates. In addressing possible objections to confirmation or challenges, the Court will consider the activities of the arbitrator's law firm and the relationship of the law firm with the arbitrator in each individual case. Arbitrators should in each case consider disclosing relationships with another arbitrator or counsel who is a member of the same barristers' chambers. Relationships between arbitrators, as well as relationships with any entity having a direct economic interest in the dispute or an obligation to indemnify a party for the award, should also be considered in the circumstances of each case.
29. Arbitrators have a duty to devote to the arbitration the time necessary to conduct the proceedings as diligently, efficiently and expeditiously as possible. Accordingly, prospective arbitrators must indicate in the Statement the number of arbitrations in which they are currently acting, specifying whether they are acting as president, sole arbitrator, co-arbitrator or counsel to a party, as well as any other commitments and their availability over the next 24 months.
30. If one or more parties object to the confirmation of a prospective arbitrator, or in case of a challenge, the Secretariat will invite the other party or parties and the arbitrator or prospective arbitrator to comment.
31. By signing the Statement, arbitrators accept that their name and contact details as well as their *curriculum vitae*, may be communicated to the members of the Court, the Secretariat at its various offices, and to ICC National Committees and Groups for the purpose of arbitral proceedings under the Rules. By signing the Statement, arbitrators also accept that their name and related information may be published pursuant to sections C and D below, and that their award(s) and procedural order(s) may be published pursuant to section D below.

B - Assistance by the Secretariat with the Nomination or Appointment of Arbitrators

32. Whenever the parties are to nominate a sole arbitrator or a presiding arbitrator for confirmation by the Court or the co-arbitrators a presiding arbitrator, they may jointly seek the Secretariat's assistance by requesting the Secretariat either to propose names of possible candidates or to provide non-confidential information on prospective arbitrators. Upon joint request of the parties, the Secretariat may also contact prospective arbitrators in order to check their experience, availability and possible conflicts of interests.

33. The parties may agree that the Court's appointment of a sole arbitrator or a presiding arbitrator will take place in consultation between the parties and the Secretariat. In particular, the parties may agree that any such appointment will take place following a list procedure, whereby the Secretariat will establish a list of candidates and submit it to the parties (for example by allowing them to strike a limited number of candidates and rank the others by order of preference) before proceeding with the appointment.

C - Publication of Information Regarding Arbitral Tribunals

34. Increasing the information available to parties, the business community at large and academia is key in ensuring that arbitration remains a trusted tool to facilitate trade. The Court therefore endeavours to make the arbitration process more transparent in ways that do not compromise expectations of confidentiality that may be important to parties. Transparency provides greater confidence in the arbitration process, and helps protect arbitration against inaccurate or ill-informed criticism.
35. Consistent with that policy and unless otherwise agreed by the parties, the Court publishes on the ICC website, for arbitrations registered as from 1 January 2016, the following information: (i) the names of the arbitrators, (ii) their nationality, (iii) their role within a tribunal, (iv) the method of their appointment, and (v) whether the arbitration is pending or closed. The arbitration reference number and the names of the parties and of their counsel will not be published.
36. For arbitrations registered as from 1 July 2019, the Court will also publish on the ICC website the following additional information: (vi) the sector of industry involved and (vii) counsel representing the parties in the case.
37. This information will be published after the Terms of Reference have been transmitted to, or approved by, the Court and will be updated in the event of a change in the arbitral tribunal's composition or party representation (without however mentioning the reason for the change).
38. This information will remain on the ICC website after the closure of the arbitration unless the concerned individual withdraws his/her consent in accordance with applicable data protection regulations.
39. The parties may jointly request the Court to publish additional information about a particular arbitration in which they are involved.

D - Publication of Awards

40. Publicising and disseminating information about arbitration has been one of ICC's commitments since its creation and an instrumental factor in facilitating the development of trade worldwide.
41. Parties and arbitrators in ICC arbitrations accept that ICC awards made as from 1 January 2019 may be published according to the following provisions.
42. The Secretariat will inform the parties and arbitrators, at the time of notification of any final award made as from 1 January 2019, that such final award, as well as any other award and dissenting or concurring opinion made in the case, may be published in its entirety no less than two years after the date of said notification. The parties may agree to a longer or shorter time period for publication.

43. At any time before publication, any party may object to publication or require that any award be in all or part anonymised or pseudonymised, in which case the award will not be published or will be anonymised or pseudonymised.
44. In case of a confidentiality agreement covering certain aspects of the arbitration or of the award, publication will be subject to the parties' specific consent.
45. The Secretariat may anonymise or pseudonymise personal data included in the award as necessary pursuant to the applicable data protection regulations.
46. The Secretariat may always, in its discretion, exempt awards from publication.

IV - Conduct of Participants in the Arbitration

47. Arbitral tribunals, parties and their representatives are expected to abide by the highest standards of integrity and honesty, to conduct themselves with honour, courtesy and professionalism, and to encourage all other participants in the arbitral proceedings to do the same.
48. Parties and arbitral tribunals are encouraged to draw inspiration from and, where appropriate, to adopt the IBA Guidelines on Party Representation in International Arbitration.
49. An arbitrator or prospective arbitrator shall not engage in *ex parte* communications with a party or party representative concerning the arbitration. However:
 - a. A prospective arbitrator may communicate with a party or party representative on an *ex parte* basis to determine his or her expertise, experience, skills, availability, acceptance and the existence of potential conflicts of interest.
 - b. To the extent that the parties so agree, arbitrators may also communicate with parties or party representatives on an *ex parte* basis for the purpose of the selection of the president of the arbitral tribunal.
 - c. In all such *ex parte* communications, an arbitrator or prospective arbitrator shall refrain from expressing any views on the substance of the dispute.

V - Emergency Arbitrator

50. Pursuant to Article 29 of the Rules and Appendix V ("Emergency Arbitrator Provisions"), a party that needs urgent interim or conservatory measures ("Emergency Measures") which cannot await the constitution of an arbitral tribunal may make an application to the Secretariat.
51. The Emergency Arbitrator Provisions apply only to parties that are signatories to the arbitration agreement that is relied upon for the application or successors to such signatories.
52. Furthermore, the Emergency Arbitrator Provisions shall not apply if:
 - a. the arbitration agreement under the Rules was concluded before 1 January 2012;
 - b. the parties have opted out of the Emergency Arbitrator Provisions, whether by the recommended standard clauses contained in the Rules or otherwise; or
 - c. the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures.

53. Parties may agree that the Emergency Arbitrator Provisions apply to arbitration agreements concluded before 1 January 2012.
54. Parties who wish to file an Application for Emergency Measures (“Application”) should inform the Secretariat as soon as possible and preferably before submitting the Application. If the Application precedes the Request for Arbitration, parties should send an email to: emergencyarbitrator@iccwbo.org. If the Application is related to an ongoing arbitration, parties should contact the ICC case management team to which the arbitration has been assigned.
55. Upon receipt of the Application, the President of the Court will be invited to consider whether the Emergency Arbitrator Provisions apply. If the President of the Court considers that they apply, the Secretariat will transmit the Application to the responding party. If the President of the Court considers that they do not apply, the Secretariat will inform the parties that the Emergency Arbitrator proceedings shall not take place. Without prejudice to the parties’ status in the main arbitral proceedings, the President of the Court may consider that the Emergency Arbitrator Provisions apply only with respect to some of the parties. In that case, the Secretariat will inform the parties accordingly and transmit a copy of the Application to all parties.
56. The President of the Court will terminate the Emergency Arbitrator proceedings if the Secretariat has not received a Request for Arbitration within 10 days from the Secretariat’s receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary (Article 1(6) of Appendix V).
57. The President of the Court shall appoint the emergency arbitrator in as short a time as possible, normally within two days from the Secretariat’s receipt of the Application.
58. Emergency arbitrators are subject to the requirements set forth in section III above. A challenge against an emergency arbitrator must be made within three days from the challenging party’s receipt of the notification of the emergency arbitrator appointment or from the date when that party was informed of the facts and circumstances on which the challenge is made if such date is subsequent to the appointment notification. The Court may decide the challenge, after affording all parties and the emergency arbitrator an opportunity to comment in writing, before or after the Emergency Arbitrator Order (“Order”) is rendered.
59. The emergency arbitrator’s first task is to establish a procedural timetable as soon as possible, normally within two days from the transmission of the file to the emergency arbitrator (Article 5 of Appendix V). In doing so, the emergency arbitrator must ensure that the responding party is granted time to respond to the Application.
60. The Order must be made no later than 15 days from the date on which the file was transmitted to the emergency arbitrator (Article 6(4) of Appendix V). The President may extend that time limit pursuant to a reasoned request or on his or her own initiative (Article 6(4) of Appendix V).
61. The Court will not scrutinise the draft Order. The emergency arbitrator is however encouraged to seek guidance from the Secretariat, in particular by submitting his/her draft Order for review prior to the expiration of the time limit set out in Article 6(4) of Appendix V. The [Emergency Arbitrator Order Checklist](#) may also provide guidance to the emergency arbitrator in drafting the Order.

62. The Order may be signed and notified in electronic form if the emergency arbitrator so decides after having consulted the parties. In any event, the emergency arbitrator shall send two originals of the Order to the Secretariat.
63. The effects of the Order are set forth in Article 29(2), (3) and (4) of the Rules, and Articles 6(6), (7) and (8) of Appendix V.

VI - Conduct of the Arbitration

A - Advance on Costs

64. The Secretary General may fix the provisional advance upon receipt of the Request for Arbitration (Article 37(1)). The provisional advance is intended to cover the costs of the arbitration until the Terms of Reference have been drawn up or, when the Expedited Procedure Provisions apply, until the case management conference.
65. Payment of the provisional advance will be considered as a partial payment by the claimant of the advance on costs subsequently fixed by the Court. Transmission of the file to the arbitral tribunal, once constituted, will be subject to prior payment of the provisional advance (Article 16).
66. The advance on costs is intended to cover the arbitral tribunal's fees and arbitration-related expenses, as well as the ICC administrative expenses (Article 37 of the Rules and Article 1(4) of Appendix III). It comprises the total of (i) a figure between the minimum and maximum fee suggested under the scales, (ii) a reasonable amount for tribunal-related expenses and (iii) the amount of administrative expenses under the scales. Whenever the Court fixes or readjusts the advance on costs, a detailed financial table is provided to the parties and arbitrators for information and guidance. The Court does not necessarily use the advance on costs in its entirety when fixing the fees of the arbitrators at the end of the arbitration.
67. Where the amount in dispute is significant, the Court may initially fix the advance on costs at an amount that will not cover the full ICC administrative expenses and arbitrator fees and expenses. In such cases, the Secretariat will inform the parties and arbitrators not to assume that the advance covers the costs until the end of the arbitration and that future readjustments of the advance on costs are therefore likely. The Court may proceed with multiple readjustments of the advance by considering the progress of the case. This practice allows the Court to better appreciate all relevant elements of the case as they occur rather than forecast what the suggested fees may be.
68. The Court may readjust the advance on costs if the development of the arbitration so requires (Article 37(5)). The arbitral tribunal should inform the Secretariat of any developments in the value and complexity of the arbitration or any other issues it considers relevant. To this end, the Secretariat will also request from the arbitrators a periodical report on their activities, which should include a description of the tasks performed, an estimate of the amount of time spent on each of those tasks, and any other information related to those tasks that the arbitrators may deem relevant. For this purpose, arbitrators should use the ICC form on [*Statement of Time and Travel for Work Done*](#), available on the ICC website. If arbitrators use time sheets as part of their normal professional activities, they may provide the Secretariat with such time sheets instead. Arbitrators are also encouraged to send such reports to the Secretariat on their own initiative after completing a procedural milestone or when requesting advances on fees or the readjustment of the advance on costs. Time spent by the arbitrators should not include time spent by the administrative secretary, if any. The arbitral tribunal may include such time spent by the Secretary separately if it wishes to do so.

69. The parties will be invited to pay the advance on costs in accordance with paragraphs 2, 3, 4 and 5 of Article 37 and paragraphs 4, 5, 6, 7, 8 and 9 of Article 1 of Appendix III. As a general rule, payments in ICC arbitration cases must originate directly from parties to the case. Should this not be the case, ICC will accept payments which are made by duly mandated counsels or representatives, provided that the legal relationship between the third party payer and the party in the case is evidenced. Should the legal document not be considered as satisfactory by ICC's banks pursuant to their legal obligations under French law, the payment received by ICC may be cancelled and the lack of relevant information reported to the relevant regulatory authorities. The party making the payment must pay all bank charges and/or taxes applicable to the payment of the advance on costs. However, bank transfers made within the European Economic Area (EEA) are subject to shared banking fees.
70. Where claims are made under Articles 7 and 8, the Court may either (1) fix several advances on costs, or (2) fix one advance on costs and establish the respective portions to be paid by each party (Article 37(4)). The parties may also agree to a different apportionment.
71. The arbitral tribunal should clarify with the parties whether they will be directly responsible for the costs of any hearing or whether such costs should be included in the arbitration-related expenses. If hearing costs will be included in the arbitration-related expenses, the arbitral tribunal should provide the Secretariat with an estimate of such costs. Thereafter, the Secretariat may examine whether it is appropriate to invite the Court to reconsider the advance on costs.

B - Expeditious and Efficient Conduct of the Arbitration

72. The Rules require the arbitral tribunal and the parties to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute (Article 22(1)).
73. In order to ensure effective case management, the arbitral tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties (Article 22(2)). The arbitral tribunal should consider the case management techniques referred to in Appendix IV to the Rules and the report of the ICC Commission on Arbitration and ADR entitled [Controlling Time and Costs in Arbitration](#), available on the ICC website.

C - Expeditious Determination of Manifestly Unmeritorious Claims or Defences

74. This section includes guidance as to how an application for the expeditious determination of manifestly unmeritorious claims or defences may be addressed within the broad scope of Article 22.
75. Any party may apply to the arbitral tribunal for the expeditious determination of one or more claims or defences, on grounds that such claims or defences are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction ("application"). The application must be made as promptly as possible after the filing of the relevant claims or defences.
76. The arbitral tribunal has full discretion to decide whether to allow the application to proceed. In so doing, it shall take into consideration any circumstances it considers to be relevant, including the stage of the proceedings and the need to ensure time and cost efficiency.

77. If the arbitral tribunal allows the application to proceed, it shall promptly adopt the procedural measures it considers appropriate, after consulting the parties. The responding party or parties shall be given a fair opportunity to answer the application. Further presentation of evidence will only be allowed exceptionally. When the arbitral tribunal determines that a hearing is appropriate, such hearing may be conducted by videoconference, telephone or similar means of communication.
78. Consistent with the nature of the application, the arbitral tribunal shall decide the application as promptly as possible and may state the reasons for its decision in as concise a fashion as possible. The decision may be in the form of an order or award. In either case, the arbitral tribunal may decide on the costs of the application pursuant to Article 38 or reserve this decision to a later stage.
79. The Court will scrutinise any award made on an application for expeditious determination, in principle within one week of receipt by the Secretariat.

D - Protection of Personal Data

80. ICC recognises the importance of effective and meaningful personal data protections when it collects and uses such personal data as data controller pursuant to data protection regulations, including the European Union Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “General Data Protection Regulation” or “GDPR”).
81. ICC, the Court and its Secretariat, in order to comply (i) with the Court’s and Secretariat’s mission to disseminate and improve international knowledge of arbitration and (ii) with the Court’s and Secretariat’s obligations under the Rules, are led to collect and process the personal data of the parties, their representatives, the arbitrators, the administrative secretary, the witnesses, the experts, and any other individuals that may be involved in any capacity in the arbitration. Arbitral tribunals, in performing their duties under the Rules, also have to process such personal data. For this purpose, such personal data may be transferred by or to the various offices of the Secretariat in and out of the European Union.
82. By accepting to participate in an ICC arbitration, the parties, their representatives, the arbitrators, the administrative secretary, the witnesses, the experts, and any other individuals that may be involved in any capacity in the arbitration, acknowledge that collecting, transferring and archiving personal data is necessary for the purposes of arbitration proceedings, and accept that said data may be published in case of a publication of an award or a procedural order.
83. The parties shall ensure (i) that their representatives, as well as their witnesses, party-appointed experts and any other individual appearing on their behalf or in their interest in the arbitration, are aware and accept that their personal data may have to be collected, transferred, published and archived for purposes of the arbitration, and (ii) that applicable data protection regulations, including the GDPR, are complied with.
84. At an appropriate time in the arbitration, the arbitral tribunal shall remind the party representatives, witnesses, experts and any other individuals appearing before it that the GDPR applies to the arbitration and that by accepting to participate in the proceedings, their personal data may be collected, transferred, published and archived. Arbitral tribunals are encouraged to include in the Terms of Reference a data protection protocol to that effect.

85. Parties and arbitrators shall ensure that only personal data that are necessary and accurate for the purposes of the arbitration proceedings are processed. Any individual, whose data is collected and processed in the context of an arbitration may at any time request the Secretariat and, as the case may be, the arbitral tribunal to exercise notably his right of access and that inaccurate data be corrected or suppressed, according to the applicable data protection regulations.
86. During the arbitration, the parties, their representatives and all other participants in the proceedings shall ensure the security of personal data processed under their responsibility.
87. To that effect, parties and arbitrators shall ensure that secured means of collecting, communicating, and archiving data are used throughout the entire arbitration process and during the applicable retention period of such data. To that effect, arbitral tribunals and parties are encouraged to consult the [*Report on the Use of Information Technology in International Arbitration*](#) by the ICC Commission on Arbitration and ADR.
88. Any breach of the security and confidentiality of personal data, such as unauthorised access to or use of personal data, inadvertent disclosure to persons who should not have been identified as recipients, be reported immediately to the individual whose personal data may be affected and to the Secretariat. Notification of such breach to the competent supervisory authority and as the case may be to the concerned individuals shall be made by ICC when it acts as data controller pursuant to the applicable data protection regulations.
89. Once an arbitration is completed, arbitrators may retain the personal data that were processed during the proceedings for as long as they keep the case file in their archives pursuant to applicable laws. Such duration shall be communicated to the parties and the Secretariat.
90. At the end of each case, the Secretariat shall retain, pursuant to its obligations (Article 1(7) of Appendix II), personal data pertaining to the case. Such data shall be archived. Other personal data that are no longer necessary for ICC to discharge its obligation under the Rules shall be destroyed or erased.
91. The archives of the Court and its Secretariat are also kept for scientific and historic research purposes. Access to archives and their publication either in full, as excerpts redacted or not, or in a summarised form, may be allowed by the President or the Secretary General of the Court in furtherance of ICC's mission to disseminate and improve international knowledge of arbitration.

E - Time Limits under the Rules

92. The Rules contain strict time limits which arbitrators and parties must endeavour to comply with, in particular:
 - a. **Terms of Reference:** must be established within **one month** from the transmission of the file to the arbitral tribunal (Article 23(2)). Terms of Reference are not applicable to arbitrations under the Expedited Procedure Provisions.
 - b. **Case management conference:** must be convened (1) when drawing up the Terms of Reference or as soon as possible thereafter (Article 24(1)), or (2) no later than 15 days after the date on which the file was transmitted to the arbitral tribunal in arbitrations under the Expedited Procedure Provisions.
 - c. **Procedural timetable:** must be established during or immediately following the case management conference and transmitted to the Court and the parties (Article 24(2)).

- d. **Closing of the proceedings:** must be done as soon as possible after the last hearing on matters to be decided in an award, or the filing of the last authorised submissions concerning such matters (Article 27).
- e. **Date for submission of draft awards:** must be indicated to the Secretariat and the parties when the arbitral tribunal closes the proceedings in relation to the award (Article 27).
- f. **Final award:** must be rendered within (1) the time limit fixed by the Court based upon the procedural timetable, (2) if the Court does not fix such time limit within six months from the date of the last signature added to the Terms of Reference or the date of notification of their approval (Article 31(1)), or (3) six months from the date of the case management conference in arbitrations under the Expedited Procedure Provisions.

VII - Expedited Procedure Provisions

A - Scope of the Expedited Procedure Provisions

- 93. By agreeing to the Rules, the parties agree that Article 30 of the Rules and Appendix VI (collectively, the “Expedited Procedure Provisions”) shall take precedence over any contrary terms of the arbitration agreement.
- 94. The Expedited Procedure Provisions shall apply if:
 - a. the arbitration agreement was concluded after 1 March 2017; and
 - b. the amount in dispute does not exceed US\$ 2 000 000; and
 - c. the parties have not opted out of the Expedited Procedure Provisions in the arbitration agreement or at any time thereafter. Agreements to opt out should express in specific terms the parties’ intention not to subject themselves to the Expedited Procedure Provisions. It is not sufficient, to that effect, that the parties have referred in the arbitration agreement to a three-member arbitral tribunal, or have adopted time limits that depart from those provided by the Expedited Procedure Provisions. It is recommended that parties wishing to opt out of the Expedited Procedure Provisions use the standard clauses contained in the Rules.
- 95. The Expedited Procedure Provisions shall also apply, irrespective of the date of conclusion of the arbitration agreement or the amount in dispute, if the parties have agreed to opt in. Such opt in agreements can be concluded in the arbitration agreement or by separate or subsequent agreement. It is recommended that the parties wishing to opt in to the Expedited Procedure Provisions use the standard clauses contained in the Rules.
- 96. The Court may at any time, upon request of a party or on its own motion after consulting the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply (Article 1(4) of Appendix VI). The Court may in particular use such power in case new circumstances arise that make the Application of the Expedited Procedure Provisions no longer appropriate.

B - Determination of the Amount in Dispute for the Purpose of the Application of the Expedited Procedure Provisions

- 97. For purposes of deciding whether the Expedited Procedure Provisions apply, the amount in dispute includes all quantified claims, counterclaims, cross-claims and claims pursuant to Articles 7 and 8. Claims relating to interest and costs will not be considered to that effect.

98. Pursuant to the Rules (Articles 4(3), 5(5)(b), 7(2), 7(4), 8(2) and 8(3)), the parties shall quantify their claims and, to the maximum extent possible, provide an estimate of the value of any non-monetary claims.
99. For purposes of deciding whether the Expedited Procedure Provisions apply, the Secretariat will consider the quantifications or estimates submitted by the parties.
100. In principle, the Expedited Procedure Provisions shall not apply in presence of declaratory or non-monetary claims which value cannot be estimated, unless it appears that such claims are the mere support of a monetary claim or that they do not add significantly to the complexity of the dispute.
101. In case of an objection as to the applicability of the Expedited Procedure Provisions, the matter will be decided by the Court after giving an opportunity to the other parties to state their views.
102. Any submission by the parties with respect to the applicability of the Expedited Procedure Provisions shall be made in the Request for Arbitration and in the Answer, or in any time limit subsequently given by the Secretariat.
103. Any decision made by the Secretariat or by the Court as to the amount in dispute for purposes of deciding whether the Expedited Procedure Provisions apply shall not bind the arbitral tribunal when deciding the substance of the dispute.
104. The arbitral tribunal may take into account, in assessing costs pursuant to Article 38(5), whether by artificially inflating its claims, a party has prevented the Expedited Procedure Provisions from applying.

C - Scales

105. In all cases conducted under the Expedited Procedure Provisions, the Scales of Administrative Expenses and Arbitrator's Fees for the Expedited Procedure shall apply as indicated in section XIII below and any advance on costs will be fixed on this basis. The arbitrators' fees pursuant to these scales are 20% less than under the general scales.
106. Any provisional advance may be fixed by the Secretary General after receipt of the Request for Arbitration on the basis of the Expedited Procedure Provisions and the amount in dispute at that stage. The provisional advance may be readjusted on the basis of the general scales if the Expedited Procedure Provisions ultimately do not apply.

D - Information to the Parties

107. Pursuant to Article 1(3) of Appendix VI, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply (1) upon receipt of the Answer to the Request for Arbitration, (2) upon expiry of the time limit for the Answer, or (3) at any relevant time thereafter.
108. If a Request for Joinder is filed or claims pursuant to Article 8 are made, the Secretariat will inform the parties as to the applicability of the Expedited Procedure Provisions upon receipt of an Answer to the Request for Joinder or to such claims or upon expiry of the time for such answer.

E - Constitution of the Arbitral Tribunal

109. According to Article 2 of Appendix VI, the Court may appoint a sole arbitrator notwithstanding any contrary provision of the arbitration agreement.
110. By submitting to arbitration under the Rules, the parties agree that any reference of disputes to three arbitrators in their arbitration agreement is subject to the Court's discretion to appoint a sole arbitrator if the Expedited Procedure Provisions apply.
111. When the Expedited Procedure Provisions apply, the Court will normally appoint a sole arbitrator in order to ensure that the arbitration is conducted in an expeditious and cost-effective manner.
112. The Court may nevertheless appoint three arbitrators if appropriate in the circumstances. In all cases, the Court will invite the parties to comment in writing before taking any decision and shall make every effort to ensure that the award is enforceable at law.
113. If the Court decides that the Expedited Procedure Provisions shall no longer apply (paragraph 96 above), the arbitral tribunal shall normally remain in place, unless the Court finds, at the request of the parties or on its own initiative, after giving an opportunity to the parties and the arbitral tribunal to state their views, that circumstances exist which justify to replace and/or reconstitute the arbitral tribunal. If the Court decides to reconstitute the arbitral tribunal and proceed with a three-member arbitral tribunal, it may consider appointing the individual that was acting as sole arbitrator as president of the arbitral tribunal.

F - Proceedings before the Arbitral Tribunal

114. In conducting the arbitration under the Expedited Procedure Provisions, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
115. Under the Expedited Procedure Provisions, the arbitral tribunal has discretion to adopt such procedural measures as it considers appropriate to conduct the arbitration in accordance with the time limits established therein. In particular, the arbitral tribunal may, after giving an opportunity to the parties to state their views, (1) decide the case on documents only, with no hearing and no examination of witnesses, (2) decide not to allow requests for the production of documents and (3) limit the number, scope and length of submissions.

G - Award

116. The final award shall be made within six months from the date of the case management conference. The Court expects arbitral tribunals acting under the Expedited Procedure Provisions to conduct the procedure in order for this time limit to be effectively complied with, with no need for extensions. In case an extension would nonetheless be needed, the arbitral tribunal shall submit a reasoned application to the Court.
117. Any award under the Expedited Procedure Provisions shall be reasoned. Arbitral tribunals may limit the factual and/or procedural sections of the award to what they consider to be necessary to the understanding of the award, and state the reasons of the award in as concise a fashion as possible.

VIII - Efficiency in the Submission of Draft Awards to the Court

A - General Practice

118. The Court expects arbitral tribunals to render awards within six months from the drawing up of the Terms of Reference, or within the time limit fixed by the Court for this purpose (Article 31(1)).
119. While the Court has the power to extend such time limits, sole arbitrators are expected to submit draft awards within two months, and three-member arbitral tribunals within three months after the last substantive hearing on matters to be decided in the award or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).
120. Whenever the arbitral tribunal has conducted the arbitration expeditiously, the Court may increase the arbitrators' fees above the amount that it would otherwise consider fixing.
121. Where the draft award is submitted after the time referred to in paragraph 119 above, the Court may lower the fees as set out below, unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances, and without prejudice to any other measures that it may take, such as replacing one or more of the arbitrators:
 - If the draft award is submitted for scrutiny up to 7 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 5% to 10%.
 - If the draft award is submitted for scrutiny up to 10 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 10% to 20%.
 - If the draft award is submitted for scrutiny more than 10 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 20% or more.
122. In deciding on the above, the Court may also take into account any delays incurred in the submission of one or more partial awards.

B - Practice under the Expedited Procedure Provisions

123. Under the Expedited Procedure Provisions, the arbitral tribunal must render the final award in six months from the case management conference, with extensions to be granted only in limited and justified circumstances.
124. The Court considers that compliance with such time limit is of the essence under the Expedited Procedure Provisions.
125. In order to effectively comply with such time limit, an arbitral tribunal acting under the Expedited Procedure Provisions is expected to submit its draft award within five months from the case management conference.

126. Whenever the arbitral tribunal has conducted the arbitration expeditiously, the Court may increase the arbitrators' fees above the amount that it would otherwise consider fixing.
127. Where the draft award is submitted after the time referred to in paragraph 125 above, the Court may lower the fees as set out below, unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances, and without prejudice to any other measures that it may take, such as replacing one or more of the arbitrators:
- If the draft award is submitted for scrutiny up to 7 months after the case management conference, the fees that the Court would otherwise consider fixing are reduced by 5% to 10%.
 - If the draft award is submitted for scrutiny up to 10 months after the case management conference, the fees that the Court would otherwise consider fixing are reduced by 10% to 20%.
 - If the draft award is submitted for scrutiny more than 10 months after the case management conference, the fees that the Court would otherwise consider fixing are reduced by 20% or more.

IX - Closing of the Proceedings and Scrutiny of Awards

A - Closing of the Proceedings

128. An arbitral tribunal should declare the proceedings closed as soon as possible after the last hearing or the last authorised submission filed in relation to matters to be decided in an award, whether final or otherwise (Article 27). Upon doing so, the arbitral tribunal must inform the Secretariat and the parties of the date by which it expects to submit the draft award for the Court's scrutiny (Article 34).

B - Scrutiny Process

129. The scrutiny process carried out by the Court with the assistance of its Secretariat is a unique and thorough procedure designed to ensure that all awards are of the best possible quality and are more likely to be enforced by state courts. All draft awards undergo a three-step review process, starting with the Counsel of the team in charge of the arbitration that has followed the proceedings since the inception of the arbitration, followed by review by the Secretary General, the Deputy Secretary General or the Managing Counsel, before being submitted for the Court's scrutiny. For certain arbitrations, generally those involving state parties or dissenting opinions, a Court member will draft a report with recommendations on the draft award.
130. All draft awards are scrutinised at a Committee Session of the Court, composed of three Court members, or at a Plenary Session of the Court. Draft awards scrutinised at a Plenary Session include, but are not limited to, matters involving a state or a state entity, matters in which one or more arbitrators have dissented, matters raising issues of policy, and matters in which a Committee Session has been unable to reach a unanimous decision or otherwise makes a referral to the Plenary.

C - Information to the Parties

131. Upon receipt of a draft award, the Secretariat promptly informs the parties and the arbitral tribunal that the draft will be scrutinised at one of the Court's next Sessions.

132. After scrutiny, the Secretariat informs the parties and the arbitral tribunal that the award either was approved or will be further scrutinised at one of the Court's next Sessions.
133. Once a draft award is approved subject to comments, the Secretariat will request the arbitral tribunal to indicate the time needed to finalise the draft award. Implementing the Court's comments should be done by the arbitral tribunal as expeditiously as possible. Based on that information, the Secretariat will inform the parties of the estimated time of notification of the award.

D - Timing of Scrutiny

134. Any draft award submitted to the Court will be scrutinised within three to four weeks of receipt by the Secretariat. As a Plenary Session of the Court is held only once a month (generally the last Thursday of the month), the time needed for Plenary review of a draft award will depend on when it is submitted, and may take up to five or six weeks.
135. If the Expedited Procedure Provisions apply, any draft award submitted to the Court will be scrutinised as soon as possible, and in any event no later than two to three weeks of receipt by the Secretariat. The Court may decide, in exceptional circumstances, that any award made under the Expedited Procedure Provisions will be scrutinised by a Committee consisting of one member of the Court (Article 4(6) of Appendix II).
136. If delay in the scrutiny process is not attributable to exceptional circumstances beyond the Court's control, the Court's administrative expenses will be reduced by up to 20% depending on the length of the delay.
137. For purposes of timing, scrutiny is the first submission of the award to the Court for approval, irrespective of whether the award is approved or not at that Court Session.

X - ICC Award Checklist

138. The [ICC Award Checklist](#) is intended to provide arbitrators with guidance when drafting awards and is not an exhaustive, mandatory or otherwise binding document. It should not be thought to reflect the opinion of the members of the Court or of its Secretariat, but is intended to facilitate the arbitrators' mission. It may not be published or used for any purpose other than the conduct of ICC arbitrations. The Checklist is not exhaustive of issues that may be raised by the Court under Article 34.

XI - Treaty-based Arbitrations

139. In view of the specific nature of investment arbitrations based on treaties, for the sake of transparency and subject to any considerations of confidentiality, prospective arbitrators are encouraged to state in their *curriculum vitae* a complete list of the treaty-based cases in which they participated as arbitrator, expert or counsel.
140. The parties may agree to adopt the UNCITRAL Rules on Transparency in ICC treaty-based arbitrations either in full or in part, or to adopt rules inspired from the same. In such a case, the Secretariat may act as the repository of published information.
141. In treaty-based cases, the draft award is scrutinised by the President and/or Vice-Presidents of the Court and Court members having experience in investment treaty arbitration.

142. In derogation from section III(D) above, and unless a party objects, a treaty-based award will be published within six months from its notification.

XII - Submissions by *Amici Curiae* and non-disputing parties

143. Pursuant to Article 25(3) of the Rules, the arbitral tribunal may, after consulting the parties, adopt measures to allow oral or written submissions by *amici curiae* and non-disputing parties.

XIII - Arbitral Tribunal's Fees and Administrative Expenses

A - Scales

144. Arbitrators' fees in ICC arbitration are calculated on an ad valorem basis pursuant to the scales set forth in Article 4 of Appendix III which provides two scales: the general scales of administrative expenses and arbitrator's fees, and the scales applicable to the cases conducted under the Expedited Procedure Provisions. Parties and arbitrators are encouraged to consult the [Cost Calculator](#) on the ICC website and the applicable scales contained in Article 4 of Appendix III.

B - Advance on Fees

145. The Court fixes arbitrators' fees at the end of the arbitration, although advances on fees may be granted upon request and the completion of concrete milestones in the arbitration.

C - Allocation among Arbitral Tribunal Members

146. When there is a three-member arbitral tribunal, arbitrators may agree on the fee allocation for each arbitrator and inform the Secretariat of their agreement as early as possible in the proceedings. Arbitrators may modify their agreement in the course of the proceedings. Unless the Court is advised in writing that the arbitral tribunal has agreed on a different allocation, the Court will fix the arbitrators' fees so that the president receives between 40% and 50% of the total fees and each co-arbitrator receives between 25% and 30%, as the case may be. The Court may decide upon a different allocation based on the circumstances. Unless otherwise agreed, the same allocation may apply to any advances on fees granted by the Court.

D - Fixing of Fees

147. Arbitrators' fees are fixed exclusively by the Court. Separate fee arrangements between the parties and arbitrators are not permitted.
148. Arbitrators' fees will normally be fixed by the Court at a figure within the limits specified in the scales or, in exceptional circumstances, at a figure higher or lower than those limits. An exceptionally high amount in dispute may be considered as such a circumstance in deciding whether to fix arbitrators' fees at a figure lower than the limits specified in the scales.
149. Pursuant to Article 2 of Appendix III, when fixing the arbitrators' fees the Court will take into consideration the diligence and efficiency of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of any draft

award. To this end, the Secretariat will request from the arbitrators the information specified in paragraph 68.

150. The Court may therefore fix the arbitrators' fees below the average, including at the minimum under the scales, where the amount in dispute is high or very high, or towards the maximum where the amount in dispute is low or very low. The amount of the advance on costs is not an indication of the final amount of the arbitrators' fees.
151. As a matter of guidance only, the Court may proceed as follows when fixing the fees of the arbitrators or granting advances on fees when the advance on costs has been fixed on the basis of the average fee:
- | | | |
|----|--|------------------------------------|
| a. | Case Management Conference
(in Expedited Procedure cases) | 35% of minimum fee |
| b. | Terms of Reference established | 50% of minimum fee |
| c. | A partial award issued / major hearing | Minimum fee |
| d. | Multiple partial awards | Between 50% of average and average |
| e. | Final award issued | Average fee |
152. The Court may depart from this guidance depending on the circumstances of each arbitration, the criteria set forth in Article 2 of Appendix III, and the practice set forth in section VIII(A) of the present Note.

E - Replacement

153. When fixing the fees of an arbitrator who has been replaced, the Court will take into consideration the nature of and reasons behind the replacement, the milestones completed in the arbitration, and the work expected to be completed by the successor. The Court may deduct the replaced arbitrator's fees from those of the successor.

F - Administrative Expenses

154. The Court will normally fix the ICC administrative expenses in accordance with the scale. In exceptional circumstances, the Court may fix them at a figure higher or lower than that which would result from the application of such scale, provided that they shall normally not exceed the maximum amount of the scale.
155. As a matter of guidance only, when fixing the ICC administrative expenses, the Court may proceed as follows:
- | | | |
|----|---|------|
| a. | File transmitted to the arbitral tribunal | 25% |
| b. | Case Management Conference
(in Expedited Procedure cases) | 35% |
| c. | Terms of Reference established | 50% |
| d. | Partial award(s) or other major procedural milestones completed | 75% |
| e. | Final award | 100% |
156. The Court may depart from this guidance depending on the circumstances of each arbitration. In any event, the figures above do not include abeyance fees, increases in the administrative expenses pursuant to section VIII(A) of the present Note, or additional advances to cover Article 36 applications.

G - Declaration to French Tax Authorities

157. Depending on the applicable law, ICC may be required to declare the amount of fees, including advances on fees, paid to any arbitrator during each calendar year, as well as any expenses reimbursed during the same period.

XIV - Decisions as to the Costs of the Arbitration

158. Arbitral tribunals may make decisions as to costs, except for those to be fixed by the Court, and order payment thereof at any time during the proceedings (Article 38(3)).
159. In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 38(5)). Further information on this topic may be found in the ICC Commission Report [*Decisions on Costs in International Arbitration*](#), available on the ICC website.
160. If the parties withdraw their claims or the arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal (Article 38(6)). If the arbitral tribunal has not been constituted at the time of the withdrawal, any party may request the Court to proceed with the constitution of the arbitral tribunal so that it may make decisions as to costs.

XV - Signature of Terms of Reference and Awards

161. Subject to any requirements of mandatory law that may be applicable, and unless the parties agree otherwise, (1) the Terms of Reference may be signed by each party and member of the arbitral tribunal in counterparts, and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 by email or any other means of telecommunication that provides a record of the sending thereof. An original of the signed Terms of Reference must be provided to the Secretariat.
162. Each party, each arbitrator and the Secretariat receive an original of the awards, *addenda* and decisions signed by the arbitrators after approval of the drafts by the Court. The arbitral tribunal must thus provide the Secretariat with the required number of originals (unbound) requested by the Secretariat. The originals must be signed and dated after the date of the Court Session at which awards, *addenda* and decisions were approved; their date should be the date on which the last arbitrator signed.
163. The arbitral tribunal must also provide the Secretariat with a PDF of the signed original by email, which will be sent to the parties before the originals are received and notified.
164. Subject to any requirements of mandatory law that may be applicable, the parties may agree (1) that any award be signed by the members of the arbitral tribunal in counterparts, and/or (2) that all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof, pursuant to Article 35.

XVI - Correction and Interpretation of Awards

165. If the arbitral tribunal decides to correct the award on its own initiative, pursuant to Article 36(1), it should inform the parties and the Secretariat of its intention to do so and grant a time limit to the parties to comment in writing. The arbitral tribunal should submit the draft *addendum* to the Court for scrutiny within 30 days of the date of the award.
166. Upon receipt of an Article 36(2) application, the Secretariat may submit the matter to the Court for it to consider whether, in view of the circumstances of the case, an advance to cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses (Article 2(10) of Appendix III) is warranted. Should the Court fix an additional advance, such advance must be paid before the Secretariat will transmit the application to the arbitral tribunal. Otherwise, the Secretariat will transmit the application directly to the arbitral tribunal. The arbitral tribunal should not address an application until the Secretariat transmits it to them.
167. If the Court has not asked for an additional advance upon filing of the application, it can nevertheless take a decision on costs at the time of the scrutiny and make the notification of the *addendum* or the decision contingent upon the payment by one or both parties of the costs fixed by the Court.
168. Upon receipt of the application from the Secretariat, the arbitral tribunal should grant the other parties a short time limit, normally not exceeding 30 days, for comments.
169. The arbitral tribunal should then submit its draft decision to the Court for scrutiny not later than 30 days following the expiration of the time limit granted for comments. Should the arbitral tribunal require an extension of such time limit, it should inform the Secretariat.
170. The arbitral tribunal's disposition can take one of four forms:
 - a. **Addendum:** if the arbitral tribunal decides to correct or interpret the award, as this shall constitute part of the award;
 - b. **Decision:** if the arbitral tribunal decides that the award does not need to be corrected or interpreted and does not take a decision on costs;
 - c. **Addendum and decision:** if there are two or more applications and the arbitral tribunal decides to correct or interpret the award on the basis of one or more, but not all applications;
 - d. **Decision and addendum on costs:** if the arbitral tribunal decides that the award does not need to be corrected or interpreted but takes a decision on costs related to the application.
171. All decisions and *addenda* shall state the reasons upon which they are based. They should also include operative conclusions ("dispositif") or a finding either rejecting or granting the application as the case may be. For further guidance about what should be included in a draft decision or *addendum*, see the [ICC Checklist on Correction and Interpretation of Arbitral Awards](#). The Court will scrutinise all draft Decisions and Addenda. Upon approval by the Court, the arbitral tribunal shall sign the decision or *addendum* and send it to the Secretariat for notification to the parties as per section XVII below.
172. In all cases, the arbitral tribunal must first ensure that mandatory rules of law at the place of arbitration do not exclude the correction or interpretation of an award by the tribunal.

173. Where the relevant national law or court practice provide specific circumstances in which an arbitral tribunal may render certain decisions other than corrections or interpretation regarding an award which has already been approved and notified, such situations shall be treated in the spirit of the Rules and this Note.

XVII - Notification of Awards, *Addenda* and Decisions

174. The Secretariat will notify to the parties an original of the awards, *addenda* and decisions (Article 35(1)).
175. The Secretariat will also send a courtesy copy of the PDF signed original of the awards, *addenda* and decisions to the parties by email. The sending of a courtesy copy by email does not trigger any of the time limits under the ICC Rules of Arbitration.

XVIII - International Sanctions Regulations

176. International sanctions regulations may apply to an arbitration. Parties and arbitrators must consult the [Note to Parties and Arbitral Tribunals on ICC Compliance](#), available on the ICC website.

XIX - Administrative Secretaries

177. This section sets out the policy and practice of the Court regarding the appointment, duties and remuneration of arbitral tribunal administrative secretaries or other assistants (“Administrative Secretaries”). It applies with respect to any administrative secretary appointed on or after 1 August 2012.
178. Administrative secretaries can provide a useful service to the parties and arbitral tribunals in ICC arbitration. While principally engaged to assist three-member arbitral tribunals, an administrative secretary may also assist a sole arbitrator. Administrative secretaries can be appointed at any time during an arbitration.

A Appointment

179. If an arbitral tribunal envisages the appointment of an administrative secretary, it shall consider carefully whether in the circumstances of that particular arbitration such an appointment would be appropriate.
180. Administrative secretaries must satisfy the same independence and impartiality requirements as those which apply to arbitrators under the Rules. ICC staff members are not permitted to serve as administrative secretaries.
181. There is no formal process for the appointment of an administrative secretary. However, before any steps are taken to appoint an administrative secretary, the arbitral tribunal shall inform the parties of its intention to do so. For this purpose, the arbitral tribunal shall submit to the parties the proposed administrative secretary’s *curriculum vitae*, together with a declaration of independence and impartiality, an undertaking on the part of the administrative secretary to act in accordance with the present Note and an undertaking on the part of the arbitral tribunal to ensure that this obligation on the part of the administrative secretary shall be met.

182. The arbitral tribunal shall make clear to the parties that they may object to such proposal and an administrative secretary shall not be appointed if a party has raised an objection.

B - Duties

183. Administrative secretaries act upon the arbitral tribunal's instructions and under its strict and continuous supervision. The arbitral tribunal shall, at all times, be responsible for the administrative secretary's conduct during the arbitration.
184. The tasks entrusted to an administrative secretary shall in no circumstances release the arbitral tribunal from its duty to personally review the file. Under no circumstances may the arbitral tribunal delegate its decision-making functions to an administrative secretary. Nor shall the arbitral tribunal rely on an administrative secretary to perform on its behalf any of the essential duties of an arbitrator.
185. Notwithstanding the above, an administrative secretary may perform organisational and administrative tasks such as:
- transmitting documents and communications on behalf of the arbitral tribunal;
 - organising and maintaining the arbitral tribunal's file and locating documents;
 - organising hearings and meetings and liaising with the parties in that respect;
 - drafting correspondence to the parties and sending it on behalf of the arbitral tribunal;
 - preparing for the arbitral tribunal's review drafts of procedural orders as well as factual portions of an award, such as the summary of the proceedings, the chronology of facts, and the summary of the parties' positions;
 - attending hearings, meetings and deliberations; taking notes or minutes or keeping time;
 - conducting legal or similar research; and
 - proof-reading and checking citations, dates and cross-references in procedural orders and awards, as well as correcting typographical, grammatical or calculation errors.
186. The administrative secretary may not act, or be required to act, in such a manner as to prevent or discourage direct communications between the arbitrators, between the arbitral tribunal and the parties, or between the arbitral tribunal and the Secretariat.
187. A request by an arbitral tribunal to an administrative secretary to prepare written notes or memoranda shall in no circumstances release the arbitral tribunal from its duty personally to review the file and/or to draft any decision of the arbitral tribunal.
188. When in doubt about which tasks may be performed by an administrative secretary, the arbitral tribunal or the administrative secretary should consult the Secretariat.

C - Disbursements

189. The arbitral tribunal may seek reimbursement from the parties of the administrative secretary's justified reasonable personal disbursements for hearings and meetings.

D - Remuneration

190. With the exception of the administrative secretary's reasonable personal disbursements, the engagement of an administrative secretary should not pose any additional financial burden on the parties. Accordingly, the arbitral tribunal may not look to the parties for the

reimbursement of any costs associated with an administrative secretary beyond the scope prescribed in this Note.

191. Any remuneration payable to the administrative secretary shall be paid by the arbitral tribunal out of the total funds available for the fees of all arbitrators, such that the fees of the administrative secretary will not increase the total costs of the arbitration.
192. In no circumstances should the arbitral tribunal seek from the parties any form of compensation for the administrative secretary's activity. Direct arrangements between the arbitral tribunal and the parties on the administrative secretary's fees are prohibited. Since the fees of the arbitral tribunal are established on an *ad valorem* basis, any compensation to be paid to the administrative secretary is deemed to be included in the arbitral tribunal's fees.

XX - Expenses

A - How to Submit a Request for Expenses

193. The Secretariat will reimburse expenses and pay *per diem* allowances only upon receipt of a request in a readily comprehensible form including a cover page listing each payment claimed and the reason for it. Expense reimbursement claims must be supported by original receipts. This is necessary so that the Secretariat can carry out its accounting responsibilities and, from time to time, provide the parties with comprehensive statements of expenses incurred by arbitrators.

B - When to Submit a Request for Expenses

194. Arbitrators should submit their requests for the reimbursement of expenses and/or the payment of *per diem* allowances, together with any required supporting documentation as specified below, **as soon as possible after expenses are incurred**. This will help ensure that the advance on costs paid by the parties is adequate to cover the costs of the arbitration.
195. All requests for the reimbursement of expenses and/or the payment of *per diem* allowances relating to any period prior to the submission of the draft final award must be provided at the latest when the draft final award is submitted to the Secretariat. Three-member arbitral tribunals should co-ordinate their submission of requests for reimbursement of expenses and/or payment of *per diem* allowances in order to ensure that they reach the Secretariat no later than the draft final award. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted **after the Court has approved the final award will not be taken into account by the Court when fixing the costs of the arbitration and will not be paid**, save in exceptional circumstances as decided by the Secretary General.
196. In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, all requests for the reimbursement of expenses and/or the payment of *per diem* allowances must be submitted within the time limit granted by the Secretariat. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted after the Court has fixed the costs of arbitration will not be taken into account by the Court and will not be paid.

C - Travel Expenses

197. If required to travel for the purpose of an ICC arbitration, an arbitrator will be reimbursed for the actual travel expenses he or she incurs travelling from and returning to his or her usual

place of business as indicated on the *curriculum vitae* filed for the relevant ICC arbitration. Travel expenses will be reimbursed in accordance with paragraphs 198 to 200 below.

198. A request for reimbursement of travel expenses must be accompanied by the originals of all receipts claimed or other proper substantiation if receipts are unavailable. Travel expenses that are not fully and comprehensively justified will not be reimbursed.
199. The reimbursement of travel expenses is subject to the following strict limits:
 - a. Air travel: an airfare equivalent to the applicable standard business-class airfare.
 - b. Rail travel: the applicable first-class train fare.
 - c. Transport to and from airport(s) and/or train station(s): the applicable standard taxi fare.
 - d. Travel by private car: a flat rate for every kilometre driven, plus all necessary actual parking and toll charges incurred. The flat rate is US\$ 0.80 per kilometre.
200. Except for expenses claimed pursuant to paragraph 199(d) above, travel expenses will, where possible, be reimbursed in the currency in which they were incurred. An arbitrator may alternatively request reimbursement in US dollars provided that the request is accompanied by a statement of the US dollar amount and evidence of the exchange rate (for example, a printout from www.oanda.com). The date for the currency conversion should be the date on which the expense was incurred.

D - Per Diem Allowance

201. In addition to travel expenses, an arbitrator will be paid a flat-rate *per diem* allowance for every day of an ICC arbitration that he or she is required to spend outside his or her usual place of business as indicated on the *curriculum vitae* filed for the relevant ICC arbitration. The arbitrator is not required to submit receipts in order to claim the *per diem* allowance, but simply evidence of the travel for purposes of the arbitration.
202. If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 400.
203. If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 1 200.
204. The applicable *per diem* allowance is deemed to cover fully all personal living expenses of whatever nature and of whatever actual value (other than travel expenses) incurred by an arbitrator. In particular, the applicable *per diem* allowance is deemed to cover the total cost of, *inter alia*:
 - Accommodation
 - Meals
 - Laundry/ironing/dry cleaning and other housekeeping or similar services
 - Inner-city transport
 - Telephone calls, faxes, emails and other means of communication
 - Gratuities
205. For the avoidance of doubt, no *per diem* allowance will be paid in respect of time spent by an arbitrator travelling to or from the relevant destination.

206. Since the *per diem* allowance is deemed to cover all personal living expenses incurred by an arbitrator while outside his or her usual place of business on ICC arbitration business, the Secretariat will not reimburse expenses over and above the applicable *per diem* allowance under any circumstances.

E - General Office Expenses and Courier Charges

207. General office expenses and overheads incurred in the ordinary course of business by an arbitrator or an arbitral tribunal in connection with an ICC arbitration will not be reimbursed. However, an arbitrator or an arbitral tribunal may request to be reimbursed at cost for any courier, photocopying, fax or telephone charges incurred for the purposes of an ICC arbitration, provided such request is accompanied by detailed receipts.

F - Advance Payments on Expenses

208. An arbitrator may request an advance payment of travel expenses and/or the applicable *per diem* allowance. If an advance is granted, the arbitrator must subsequently submit the relevant supporting documentation to the Secretariat, including all receipts and a statement of working days and nights spent outside of his or her usual place of business on ICC arbitration business.

XXI - Administrative Services

A - Deposit of Funds other than the Advance on Costs for Arbitration

209. ICC may offer arbitrators and parties who expressly so request in writing a service allowing funds to be deposited, in the course of an arbitration, into an account administered by ICC for the purpose of paying an advance on VAT due on the arbitrators' fees or an advance to cover fees and expenses of any expert appointed by the arbitral tribunal, or for escrow purposes.
210. When arbitrators and parties avail themselves of this service and ICC consents to provide it, ICC acts as the depositary of the funds. ICC receives funds from one or more parties who have been instructed accordingly by an arbitrator (president or member of an arbitral tribunal on behalf of the other tribunal members, or sole arbitrator) and makes the payments from the account at the request of the arbitrator.
211. ICC acts as depositary of funds related to:
- a. VAT, taxes, charges and imposts applicable to arbitrators' fees
 - b. Experts
 - c. Escrow accounts
212. This service is available to arbitrators and parties from any country.
213. The deposit accounts are administered solely in US dollars or in Euros, unless otherwise decided.
214. The deposit accounts do not yield interest for the parties or the arbitrators.

Step 1: Request for a Deposit Account

Any arbitrator wishing to use this service shall inform the Secretariat in writing and request ICC to act as depositary of funds to be paid by one or more parties as an advance on the VAT due on the arbitrators' fees or an advance to cover fees and expenses of any expert appointed by the arbitral tribunal, or for escrow purposes.

The initiative of requesting the opening of a deposit account, calling deposits, and making payments from the amounts deposited lies solely with the arbitrators.

Arbitrators are responsible for ensuring that payments are made in compliance with applicable laws and banking practices.

Step 2: Estimation of Amounts

The arbitrator determines the funds to be paid by one or more parties into a deposit account.

If, in the course of an arbitration, the amount of the advance on costs is increased pursuant to a decision of the Court, this step may be repeated. Likewise, if, in the course of the arbitration, the amount of the funds deposited to cover the fees and expenses of any expert or the amount of the funds deposited into an escrow account is increased pursuant to a decision of the arbitral tribunal, this step may be repeated.

Step 3: Funds to be Deposited

The arbitrator requests one or more parties to pay the funds and sets a time limit in which to do so.

The Secretariat will provide the party/parties with the relevant banking instructions.

As a general rule, payments in ICC arbitration cases, must originate directly from parties to the case. Should this not be the case, ICC will accept payments which are made by duly mandated counsels or representatives, provided that the legal relationship between the third party payer and the party in the case is evidenced. Should the legal document not be considered as satisfactory by ICC's banks pursuant to their legal obligations under French law, the payment received by ICC may be cancelled and the lack of relevant information reported to the relevant regulatory authorities. The party making the payment must pay all bank charges and/or taxes applicable to the payment of the advance on costs. However, bank transfers made within the European Economic Area (EEA) are subject to shared banking fees.

Step 4: Acknowledgement of Payments and Administration

The Secretariat confirms to the arbitrator and the parties receipt of the amounts paid by the party/parties.

If the arbitrator receives no confirmation from the Secretariat of receipt of payment by the party or parties, it is up to the arbitrator to renew his or her request for payment and to fix a time limit for this purpose.

ICC administers the funds on behalf of the arbitrator.

Step 5: Payments

The arbitrator requests ICC to make payments from the funds deposited by the parties.

Payments are made by ICC within the limits of the funds deposited.

Step 6: Balance of Account

At the end of the arbitration the Secretariat seeks instructions from the arbitrator with regard to closing the deposit account. On the basis of the information provided by the arbitrator and in accordance with his or her instructions, the Secretariat closes the deposit accounts and returns to the party or parties any amounts remaining from the funds deposited with ICC.

After advising the arbitrator, ICC may close the deposit account if no balance remains. The account will be closed even if a request by the arbitrator for the payment of funds is still outstanding.

B - Deposits for VAT, Taxes, Charges and Imposts Applicable to Arbitrators' Fees

215. Payments made by ICC to arbitrators do not include Value Added Tax (VAT) or other taxes or charges and imposts of the same nature that may be applicable to the arbitrator's fees (Article 2(13) of Appendix III). Parties have a duty to pay such VAT or similar taxes or charges due pursuant to applicable law. The recovery of any such charges or taxes is a matter solely between the arbitrator and the parties. Such parties' duty does not include the payment of any other taxes, charges and imposts that may be applied to the arbitrator's fees, such as, but not limited to, income or company tax, professional license fees, charges or retentions applied by the arbitrator's Bar association, pension or social security regime, as well as banking charges and commissions. In case of doubt, arbitrators should consult the Secretariat.
216. Arbitrators subject to VAT may request in writing to use the service described above allowing them to have the funds corresponding to their estimate of the VAT due on their fees and expenses (hereinafter "Fees") administered by ICC.
217. This service is completely separate from, and has no effect on, the procedure for paying advances as set out in the Rules. Should the parties fail to pay the VAT on the arbitrators' fees, this cannot be invoked by the arbitrators before the Court, for instance as a ground for suspending the arbitration.
218. If the president of an arbitral tribunal requests a VAT advance on behalf of all those members of the arbitral tribunal who are subject to VAT, the president shall inform the Secretariat of the breakdown of this advance arbitrator-by-arbitrator.
219. Arbitrators bear sole responsibility for ensuring that the procedure described above complies with the tax laws and regulations applicable to the exercise of their profession as arbitrators, including the payment of their fees. Arbitrators are encouraged to check the basis on which they should calculate the amount of VAT due.
220. ICC acts exclusively as depositary and is not in a position to advise arbitrators on tax law issues.
221. The arbitrator determines the amount of VAT on his or her fees according to the rules that apply at the place where he or she is taxable.

222. Arbitrators may use the [Cost Calculator](#) on the ICC website to estimate the amount of the fees that may be payable. They are however reminded that the breakdown of fees between the members of the arbitral tribunal (from 40% to 50% for the president, and 25% to 30% for each co-arbitrator) is given merely as a guide and may be varied by the Court.
223. Any invoice issued by an arbitrator to a party for fees and, as the case may be, VAT applicable to those fees should be for the portion of the fees and the amount of tax payable by that party. No invoice should in principle be issued by an arbitrator to ICC, save in special circumstances to be discussed in advance with the Secretariat.
224. When drawing up his or her invoice, the arbitrator requests ICC to pay the amount corresponding to the VAT on the fees due by the party. This applies at the time of the final award, but also in the event that the Court decides to pay an advance on fees to arbitrators who reside in countries where, under local tax law, VAT becomes payable to the tax authorities when fees are paid in advance.

XXII - Assistance with the Conduct of the Arbitration

A - Conduct of the Arbitration

225. The Secretariat may provide parties and arbitral tribunals with assistance regarding the conduct of the arbitration. The services the Secretariat may offer include but are not limited to:
- a. **Deposit of documents:** the Secretariat may in certain circumstances act as depositary of documents.
 - b. **Conference calls:** the Secretariat may assist arbitral tribunals in organising conference calls with the parties and, when required, participate in such calls.
 - c. **Administrative secretaries:** the Secretariat may assist arbitral tribunals in identifying administrative secretaries for appointment pursuant to section XIX above.
 - d. **Model documents:** the Secretariat may provide arbitral tribunals with model documents related to the conduct of the arbitration, in particular terms of reference and procedural timetables.
 - e. **Transparency:** pursuant to paragraph 39 above, the Court may, at the request of parties, publish on its website or otherwise make available to the public information or documents related to an ICC arbitration that is subject to transparency rules or regulations.
 - f. **ADR:** the ICC International Centre for ADR provides parties and arbitral tribunals with a number of services relevant to ongoing ICC arbitrations, in particular the proposal and appointment of experts (see section XXIV below).
 - g. **ICC Commercial Crime Services:** the Secretariat may assist arbitral tribunals and parties in liaising with ICC Commercial Crime Services (for more information visit: www.icc-ccs.org).

B - Hearings and Meetings

226. The Secretariat may provide services or assist parties and arbitral tribunals with the organisation of hearings and meetings, in particular:
- a. **ICC Hearing Centre in Paris (France):** the ICC Hearing Centre offers flexible packages and a range of specialised facilities and services for hearings and meetings.

Parties and arbitral tribunals may contact the Secretariat for further information or visit the website at www.icchearingcentre.org. By reserving a room at the ICC Hearing Centre for an ICC arbitration, parties and arbitrators accept that their contact details be communicated by the Secretariat to the ICC Hearing Centre for the sole purpose of their booking.

- b. **Other hearing facilities:** ICC has agreements with other hearing facilities around the globe. Parties and arbitral tribunals may consult the Secretariat for further information.
- c. **Court reporting:** the Secretariat may also provide parties and arbitral tribunals with information regarding services for hearings such as court reporting and simultaneous interpretation.
- d. **Visas and other authorisations:** the Secretariat may issue letters to facilitate the obtaining of visas or other authorisations for individuals participating in a hearing or meeting related to an ICC arbitration.
- e. **Hotels:** ICC negotiates preferential rates with a number of hotels in Paris and other jurisdictions. Parties and arbitral tribunals may consult the Secretariat for further information.

C - Sealed Offer(s)

- 227. The Secretariat may assist the Parties to put information relating to certain unaccepted settlement offers, and related correspondence (commonly referred to as “Sealed Offer(s)”), before an arbitral tribunal. The Secretariat may also assist with any counter-offer(s) made as Sealed Offer(s) by the offeree.
- 228. The arbitral tribunal should consider consulting the parties at an early stage (e.g. at the first case management conference pursuant to Article 24) and inviting them to agree on a procedure for the possible use of Sealed Offer(s) in the arbitration. Absent initiative by the arbitral tribunal in this respect, any party is free to raise this issue.
- 229. The Secretariat will keep any such correspondence (referred to in paragraph 227) confidential from the tribunal until all issues of liability and quantum have been resolved.
- 230. To obtain the Secretariat’s assistance, the following procedure should be followed:
 - a. At any point after the Secretariat has transmitted the Request for Arbitration to the respondent(s), any party to the arbitration may send to the Secretariat a copy of an offer of settlement previously made to any other party in the arbitration, but not accepted, that is marked “without prejudice save as to costs”. The offer should be submitted to the Secretariat in a sealed envelope marked “without prejudice save as to costs”. An accompanying letter should request the Secretariat to treat the sealed envelope as confidential and not to transmit it to the tribunal until the tribunal has resolved all issues of liability and quantum and is ready to consider the allocation of costs. The sending party should address such correspondence to the Secretariat and simultaneously copy the original recipient of the offer.
 - b. Following receipt of correspondence pursuant to paragraph (a) above, the Secretariat will inform:
 - (i) the sending party (copying the other party) that the sealed envelope will be held in confidence, and
 - (ii) the original recipient of the offer (copying the other party) of the circumstances in which the sealed envelope may be submitted to the tribunal and solicit any comments.
 - c. Further correspondence arising from the original offer (including, for example, any counter-offers) which is sent by a party to the Secretariat in a sealed envelope marked

- “without prejudice save as to costs” will be held by the Secretariat on the same basis as the original offer.
- d. At an appropriate stage in the proceedings, the Secretariat will write to the tribunal to inform it that the Secretariat is holding correspondence exchanged between the parties that is potentially relevant to its determination of costs under Article 38. The Secretariat will request the tribunal to: (i) inform the Secretariat in writing whether it accepts to receive the Sealed Offer(s); and in such case to (ii) inform the Secretariat in writing once it has completed its deliberations on all liability and quantum issues and is ready to apportion costs.
 - e. If the tribunal accepts to receive the Sealed Offer(s), it should refrain from closing the proceedings pursuant to Article 27 to the extent necessary to allow the parties to make further submissions on costs.
 - f. Once the tribunal has informed the Secretariat that it is ready to apportion costs under Article 38, the Secretariat will send to the tribunal all the correspondence marked “without prejudice save as to costs” and held by the Secretariat. Once the tribunal has received this information, it shall open the sealed envelopes and provide copies of any documents contained therein to the parties.
 - g. The tribunal will decide whether any further procedural steps are necessary or whether it can proceed to allocate costs pursuant to Article 38. For the avoidance of doubt, the tribunal retains discretion to decide what weight, if any, should be given to correspondence marked “without prejudice save as to costs” and received from the Secretariat.
 - h. Once the tribunal has completed its deliberations on costs, it will add its decision as to the allocation of costs to the draft final award, which will be submitted to the ICC Court for scrutiny pursuant to Article 34.

XXIII - Post-Award Services

231. In accordance with Article 35, the Secretariat shall assist the parties in complying with whatever formalities that may be necessary. These may include, but are not limited to:
- a. Certified copies of awards, Terms of Reference, correspondence or any other document issued or approved by the Secretariat or the Court;
 - b. Notarisation by the ICC notary public in Paris of signatures of members of the Secretariat who certify copies of documents;
 - c. Certificates;
 - d. Non-certified copies of documents from the case file, limited in size and number;
 - e. Letters reminding parties of their obligation to comply with the award.

232. As some post-award services take time and preparation, parties should allow sufficient time when requesting such assistance from the Secretariat.

XXIV - International Centre for ADR

A - ICC Mediation Rules

233. Parties are free to settle their dispute amicably prior to or at any time during an arbitration. They may wish to consider conducting an amicable dispute resolution procedure administered by the ICC International Centre for ADR (“Centre”) pursuant to the ICC Mediation Rules, which, in addition to mediation, allow for the use of other amicable settlement procedures. The Centre can also assist the parties in finding a suitable mediator.

234. Where appropriate, arbitrators may wish to remind the parties about the ICC Mediation Rules.
235. Further information is available from the Centre at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

B - ICC Expert Rules

236. If a party requires the assistance of an expert, the Centre can, upon request, propose experts with a wide range of specialisations. The fee for this service is US\$ 3 000.
237. Likewise, if the assistance of an expert is required by the arbitral tribunal, the Centre can, upon request, propose experts. This service is provided free of charge to arbitrators.
238. Further information is available from the Centre at +33 1 49 53 30 53 or expertise@iccwbo.org or www.iccexpertise.org.

XXV - Dispatch of Materials to ICC and Customs Charges

239. Materials sent to ICC (correspondence, submissions, binders, tapes, CDs, etc.) must be sent exclusively as “Documentation”. No other description should be indicated on the transportation slip or waybill. Generally, documentation is not subject to customs taxes. Other material may be subject to taxes, which vary according to the origin, content and weight of such material. Customs charges, if any, will increase the costs of arbitration.



2017 RULES

ICC ARBITRATOR STATEMENT

ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Family Name(s): _____

Given Name(s): _____

Please tick all relevant boxes.

1. ACCEPTANCE

Acceptance

☐ I **accept** to serve as arbitrator under and in accordance with the 2017 ICC Rules of Arbitration ("**Rules**"). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules). By accepting to serve as arbitrator under the Rules, unless otherwise agreed by the parties, I accept that my name, nationality, role and the method of my appointment as well as the termination of my assignment will be published on the ICC Court's website.

Non-Acceptance

☐ I **decline** to serve as arbitrator in this case. (If you tick here, simply date and sign the form without completing any other sections.)

2. AVAILABILITY

☐ I **confirm**, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration throughout the entire duration of the case as diligently, efficiently and expeditiously as possible in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 31 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Number of currently pending cases in which I am involved (i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):

	As tribunal chair / sole arbitrator	As co-arbitrator	As counsel
Arbitrations			
Court litigation	Not applicable	Not applicable	

Case N° _____

I have marked in the annexed calendar for the next 24 months all currently scheduled hearings and other existing commitments that would prevent me from sitting in a hearing on this matter.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

3. INDEPENDENCE and IMPARTIALITY

(Tick one box and provide details below and/or, if necessary, on a separate sheet)

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the parties, their lawyers or other representatives, or related entities and individuals. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information. In deciding which box to tick and as the case may be in preparing your disclosure, you should also consult with care the relevant sections of the **Note** to Parties and Arbitral Tribunals on the Conduct of the Arbitration.

☐ **Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

☐ **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Use one of the following options to sign the document:

- 1) Copy your signature from a Word document and paste it in this form.
- 2) Draw your ink signature ([click here for further assistance](#)).
- 3) Add your electronic signature.
- 4) Print the form, sign it and scan it.

Date: _____

Signature: _____

Disclaimer: The information requested in this form will be considered by the ICC for its Dispute Resolution Services, and will be stored in case management database systems. Pursuant to the French Law on "Informatique et Libertés" of 6 January 1978, particularly Articles 32 and 40, you may access this information and ask for rectification by writing to the Court's Secretariat.

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ICDR GUIDELINES FOR ARBITRATORS CONCERNING EXCHANGES OF INFORMATION

Introduction

The American Arbitration Association (AAA) and its international arm, the International Centre for Dispute Resolution[®] (ICDR) are committed to the principle that commercial arbitration, and particularly international commercial arbitration, should provide a simpler, less expensive and more expeditious form of dispute resolution than resort to national courts.

While arbitration must be a fair process, care must also be taken to prevent the importation of procedural measures and devices from different court systems, which may be considered conducive to fairness within those systems, but which are not appropriate to the conduct of arbitrations in an international context and which are inconsistent with an alternative form of dispute resolution that is simpler, less expensive and more expeditious. One of the factors contributing to complexity, expense and delay in recent years has been the migration from court systems into arbitration of procedural devices that allow one party to a court proceeding access to information in the possession of the other, without full consideration of the differences between arbitration and litigation.

The purpose of these guidelines is to make it clear to arbitrators that they have the authority, the responsibility and, in certain jurisdictions, the mandatory duty to manage arbitration proceedings so as to achieve the goal of providing a simpler, less expensive, and more expeditious process. Unless the parties agree otherwise in writing, these guidelines will become effective in all international cases administered by the ICDR commenced after May 31, 2008, and may be adopted at the discretion of the tribunal in pending cases. They will be reflected in amendments incorporated into the next revision of the International Arbitration Rules. They may be adopted in arbitration clauses or by agreement at any time in any other arbitration administered by the AAA.

1. In General

- a. The tribunal shall manage the exchange of information among the parties in advance of the hearings with a view to maintaining efficiency and economy. The tribunal and the parties should endeavor to avoid unnecessary delay and expense while at the same time balancing the goals of avoiding surprise, promoting equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.

- b. The parties may provide the tribunal with their views on the appropriate level of information exchange for each case, but the tribunal retains final authority to apply the above standard. To the extent that the Parties wish to depart from this standard, they may do so only on the basis of an express agreement among all of them in writing and in consultation with the tribunal.
2. **Documents on which a Party Relies.**

Parties shall exchange, in advance of the hearing, all documents upon which each intends to rely.
3. **Documents in the Possession of Another Party.**
 - a. In addition to any disclosure pursuant to paragraph 2, the tribunal may, upon application, require one party to make available to another party documents in the party's possession, not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case.
 - b. The tribunal may condition any exchange of documents subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.
4. **Electronic Documents.**

When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the Tribunal determines, on application and for good cause, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The Tribunal may direct testing or other means of focusing and limiting any search.
5. **Inspections.**

The tribunal may, on application and for good cause, require a party to permit inspection on reasonable notice of relevant premises or objects.
6. **Other Procedures.**
 - a. Arbitrators should be receptive to creative solutions for achieving exchanges of information in ways that avoid costs and delay, consistent with the principles of due process expressed in these Guidelines.

- b. Depositions, interrogatories, and requests to admit, as developed in American court procedures, are generally not appropriate procedures for obtaining information in international arbitration.

7. Privileges and Professional Ethics.

The tribunal should respect applicable rules of privilege or professional ethics and other legal impediments. When the parties, their counsel or their documents would be subject under applicable law to different rules, the tribunal should to the extent possible apply the same rule to both sides, giving preference to the rule that provides the highest level of protection.

8. Costs and Compliance.

- a. In resolving any dispute about pre-hearing exchanges of information, the tribunal shall require a requesting party to justify the time and expense that its request may involve, and may condition granting such a request on the payment of part or all of the cost by the party seeking the information. The tribunal may also allocate the costs of providing information among the parties, either in an interim order or in an award.
- b. In the event any party fails to comply with an order for information exchange, the tribunal may draw adverse inferences and may take such failure into account in allocating costs.

[II HOMEPAGE \(HTTP://WWW.JAIAC.ORG/\)](http://www.jaiac.org/)[II ABOUT US ▾](#)[II DISPUTE RESOLUTION ▾](#)[II EVENTS \(HTTP://WWW.JAIAC.ORG/EVENTS/\)](http://www.jaiac.org/events/)[II CONTACT US \(HTTP://WWW.JAIAC.ORG/CONTACT-US/\)](http://www.jaiac.org/contact-us/)

Code of Conduct For Arbitrator

Code of Conduct For Arbitrator

1. General

For the purpose of this Code of Conduct, 'JAIAC Rules' means JAIAC Arbitration Rules and JAIAC Fast Track Arbitration Rules.

2. Appointment

2.1 When approached with an appointment, an Arbitrator shall conduct reasonable enquiries with regard to potential conflict of interest that may arise from his appointment for that particular matter that may affect impartiality and independence. The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in determining the disclosure requirement and whether an Arbitrator is conflicted.

2.2 An Arbitrator shall only accept an appointment if he is fully satisfied that he is independent of the parties at the time of the appointment, and is able to remain so until final award has been rendered, able to discharge his duties without bias, has adequate knowledge of the language of the proceedings, has adequate experience and ability for the case at hand, and is able to give to the proceedings the time and attention which parties are reasonably entitled to expect.

3. Disclosure

3.1 A prospective Arbitrator shall disclose to the JAIAC, the Parties and/or co-panellist (if any) of all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as the information becomes available.

3.2 The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in determining the disclosure requirement and whether an Arbitrator is conflicted.

3.3 Before accepting appointment, a prospective Arbitrator must disclose:

1. Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness to the arbitration;
2. The extent of any prior knowledge he may have of the dispute.

3.4 Following such disclosure, the Secretary General shall reassess the suitability of the Arbitrator for the matter at hand and retains the discretion to appoint a different Arbitrator.

3.5 This duty of disclosure shall continue throughout the arbitration with regard to new facts and circumstances.

3.6 Failure to disclose may be a basis of removal as a JAIAC Arbitrator even if the non-disclosed facts or circumstances do not justify the removal or disqualification.

4. Communications

4.1 All communications other than proceedings at a hearing should be in writing.

4.2 Before accepting an appointment, an Arbitrator may only enquire as to the general nature of the dispute, the names of the parties, the amount in dispute and the expected time period required for the proceeding.

4.3 No Arbitrator shall confer with any of the parties or their counsel until after the Secretary General gives notice of the formation of the Tribunal or Panel to the parties.

4.4 Throughout the arbitral proceedings, an Arbitrator shall avoid any unilateral communications regarding the case with any party or its representatives. If such communication should occur, the Arbitrator should inform the other party or parties and co-arbitrators, if any, of its substance.

4.5 Any correspondence between Arbitrator and parties shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute and the JAIAC, unless the parties agree otherwise.

5. Termination on Corruption, Unlawful or Illegal Activities

5.1 Termination

Termination on basis of corruption without prejudice to any other rights of the JAIAC, if the Arbitrator is convicted by any court of law for corruption or any unlawful or illegal activities in relation to this Code of Conduct or any other agreement that the Arbitrator may have with the JAIAC, JAIAC shall be entitled to the removal or disqualification the JAIAC Arbitrator at any time.

5.2. Consequences of Termination

- a. In the event this Code of Conduct no longer applies, Clause 5 and its provisions shall remain in force.
- b. For the avoidance of doubt, the JAIAC and the Arbitrator hereby agree that the Arbitrator shall not be entitled to any compensation or any other form of losses including any loss of profit, damages, claims or whatsoever other than the payments stipulated in Clause 7 below.
- c. JAIAC and the Arbitrator further agree that the payment made by the JAIAC under Clause 7 shall constitute a full and final settlement between the Parties.

6. Conduct during proceedings

- 6.1 An Arbitrator shall at all times keep the JAIAC informed on the status of the proceedings.
- 6.2 Before the proceedings, an Arbitrator shall always check with the JAIAC with regards to the deposits made by each party.
- 6.3 Once the arbitration proceedings commence, the Arbitrator shall acquaint himself with all the facts and arguments presented and all the discussions relative to the proceedings so that he may properly understand the dispute.
- 6.4 An Arbitrator shall decide all the issues submitted for determination after careful deliberation and exercise his own impartial judgment and shall not permit outside pressures, fear of criticisms or any form of self-interest to affect his decisions.

7. Fees

- 7.1 For matters conducted under the JAIAC Arbitration Rules, an Arbitrator must adopt the JAIAC Scale of Fees and adhere to JAIAC's Guidelines for costs and disbursements. However an Arbitrator may adopt a different scale of fees subject to the agreement of parties as provided for in JAIAC Rules.
- 7.2 In the event parties agree to adopt a different scale of fees, an Arbitrator must disclose and explain the basis of his fees and expenses to the parties on or before the first preliminary meeting.
- 7.3 Immediately after the parties have agreed to a different scale of fees, the Arbitrator shall notify the JAIAC, in writing, of the agreed fees and expenses.
- 7.4 The Arbitral Tribunal shall keep the JAIAC informed, in writing, of any changes in the amount of dispute during the proceeding as it affects the scale of fees applicable
- 7.5 For matters conducted under the JAIAC Arbitration Rules, and notwithstanding any agreement on fees pursuant to the Rules, the Arbitral tribunal shall not under any circumstances collect any fees or expenses directly from the parties or their counsels, except with the express agreement of the Secretary General of the JAIAC.

8. Confidentiality

- 8.1 The proceedings shall remain confidential. An Arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 8.2 This Code of Conduct is not intended to provide grounds for the setting aside of any award.

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About Us

The JAIAC functions from an operational hub at the Jamaica Chamber of Commerce, while serving virtually and under as needed physical facilities arrangements, including with the Jamaica Chamber of Commerce and the Montego Bay Convention Centre.

Recent News

- › **Arbitration Week 2018**
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9:00am-5:00pm

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Arbitrators Ethics Guidelines

Introduction

A. The purpose of these Ethics Guidelines is to provide basic guidance to JAMS Arbitrators regarding ethical issues that may arise during or related to the Arbitration process. Arbitration is an adjudicative dispute resolution procedure in which a neutral decision maker issues an Award. Parties are often represented by counsel who argue the case before a single Arbitrator or a panel of three Arbitrators, who adjudicate, or judge, the matter based on the evidence presented.

B. Arbitration - either entered into voluntarily after a dispute has occurred, or as agreed to in a pre-dispute contract clause - is generally binding. By entering into the Arbitration process, the Parties have agreed to accept an Arbitrator's decision as final. There are instances when an Arbitrator's decision may be modified or vacated, but they are extremely rare. The Parties in an Arbitration trade the right to full review for a speedier, less expensive and private process in which it is certain there will be an appropriately expeditious resolution.

C. Other sets of ethics guidelines for Arbitrators exist, such as those promulgated by the National Academy of Arbitrators and jointly by the American Arbitration Association and the American Bar Association. An Arbitrator may wish to review these for informational purposes.

D. These Guidelines are national in scope and are necessarily general. They are not intended to supplant applicable state or local law or rules. An Arbitrator should be aware of applicable state statutes or court rules, such as laws concerning disclosure that may apply to the Arbitrations being conducted. In the event that these Guidelines are inconsistent with such statutes or rules, an Arbitrator must comply with the applicable law.

E. In addition, most states have promulgated codes of ethics for judges and other public judicial officers. In some instances, these codes apply to certain activities of private judges, such as court-ordered Arbitrations. Arbitrators should comply with codes that are specifically applicable to them or to their activities. Where the codes do not specifically apply, an Arbitrator may choose to comply voluntarily with the requirements of such codes.

F. The ethical obligations of an Arbitrator begin as soon as the Arbitrator becomes aware of potential selection by the Parties and continue even after the decision in the case has been rendered. JAMS strongly encourages Arbitrators to address ethical issues that may arise in their cases as soon as an issue becomes apparent, and where appropriate to seek advice on how to resolve such issues from the National Arbitration Committee.

G. The Guidelines in Articles I through IX apply to neutral Arbitrators regardless of the method by which they may have been selected. Article X is intended to apply to Party-appointed Arbitrators who are non-neutral.

Many Arbitration agreements provide for the appointment of an Arbitrator by each Party and the appointment of the third Arbitrator by the two Party-appointed Arbitrators. Party-appointed Arbitrators should be presumed to be neutral, unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise.

1. Where the Party-appointed Arbitrator is expected to be non-neutral, some of the Guidelines applicable to neutral Arbitrators do not apply or are altered to suit this process. For example, while non-neutral Arbitrators must disclose any matters that might affect their independence, the opposing Party ordinarily may not disqualify such person from service as an Arbitrator.
2. It is appropriate for the party appointed arbitrators to address the status of their service with the party that appointed them, with each other and with the neutral arbitrator and to determine whether the Parties would prefer that they act in a neutral capacity.
3. *Note regarding international Arbitrations.* Tripartite Arbitrations in which the Parties each appoint one Arbitrator are common in international disputes; however, all Arbitrators, by whomever appointed, are expected to be independent of the Parties and to be neutral. They are sometimes expected to communicate *ex parte* with the Party that appointed them solely for purposes of the selection of the chairman and not otherwise.

H. These Guidelines do not establish new or additional grounds for judicial review of Arbitration Awards.

Guidelines

I. AN ARBITRATOR SHOULD UPHOLD THE DIGNITY AND INTEGRITY OF THE OFFICE OF THE ARBITRATION PROCESS.

An Arbitrator has a responsibility to the Parties, to other participants in the proceeding, and to the profession. An Arbitrator should seek to discern and refuse to lend approval or consent to any attempt by a Party of its representative to use Arbitration for a purpose other than the fair and efficient resolution of a dispute.

II. AN ARBITRATOR SHOULD BE COMPETENT TO ARBITRATE THE PARTICULAR MATTER.

An Arbitrator should accept an appointment only if the Arbitrator meets the Parties' stated requirements in the agreement to arbitrate regarding professional qualifications. An Arbitrator should prepare before the Arbitration by reviewing any statements or documents submitted by the Parties. An Arbitrator should refuse to serve or should withdraw from the Arbitration if the Arbitrator becomes physically or mentally unable to meet the reasonable expectations of the Parties.

III. AN ARBITRATOR SHOULD INFORM ALL PARTIES OF THE ROLE OF THE ARBITRATOR AND THE RULES OF THE ARBITRATION PROCESS.

A. An Arbitrator should ensure that all Parties understand the Arbitration process, the Arbitrator's role in that process, and the relationship of the Parties to the Arbitrator.

B. An Arbitrator may encourage the Parties to mediate their dispute but should not suggest that the Arbitrator serve as the mediator. In the event that, prior to or during the Arbitration, all Parties request an Arbitrator to participate in discussions of settlement or to combine the Arbitration with another dispute resolution process, the Arbitrator should explain how the Arbitrator's role and relationship to the Parties may be altered, including the impact such a shift may have on the willingness of the Parties to disclose certain information to the Arbitrator serving in the settlement-related role. Nothing in these Guidelines is intended to prevent an Arbitrator from acting as a neutral in another dispute resolution process in the same case, if requested to do so by all Parties and if an appropriate written waiver is obtained. The Parties should, however, be given the opportunity to select another neutral to conduct any such process.

IV. AN ARBITRATOR SHOULD MAINTAIN CONFIDENTIALITY APPROPRIATE TO THE PROCESS.

- A. Unless otherwise agreed by the Parties, or required by applicable rules or law, an Arbitrator should keep confidential all matters relating to the Arbitration proceedings and decisions.
- B. An Arbitrator should not discuss a case with persons not involved directly in the Arbitration unless the identity of the Parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification.
- C. An Arbitrator may discuss a case with another member of the Arbitration panel hearing that case, whether or not all panel members are present.
- D. An Arbitrator should not use confidential information acquired during the Arbitration proceeding to gain personal advantage or advantage of others, or to affect adversely the interest of another. An Arbitrator should not inform anyone of the decision in advance of giving it to all Parties. Where there is more than one Arbitrator, an Arbitrator should not disclose to anyone the deliberations of the Arbitrators.
- E. An Arbitrator should not participate in post-Award proceedings, except (1) if requested to make a correction to or clarification of an Award, (2) if required by law or (3) if requested by all Parties to participate in a subsequent dispute resolution procedure in the same case.

V. AN ARBITRATOR SHOULD ENSURE THAT HE OR SHE HAS NO KNOWN CONFLICT OF INTEREST REGARDING THE CASE, AND SHOULD ENDEAVOR TO AVOID ANY APPEARANCE OF A CONFLICT OF INTEREST.

A. An Arbitrator should promptly disclose, or cause to be disclosed all matters required by applicable law and any actual or potential conflict of interest or relationship or other information, of which the Arbitrator is aware, that reasonably could lead a Party to question the Arbitrator's impartiality.

B. An Arbitrator may establish social or professional relationships with lawyers and members of other professions. There should be no attempt to be secretive about such relationships but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

C. An Arbitrator should not proceed with the process unless all Parties have acknowledged

and waived any actual or potential conflict of interest. If the conflict of interest casts serious doubt on the integrity of the process, an Arbitrator should withdraw, notwithstanding receipt of a full waiver.

D. An Arbitrator's disclosure obligations continue throughout the course of the Arbitration and require the Arbitrator to disclose, at any stage of the Arbitration, any such interest or relationship that may arise, or that is recalled or discovered. Disclosure should be made to all Parties, and the Arbitrator should accept such work only where the Arbitrator believes it can be undertaken without an actual or apparent conflict of interest. Where more than one Arbitrator is appointed, each should inform the others of the interests and relationships that have been disclosed.

E. An Arbitrator should avoid conflicts of interest in recommending the services of other professionals. If an Arbitrator is unable to make a personal recommendation without creating a potential or actual conflict of interest, the Arbitrator should so advise the Parties and refer them to a professional service, provider or association.

F. After an Award or decision is rendered in an Arbitration, an Arbitrator should refrain from any conduct involving a Party, insurer or counsel to a Party to the Arbitration that would cast reasonable doubt on the integrity of the Arbitration process, absent disclosure to and consent by all the Parties to the Arbitration. This does not preclude an Arbitrator from serving as an Arbitrator or in another neutral capacity with a Party, insurer or counsel involved in the prior Arbitration, provided that appropriate disclosures are made about the prior Arbitration to the Parties to the new matter.

G. Other than agreed fee and expense reimbursement, an Arbitrator should not accept a gift or item of value from a Party, insurer or counsel to a pending Arbitration. Unless a period of time has elapsed sufficient to negate any appearance of a conflict of interest, an Arbitrator should not accept a gift or item of value from a Party to a completed Arbitration, except that this provision does not preclude an Arbitrator from engaging in normal, social interaction with a Party, insurer or counsel to an Arbitration once the Arbitration is completed.

H. Where relevant state or local rule or statute is more specific than these Guidelines as to Arbitrator disclosure, it should be followed.

VI. AN ARBITRATOR SHOULD ENDEAVOR TO PROVIDE AN EVENHANDED AND UNBIASED PROCESS AND TO TREAT ALL PARTIES WITH RESPECT AT ALL STAGES OF THE PROCEEDINGS.

A. An Arbitrator should remain impartial throughout the course of the Arbitration. Impartiality means freedom from favoritism either by word or action. The Arbitrator should be aware of and avoid the potential for bias based on the Parties' backgrounds, personal attributes or conduct during the Arbitration, or based on the Arbitrator's pre-existing knowledge of or opinion about the merits of the dispute being arbitrated. An Arbitrator should not permit any social or professional relationship with a Party, insurer or counsel to a Party to an Arbitration to affect his or her decision-making. If an Arbitrator becomes incapable of maintaining impartiality, the Arbitrator should withdraw.

B. An Arbitrator should perform duties diligently and conclude the case as promptly as the circumstances reasonably permit. An Arbitrator should be courteous to the Parties, to their representatives and to the witnesses, and should encourage similar conduct by all participants in the proceedings. An Arbitrator should make all reasonable efforts to prevent the Parties, their representatives, or other participants from engaging in delaying tactics, harassment of Parties or other participants, or other abuse or disruption of the Arbitration process.

C. Unless otherwise provided in an agreement of the Parties, (1) an Arbitrator should not discuss a case with any Party in the absence of every other Party, except that if a Party fails to appear at a hearing after having been given due notice, the Arbitrator may discuss the case with any Party who is present; and (2) whenever an Arbitrator communicates in writing with one Party, the Arbitrator should, at the same time, send a copy of the communication to every other Party. Whenever an Arbitrator receives a written communication concerning the case from one Party that has not already been sent to each Party, the Arbitrator should do so.

D. When there is more than one Arbitrator, the Arbitrators should afford each other full opportunity to participate in all aspects of the Arbitration proceedings.

VII. AN ARBITRATOR SHOULD WITHDRAW UNDER CERTAIN CIRCUMSTANCES.

A. An Arbitrator should withdraw from the process if the Arbitration is being used to further criminal conduct, or for any of the reasons set forth above - insufficient knowledge of relevant procedural or substantive issues, a conflict of interest that has not been or cannot be waived, the Arbitrator's inability to maintain impartiality, or the Arbitrator's physical or mental disability. In addition, an Arbitrator should be aware of the potential need to withdraw from the case if procedural or substantive unfairness appears to have irrevocably undermined the integrity of the Arbitration process.

B. Except where an Arbitrator is obligated to withdraw or where all Parties request withdrawal, an Arbitrator should continue to serve in the matter.

VIII. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. An Arbitrator should, after careful deliberation and exercising independent judgment, promptly or otherwise within the time period agreed to by the Parties or by JAMS Rules, decide all issues submitted for determination and issue an Award. An Arbitrator's Award should not be influenced by fear or criticism or by any interest in potential future case referrals by any of the Parties or counsel, nor should an Arbitrator issue an Award that reflects a compromise position in order to achieve such acceptability. An Arbitrator should not delegate the duty to decide to any other person.

B. If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator should comply with such request unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she may inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

IX. AN ARBITRATOR SHOULD UPHOLD THE DIGNITY AND INTEGRITY OF THE ARBITRATION PROCESS IN MATTERS RELATING TO MARKETING AND COMPENSATION.

An Arbitrator should avoid marketing that is misleading or that compromises impartiality. An Arbitrator should ensure that any advertising or other marketing to the public conducted on the Arbitrator's behalf is truthful. An Arbitrator may discuss issues relating to compensation with the Parties but should not engage in such discussions if they create an appearance of coercion or other impropriety and should not engage in *ex parte* communications regarding compensation.

X. ETHICAL GUIDELINES APPLICABLE TO NON-NEUTRAL ARBITRATORS.

These Guidelines are applicable to non-neutral Arbitrators, except as follows:

Guideline III: A non-neutral Arbitrator should ensure that all Parties and other Arbitrators are aware of his or her non-neutral status.

Guideline V: A non-neutral Arbitrator is obligated to make disclosures of any actual or potential conflicts of interest, although a non-neutral Arbitrator is not obligated to withdraw if requested to do so only by the party who did not appoint him or her.

Guideline VI:

1. A non-neutral Arbitrator may be predisposed toward the Party who appointed him or her but in all other respects is obligated to act in good faith and with integrity and fairness.
2. A non-neutral Arbitrator may engage in *ex parte* communication with the Party that appointed him or her, but should disclose to the Parties and the other Arbitrators the fact that such communications are occurring and should honor any agreement reached with the Parties and the other Arbitrators regarding the timing and nature of such communications.

Guideline IX: The compensation arrangements between a non-neutral Arbitrator and the Party that appointed him or her usually is treated as confidential but may be disclosed in connection with any fee application in the Arbitration proceeding.

For more information, please call your local JAMS office at 1-800-352-5267.

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LCIA ARBITRATION RULES

effective 1 October 2014

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Preamble

Where any agreement, submission or reference howsoever made or evidenced in writing (whether signed or not) provides in whatsoever manner for arbitration under the rules of or by the LCIA, the London Court of International Arbitration, the London Court of Arbitration or the London Court, the parties thereto shall be taken to have agreed in writing that any arbitration between them shall be conducted in accordance with the LCIA Rules or such amended rules as the LCIA may have adopted hereafter to take effect before the commencement of the arbitration and that such LCIA Rules form part of their agreement (collectively, the "Arbitration Agreement"). These LCIA Rules comprise this Preamble, the Articles and the Index, together with the Annex to the LCIA Rules and the Schedule of Costs as both from time to time may be separately amended by the LCIA (the "LCIA Rules").

Article 1 Request for Arbitration

1.1 Any party wishing to commence an arbitration under the LCIA Rules (the "Claimant") shall deliver to the Registrar of the LCIA Court (the "Registrar") a written request for arbitration (the "Request"), containing or accompanied by:

- (i) the full name and all contact details (including postal address, e-mail address, telephone and facsimile numbers) of the Claimant for the purpose of receiving delivery of all documentation in the arbitration; and the same particulars of the Claimant's legal representatives (if any) and of all other parties to the arbitration;
- (ii) the full terms of the Arbitration Agreement (excepting the LCIA Rules) invoked by the Claimant to support its claim, together with a copy of any contractual or other documentation in which those terms are contained and to which the Claimant's claim relates;
- (iii) a statement briefly summarising the nature and circumstances of the dispute, its estimated monetary amount or value, the transaction(s) at issue and the claim advanced by the Claimant against any other party to the arbitration (each such other party being here separately described as a "Respondent");
- (iv) a statement of any procedural matters for the arbitration (such as the arbitral seat, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities) upon which the parties have already agreed in writing or in respect of which the Claimant makes any proposal under the Arbitration Agreement;
- (v) if the Arbitration Agreement (or any other written agreement) howsoever calls for any form of party nomination of arbitrators, the full name, postal address, e-mail address, telephone and facsimile numbers of the Claimant's nominee;
- (vi) confirmation that the registration fee prescribed in the Schedule of Costs has been or is being paid to the LCIA, without which actual receipt of such payment the Request shall be treated by the Registrar as not having been delivered and the arbitration as not having been commenced under the Arbitration Agreement; and

(vii) confirmation that copies of the Request (including all accompanying documents) have been or are being delivered to all other parties to the arbitration by one or more means to be identified specifically in such confirmation, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the LCIA Court of actual delivery (including the date of delivery) or, if actual delivery is demonstrated to be impossible to the LCIA Court's satisfaction, sufficient information as to any other effective form of notification.

1.2 The Request (including all accompanying documents) may be submitted to the Registrar in electronic form (as e-mail attachments) or in paper form or in both forms. If submitted in paper form, the Request shall be submitted in two copies where a sole arbitrator is to be appointed, or, if the parties have agreed or the Claimant proposes that three arbitrators are to be appointed, in four copies.

1.3 The Claimant may use, but is not required to do so, the standard electronic form available on-line from the LCIA's website for LCIA Requests.

1.4 The date of receipt by the Registrar of the Request shall be treated as the date upon which the arbitration has commenced for all purposes (the "Commencement Date"), subject to the LCIA's actual receipt of the registration fee.

1.5 There may be one or more Claimants (whether or not jointly represented); and in such event, where appropriate, the term "Claimant" shall be so interpreted under the Arbitration Agreement.

Article 2 *Response*

2.1 Within 28 days of the Commencement Date, or such lesser or greater period to be determined by the LCIA Court upon application by any party or upon its own initiative (pursuant to Article 22.5), the Respondent shall deliver to the Registrar a written response to the Request (the "Response"), containing or accompanied by:

(i) the Respondent's full name and all contact details (including postal address, e-mail address, telephone and facsimile numbers) for the purpose of receiving delivery of all documentation in the arbitration and the same particulars of its legal representatives (if any);

(ii) confirmation or denial of all or part of the claim advanced by the Claimant in the Request, including the Claimant's invocation of the Arbitration Agreement in support of its claim;

(iii) if not full confirmation, a statement briefly summarising the nature and circumstances of the dispute, its estimated monetary amount or value, the transaction(s) at issue and the defence advanced by the Respondent, and also indicating whether any cross-claim will be advanced by the Respondent against any other party to the arbitration (such cross-claim to include any counterclaim against any Claimant and any other cross-claim against any Respondent);

(iv) a response to any procedural statement for the arbitration contained in the Request under Article 1.1(iv), including the Respondent's own statement relating to the arbitral seat, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities and any other procedural matter upon which the parties have already agreed in writing or in respect of which the Respondent makes any proposal under the Arbitration Agreement;

(v) if the Arbitration Agreement (or any other written agreement) howsoever calls for party nomination of arbitrators, the full name, postal address, e-mail address, telephone and facsimile numbers of the Respondent's nominee; and

(vi) confirmation that copies of the Response (including all accompanying documents) have been or are being delivered to all other parties to the arbitration by one or more means of delivery to be identified specifically in such confirmation, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the LCIA Court of actual delivery (including the date of delivery) or, if actual delivery is demonstrated to be impossible to the LCIA Court's satisfaction, sufficient information as to any other effective form of notification.

2.2 The Response (including all accompanying documents) may be submitted to the Registrar in electronic form (as e-mail attachments) or in paper form or in both forms. If submitted in paper form, the Response shall be submitted in two copies where a sole arbitrator is to be appointed, or, if the parties have agreed or the Respondent proposes that three arbitrators are to be appointed, in four copies.

2.3 The Respondent may use, but is not required to do so, the standard electronic form available on-line from the LCIA's website for LCIA Responses.

2.4 Failure to deliver a Response within time shall constitute an irrevocable waiver of that party's opportunity to nominate or propose any arbitral candidate. Failure to deliver any or any part of a Response within time or at all shall not (by itself) preclude the Respondent from denying any claim or from advancing any defence or cross-claim in the arbitration.

2.5 There may be one or more Respondents (whether or not jointly represented); and in such event, where appropriate, the term "Respondent" shall be so interpreted under the Arbitration Agreement.

Article 3 LCIA Court and Registrar

3.1 The functions of the LCIA Court under the Arbitration Agreement shall be performed in its name by the President of the LCIA Court (or any of its Vice-Presidents, Honorary Vice-Presidents or former Vice-Presidents) or by a division of three or more members of the LCIA Court appointed by its President or any Vice-President (the "LCIA Court").

3.2 The functions of the Registrar under the Arbitration Agreement shall be performed under the supervision of the LCIA Court by the Registrar or any deputy Registrar.

3.3 All communications in the arbitration to the LCIA Court from any party, arbitrator or expert to the Arbitral Tribunal shall be addressed to the Registrar.

Article 4 *Written Communications and Periods of Time*

4.1 Any written communication by the LCIA Court, the Registrar or any party may be delivered personally or by registered postal or courier service or (subject to Article 4.3) by facsimile, e-mail or any other electronic means of telecommunication that provides a record of its transmission, or in any other manner ordered by the Arbitral Tribunal.

4.2 Unless otherwise ordered by the Arbitral Tribunal, if an address has been agreed or designated by a party for the purpose of receiving any communication in regard to the Arbitration Agreement or (in the absence of such agreement or designation) has been regularly used in the parties' previous dealings, any written communication (including the Request and Response) may be delivered to such party at that address, and if so delivered, shall be treated as having been received by such party.

4.3 Delivery by electronic means (including e-mail and facsimile) may only be effected to an address agreed or designated by the receiving party for that purpose or ordered by the Arbitral Tribunal.

4.4 For the purpose of determining the commencement of any time-limit, a written communication shall be treated as having been received by a party on the day it is delivered or, in the case of electronic means, transmitted in accordance with Articles 4.1 to 4.3 (such time to be determined by reference to the recipient's time-zone).

4.5 For the purpose of determining compliance with a time-limit, a written communication shall be treated as having been sent by a party if made or transmitted in accordance with Articles 4.1 to 4.3 prior to or on the date of the expiration of the time-limit.

4.6 For the purpose of calculating a period of time, such period shall begin to run on the day following the day when a written communication is received by the addressee. If the last day of such period is an official holiday or non-business day at the place of that addressee (or the place of the party against whom the calculation of time applies), the period shall be extended until the first business day which follows that last day. Official holidays and non-business days occurring during the running of the period of time shall be included in calculating that period.

Article 5 *Formation of Arbitral Tribunal*

5.1 The formation of the Arbitral Tribunal by the LCIA Court shall not be impeded by any controversy between the parties relating to the sufficiency of the Request or the Response. The LCIA Court may also proceed with the arbitration notwithstanding that the Request is incomplete or the Response is missing, late or incomplete.

5.2 The expression the "Arbitral Tribunal" includes a sole arbitrator or all the arbitrators where more than one.

5.3 All arbitrators shall be and remain at all times impartial and independent of the parties; and none shall act in the arbitration as advocate for or representative of any party. No arbitrator shall advise any party on the parties' dispute or the outcome of the arbitration.

5.4 Before appointment by the LCIA Court, each arbitral candidate shall furnish to the Registrar (upon the latter's request) a brief written summary of his or her qualifications and professional positions (past and present); the candidate shall also agree in writing fee-rates conforming to the Schedule of Costs; the candidate shall sign a written declaration stating: (i) whether there are any circumstances currently known to the candidate which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration; and (ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration. The candidate shall furnish promptly such agreement and declaration to the Registrar.

5.5 If appointed, each arbitral candidate shall thereby assume a continuing duty as an arbitrator, until the arbitration is finally concluded, forthwith to disclose in writing any circumstances becoming known to that arbitrator after the date of his or her written declaration (under Article 5.4) which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence, to be delivered to the LCIA Court, any other members of the Arbitral Tribunal and all parties in the arbitration.

5.6 The LCIA Court shall appoint the Arbitral Tribunal promptly after receipt by the Registrar of the Response or, if no Response is received, after 35 days from the Commencement Date (or such other lesser or greater period to be determined by the LCIA Court pursuant to Article 22.5).

5.7 No party or third person may appoint any arbitrator under the Arbitration Agreement: the LCIA Court alone is empowered to appoint arbitrators (albeit taking into account any written agreement or joint nomination by the parties).

5.8 A sole arbitrator shall be appointed unless the parties have agreed in writing otherwise or if the LCIA Court determines that in the circumstances a three-member tribunal is appropriate (or, exceptionally, more than three).

5.9 The LCIA Court shall appoint arbitrators with due regard for any particular method or criteria of selection agreed in writing by the parties. The LCIA Court shall also take into account the transaction(s) at issue, the nature and circumstances of the dispute, its monetary amount or value, the location and languages of the parties, the number of parties and all other factors which it may consider relevant in the circumstances.

5.10 The President of the LCIA Court shall only be eligible to be appointed as an arbitrator if the parties agree in writing to nominate him or her as the sole or presiding arbitrator; and the Vice Presidents of the LCIA Court and the Chairman of the LCIA Board of Directors (the latter being ex officio a member of the LCIA Court) shall only be eligible to be appointed as arbitrators if nominated in writing by a party or parties – provided that no such nominee shall have taken or shall take thereafter any part in any function of the LCIA Court or LCIA relating to such arbitration.

Article 6 *Nationality of Arbitrators*

6.1 Where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless the parties who are not of the same nationality as the arbitral candidate all agree in writing otherwise.

6.2 The nationality of a party shall be understood to include those of its controlling shareholders or interests.

6.3 A person who is a citizen of two or more States shall be treated as a national of each State; citizens of the European Union shall be treated as nationals of its different Member States and shall not be treated as having the same nationality; a citizen of a State's overseas territory shall be treated as a national of that territory and not of that State; and a legal person incorporated in a State's overseas territory shall be treated as such and not (by such fact alone) as a national of or a legal person incorporated in that State.

Article 7 *Party and Other Nominations*

7.1 If the parties have agreed howsoever that any arbitrator is to be appointed by one or more of them or by any third person (other than the LCIA Court), that agreement shall be treated under the Arbitration Agreement as an agreement to nominate an arbitrator for all purposes. Such nominee may only be appointed by the LCIA Court as arbitrator subject to that nominee's compliance with Articles 5.3 to 5.5; and the LCIA Court shall refuse to appoint any nominee if it determines that the nominee is not so compliant or is otherwise unsuitable.

7.2 Where the parties have howsoever agreed that the Claimant or the Respondent or any third person (other than the LCIA Court) is to nominate an arbitrator and such nomination is not made within time or at all (in the Request, Response or otherwise), the LCIA Court may appoint an arbitrator notwithstanding any absent or late nomination.

7.3 In the absence of written agreement between the Parties, no party may unilaterally nominate a sole arbitrator or presiding arbitrator.

Article 8 *Three or More Parties*

8.1 Where the Arbitration Agreement entitles each party howsoever to nominate an arbitrator, the parties to the dispute number more than two and such parties have not all agreed in writing that the disputant parties represent collectively two separate "sides" for the formation of the Arbitral Tribunal (as Claimants on one side and Respondents on the other side, each side nominating a single arbitrator), the LCIA Court shall appoint the Arbitral Tribunal without regard to any party's entitlement or nomination.

8.2 In such circumstances, the Arbitration Agreement shall be treated for all purposes as a written agreement by the parties for the nomination and appointment of the Arbitral Tribunal by the LCIA Court alone.

Article 9A *Expedited Formation of Arbitral Tribunal*

9.1 In the case of exceptional urgency, any party may apply to the LCIA Court for the expedited formation of the Arbitral Tribunal under Article 5.

9.2 Such an application shall be made to the Registrar in writing (preferably by electronic means), together with a copy of the Request (if made by a Claimant) or a copy of the Response (if made by a Respondent), delivered or notified to all other parties to the arbitration. The application shall set out the specific grounds for exceptional urgency requiring the expedited formation of the Arbitral Tribunal.

9.3 The LCIA Court shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of forming the Arbitral Tribunal the LCIA Court may abridge any period of time under the Arbitration Agreement or other agreement of the parties (pursuant to Article 22.5).

Article 9B *Emergency Arbitrator*

9.4 Subject always to Article 9.14 below, in the case of emergency at any time prior to the formation or expedited formation of the Arbitral Tribunal (under Articles 5 or 9A), any party may apply to the LCIA Court for the immediate appointment of a temporary sole arbitrator to conduct emergency proceedings pending the formation or expedited formation of the Arbitral Tribunal (the “Emergency Arbitrator”).

9.5 Such an application shall be made to the Registrar in writing (preferably by electronic means), together with a copy of the Request (if made by a Claimant) or a copy of the Response (if made by a Respondent), delivered or notified to all other parties to the arbitration. The application shall set out, together with all relevant documentation: (i) the specific grounds for requiring, as an emergency, the appointment of an Emergency Arbitrator; and (ii) the specific claim, with reasons, for emergency relief. The application shall be accompanied by the applicant’s written confirmation that the applicant has paid or is paying to the LCIA the Special Fee under Article 9B, without which actual receipt of such payment the application shall be dismissed by the LCIA Court. The Special Fee shall be subject to the terms of the Schedule of Costs. Its amount is prescribed in the Schedule, covering the fees and expenses of the Emergency Arbitrator and the administrative fees and expenses of the LCIA, with additional charges (if any) of the LCIA Court. After the appointment of the Emergency Arbitrator, the amount of the Special Fee payable by the applicant may be increased by the LCIA Court in accordance with the Schedule. Article 24 shall not apply to any Special Fee paid to the LCIA.

9.6 The LCIA Court shall determine the application as soon as possible in the circumstances. If the application is granted, an Emergency Arbitrator shall be appointed by the LCIA Court within three days of the Registrar’s receipt of the application (or as soon as possible thereafter). Articles 5.1, 5.7, 5.9, 5.10, 6, 9C, 10 and 16.2 (last sentence) shall apply to such appointment. The Emergency Arbitrator shall comply with the requirements of Articles 5.3, 5.4 and (until the emergency proceedings are finally concluded) Article 5.5.

9.7 The Emergency Arbitrator may conduct the emergency proceedings in any manner determined by the Emergency Arbitrator to be appropriate in the circumstances, taking account of

the nature of such emergency proceedings, the need to afford to each party, if possible, an opportunity to be consulted on the claim for emergency relief (whether or not it avails itself of such opportunity), the claim and reasons for emergency relief and the parties' further submissions (if any). The Emergency Arbitrator is not required to hold any hearing with the parties (whether in person, by telephone or otherwise) and may decide the claim for emergency relief on available documentation. In the event of a hearing, Articles 16.3, 19.2, 19.3 and 19.4 shall apply.

9.8 The Emergency Arbitrator shall decide the claim for emergency relief as soon as possible, but no later than 14 days following the Emergency Arbitrator's appointment. This deadline may only be extended by the LCIA Court in exceptional circumstances (pursuant to Article 22.5) or by the written agreement of all parties to the emergency proceedings. The Emergency Arbitrator may make any order or award which the Arbitral Tribunal could make under the Arbitration Agreement (excepting Arbitration and Legal Costs under Articles 28.2 and 28.3); and, in addition, make any order adjourning the consideration of all or any part of the claim for emergency relief to the proceedings conducted by the Arbitral Tribunal (when formed).

9.9 An order of the Emergency Arbitrator shall be made in writing, with reasons. An award of the Emergency Arbitrator shall comply with Article 26.2 and, when made, take effect as an award under Article 26.8 (subject to Article 9.11). The Emergency Arbitrator shall be responsible for delivering any order or award to the Registrar, who shall transmit the same promptly to the parties by electronic means, in addition to paper form (if so requested by any party). In the event of any disparity between electronic and paper forms, the electronic form shall prevail.

9.10 The Special Fee paid shall form a part of the Arbitration Costs under Article 28.2 determined by the LCIA Court (as to the amount of Arbitration Costs) and decided by the Arbitral Tribunal (as to the proportions in which the parties shall bear Arbitration Costs). Any legal or other expenses incurred by any party during the emergency proceedings shall form a part of the Legal Costs under Article 28.3 decided by the Arbitral Tribunal (as to amount and as to payment between the parties of Legal Costs).

9.11 Any order or award of the Emergency Arbitrator (apart from any order adjourning to the Arbitral Tribunal, when formed, any part of the claim for emergency relief) may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.

9.12 Article 9B shall not prejudice any party's right to apply to a state court or other legal authority for any interim or conservatory measures before the formation of the Arbitration Tribunal; and it shall not be treated as an alternative to or substitute for the exercise of such right. During the emergency proceedings, any application to and any order by such court or authority shall be communicated promptly in writing to the Emergency Arbitrator, the Registrar and all other parties.

9.13 Articles 3.3, 13.1-13.4, 14.4, 14.5, 16, 17, 18, 22.3, 22.4, 23, 28, 29, 30, 31 and 32 and the Annex shall apply to emergency proceedings. In addition to the provisions expressly set out there and in Article 9B above, the Emergency Arbitrator and the parties to the emergency proceedings shall also be guided by other provisions of the Arbitration Agreement, whilst recognising that several such provisions may not be fully applicable or appropriate to emergency proceedings. Wherever

relevant, the LCIA Court may abridge under any such provisions any period of time (pursuant to Article 22.5).

9.14 Article 9B shall not apply if either: (i) the parties have concluded their arbitration agreement before 1 October 2014 and the parties have not agreed in writing to 'opt in' to Article 9B; or (ii) the parties have agreed in writing at any time to 'opt out' of Article 9B.

Article 9C *Expedited Appointment of Replacement Arbitrator*

9.15 Any party may apply to the LCIA Court for the expedited appointment of a replacement arbitrator under Article 11.

9.16 Such an application shall be made in writing to the Registrar (preferably by electronic means), delivered (or notified) to all other parties to the arbitration; and it shall set out the specific grounds requiring the expedited appointment of the replacement arbitrator.

9.17 The LCIA Court shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of expediting the appointment of the replacement arbitrator the LCIA Court may abridge any period of time in the Arbitration Agreement or any other agreement of the parties (pursuant to Article 22.5).

Article 10 *Revocation and Challenges*

10.1 The LCIA Court may revoke any arbitrator's appointment upon its own initiative, at the written request of all other members of the Arbitral Tribunal or upon a written challenge by any party if: (i) that arbitrator gives written notice to the LCIA Court of his or her intent to resign as arbitrator, to be copied to all parties and all other members of the Arbitral Tribunal (if any); (ii) that arbitrator falls seriously ill, refuses or becomes unable or unfit to act; or (iii) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence.

10.2 The LCIA Court may determine that an arbitrator is unfit to act under Article 10.1 if that arbitrator: (i) acts in deliberate violation of the Arbitration Agreement; (ii) does not act fairly or impartially as between the parties; or (iii) does not conduct or participate in the arbitration with reasonable efficiency, diligence and industry.

10.3 A party challenging an arbitrator under Article 10.1 shall, within 14 days of the formation of the Arbitral Tribunal or (if later) within 14 days of becoming aware of any grounds described in Article 10.1 or 10.2, deliver a written statement of the reasons for its challenge to the LCIA Court, the Arbitral Tribunal and all other parties. A party may challenge an arbitrator whom it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made by the LCIA Court.

10.4 The LCIA Court shall provide to those other parties and the challenged arbitrator a reasonable opportunity to comment on the challenging party's written statement. The LCIA Court may require at any time further information and materials from the challenging party, the challenged arbitrator, other parties and other members of the Arbitral Tribunal (if any).

10.5 If all other parties agree in writing to the challenge within 14 days of receipt of the written statement, the LCIA Court shall revoke that arbitrator's appointment (without reasons).

10.6 Unless the parties so agree or the challenged arbitrator resigns in writing within 14 days of receipt of the written statement, the LCIA Court shall decide the challenge and, if upheld, shall revoke that arbitrator's appointment. The LCIA Court's decision shall be made in writing, with reasons; and a copy shall be transmitted by the Registrar to the parties, the challenged arbitrator and other members of the Arbitral Tribunal (if any). A challenged arbitrator who resigns in writing prior to the LCIA Court's decision shall not be considered as having admitted any part of the written statement.

10.7 The LCIA Court shall determine the amount of fees and expenses (if any) to be paid for the former arbitrator's services, as it may consider appropriate in the circumstances. The LCIA Court may also determine whether, in what amount and to whom any party should pay forthwith the costs of the challenge; and the LCIA Court may also refer all or any part of such costs to the later decision of the Arbitral Tribunal and/or the LCIA Court under Article 28.

Article 11 *Nomination and Replacement*

11.1 In the event that the LCIA Court determines that justifiable doubts exist as to any arbitral candidate's suitability, independence or impartiality, or if a nominee declines appointment as arbitrator, or if an arbitrator is to be replaced for any reason, the LCIA Court may determine whether or not to follow the original nominating process for such arbitral appointment.

11.2 The LCIA Court may determine that any opportunity given to a party to make any re-nomination (under the Arbitration Agreement or otherwise) shall be waived if not exercised within 14 days (or such lesser or greater time as the LCIA Court may determine), after which the LCIA Court shall appoint the replacement arbitrator without such re-nomination.

Article 12 *Majority Power to Continue Deliberations*

12.1 In exceptional circumstances, where an arbitrator without good cause refuses or persistently fails to participate in the deliberations of an Arbitral Tribunal, the remaining arbitrators jointly may decide (after their written notice of such refusal or failure to the LCIA Court, the parties and the absent arbitrator) to continue the arbitration (including the making of any award) notwithstanding the absence of that other arbitrator, subject to the written approval of the LCIA Court.

12.2 In deciding whether to continue the arbitration, the remaining arbitrators shall take into account the stage of the arbitration, any explanation made by or on behalf of the absent arbitrator for his or her refusal or non-participation, the likely effect upon the legal recognition or enforceability of any award at the seat of the arbitration and such other matters as they consider appropriate in the circumstances. The reasons for such decision shall be stated in any award made by the remaining arbitrators without the participation of the absent arbitrator.

12.3 In the event that the remaining arbitrators decide at any time thereafter not to continue the arbitration without the participation of the absent arbitrator, the remaining arbitrators shall notify in writing the parties and the LCIA Court of such decision; and, in that event, the remaining arbitrators or any party may refer the matter to the LCIA Court for the revocation of the absent arbitrator's appointment and the appointment of a replacement arbitrator under Articles 10 and 11.

Article 13 *Communications between Parties and Arbitral Tribunal*

13.1 Following the formation of the Arbitral Tribunal, all communications shall take place directly between the Arbitral Tribunal and the parties (to be copied to the Registrar), unless the Arbitral Tribunal decides that communications should continue to be made through the Registrar.

13.2 Where the Registrar sends any written communication to one party on behalf of the Arbitral Tribunal or the LCIA Court, he or she shall send a copy to each of the other parties.

13.3 Where any party delivers to the Arbitral Tribunal any communication (including statements and documents under Article 15), whether by electronic means or otherwise, it shall deliver a copy to each arbitrator, all other parties and the Registrar; and it shall confirm to the Arbitral Tribunal in writing that it has done or is doing so.

13.4 During the arbitration from the Arbitral Tribunal's formation onwards, no party shall deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration or the parties' dispute with any member of the Arbitral Tribunal or any member of the LCIA Court exercising any function in regard to the arbitration (but not including the Registrar), which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal (if comprised of more than one arbitrator) and the Registrar.

13.5 Prior to the Arbitral Tribunal's formation, unless the parties agree otherwise in writing, any arbitrator, candidate or nominee who is required to participate in the selection of a presiding arbitrator may consult any party in order to obtain the views of that party as to the suitability of any candidate or nominee as presiding arbitrator, provided that such arbitrator, candidate or nominee informs the Registrar of such consultation.

Article 14 *Conduct of Proceedings*

14.1 The parties and the Arbitral Tribunal are encouraged to make contact (whether by a hearing in person, telephone conference-call, video conference or exchange of correspondence) as soon as practicable but no later than 21 days from receipt of the Registrar's written notification of the formation of the Arbitral Tribunal.

14.2 The parties may agree on joint proposals for the conduct of their arbitration for consideration by the Arbitral Tribunal. They are encouraged to do so in consultation with the Arbitral Tribunal and consistent with the Arbitral Tribunal's general duties under the Arbitration Agreement.

14.3 Such agreed proposals shall be made by the parties in writing or recorded in writing by the Arbitral Tribunal at the parties' request and with their authority.

14.4 Under the Arbitration Agreement, the Arbitral Tribunal's general duties at all times during the arbitration shall include:

- (i) a duty to act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent(s); and

(ii) a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.

14.5 The Arbitral Tribunal shall have the widest discretion to discharge these general duties, subject to such mandatory law(s) or rules of law as the Arbitral Tribunal may decide to be applicable; and at all times the parties shall do everything necessary in good faith for the fair, efficient and expeditious conduct of the arbitration, including the Arbitral Tribunal's discharge of its general duties.

14.6 In the case of an Arbitral Tribunal other than a sole arbitrator, the presiding arbitrator, with the prior agreement of its other members and all parties, may make procedural orders alone.

Article 15 *Written Statements*

15.1 Unless the parties have agreed or jointly proposed in writing otherwise or the Arbitral Tribunal should decide differently, the written stage of the arbitration and its procedural time-table shall be as set out in this Article 15.

15.2 Within 28 days of receipt of the Registrar's written notification of the Arbitral Tribunal's formation, the Claimant shall deliver to the Arbitral Tribunal and all other parties either: (i) its written election to have its Request treated as its Statement of Case complying with this Article 15.2; or (ii) its written Statement of Case setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all essential documents.

15.3 Within 28 days of receipt of the Claimant's Statement of Case or the Claimant's election to treat the Request as its Statement of Case, the Respondent shall deliver to the Arbitral Tribunal and all other parties either: (i) its written election to have its Response treated as its Statement of Defence and (if applicable) Cross-claim complying with this Article 15.3; or (ii) its written Statement of Defence and (if applicable) Statement of Cross-claim setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all essential documents.

15.4 Within 28 days of receipt of the Respondent's Statement of Defence and (if applicable) Statement of Cross-claim or the Respondent's election to treat the Response as its Statement of Defence and (if applicable) Cross-claim, the Claimant shall deliver to the Arbitral Tribunal and all other parties a written Statement of Reply which, where there are any cross-claims, shall also include a Statement of Defence to Cross-claim in the same manner required for a Statement of Defence, together with all essential documents.

15.5 If the Statement of Reply contains a Statement of Defence to Cross-claim, within 28 days of its receipt the Respondent shall deliver to the Arbitral Tribunal and all other parties its written Statement of Reply to the Defence to Cross-claim, together with all essential documents.

15.6 The Arbitral Tribunal may provide additional directions as to any part of the written stage of the arbitration (including witness statements, submissions and evidence), particularly where there

are multiple claimants, multiple respondents or any cross-claim between two or more respondents or between two or more claimants.

15.7 No party may submit any further written statement following the last of these Statements, unless otherwise ordered by the Arbitral Tribunal.

15.8 If the Respondent fails to submit a Statement of Defence or the Claimant a Statement of Defence to Cross-claim, or if at any time any party fails to avail itself of the opportunity to present its written case in the manner required under this Article 15 or otherwise by order of the Arbitral Tribunal, the Arbitral Tribunal may nevertheless proceed with the arbitration (with or without a hearing) and make one or more awards.

15.9 As soon as practicable following this written stage of the arbitration, the Arbitral Tribunal shall proceed in such manner as has been agreed in writing by the parties or pursuant to its authority under the Arbitration Agreement.

15.10 In any event, the Arbitral Tribunal shall seek to make its final award as soon as reasonably possible following the last submission from the parties (whether made orally or in writing), in accordance with a timetable notified to the parties and the Registrar as soon as practicable (if necessary, as revised and re-notified from time to time). When the Arbitral Tribunal (not being a sole arbitrator) establishes a time for what it contemplates shall be the last submission from the parties (whether written or oral), it shall set aside adequate time for deliberations as soon as possible after that last submission and notify the parties of the time it has set aside.

Article 16 *Seat(s) of Arbitration and Place(s) of Hearing*

16.1 The parties may agree in writing the seat (or legal place) of their arbitration at any time before the formation of the Arbitral Tribunal and, after such formation, with the prior written consent of the Arbitral Tribunal.

16.2 In default of any such agreement, the seat of the arbitration shall be London (England), unless and until the Arbitral Tribunal orders, in view of the circumstances and after having given the parties a reasonable opportunity to make written comments to the Arbitral Tribunal, that another arbitral seat is more appropriate. Such default seat shall not be considered as a relevant circumstance by the LCIA Court in appointing any arbitrators under Articles 5, 9A, 9B, 9C and 11.

16.3 The Arbitral Tribunal may hold any hearing at any convenient geographical place in consultation with the parties and hold its deliberations at any geographical place of its own choice; and if such place(s) should be elsewhere than the seat of the arbitration, the arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at that seat.

16.4 The law applicable to the Arbitration Agreement and the arbitration shall be the law applicable at the seat of the arbitration, unless and to the extent that the parties have agreed in writing on the application of other laws or rules of law and such agreement is not prohibited by the law applicable at the arbitral seat.

Article 17 *Language(s) of Arbitration*

17.1 The initial language of the arbitration (until the formation of the Arbitral Tribunal) shall be the language or prevailing language of the Arbitration Agreement, unless the parties have agreed in writing otherwise.

17.2 In the event that the Arbitration Agreement is written in more than one language of equal standing, the LCIA Court may, unless the Arbitration Agreement provides that the arbitration proceedings shall be conducted from the outset in more than one language, determine which of those languages shall be the initial language of the arbitration.

17.3 A non-participating or defaulting party shall have no cause for complaint if communications to and from the LCIA Court and Registrar are conducted in the initial language(s) of the arbitration or of the arbitral seat.

17.4 Following the formation of the Arbitral Tribunal, unless the parties have agreed upon the language or languages of the arbitration, the Arbitral Tribunal shall decide upon the language(s) of the arbitration after giving the parties a reasonable opportunity to make written comments and taking into account the initial language(s) of the arbitration and any other matter it may consider appropriate in the circumstances.

17.5 If any document is expressed in a language other than the language(s) of the arbitration and no translation of such document is submitted by the party relying upon the document, the Arbitral Tribunal may order or (if the Arbitral Tribunal has not been formed) the Registrar may request that party to submit a translation of all or any part of that document in any language(s) of the arbitration or of the arbitral seat.

Article 18 *Legal Representatives*

18.1 Any party may be represented in the arbitration by one or more authorised legal representatives appearing by name before the Arbitral Tribunal.

18.2 Until the Arbitral Tribunal's formation, the Registrar may request from any party: (i) written proof of the authority granted by that party to any legal representative designated in its Request or Response; and (ii) written confirmation of the names and addresses of all such party's legal representatives in the arbitration. After its formation, at any time, the Arbitral Tribunal may order any party to provide similar proof or confirmation in any form it considers appropriate.

18.3 Following the Arbitral Tribunal's formation, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the Arbitral Tribunal and the Registrar; and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Arbitral Tribunal.

18.4 The Arbitral Tribunal may withhold approval of any intended change or addition to a party's legal representatives where such change or addition could compromise the composition of the Arbitral Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Arbitral Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented

by a legal representative chosen by that party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Arbitral Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

18.5 Each party shall ensure that all its legal representatives appearing by name before the Arbitral Tribunal have agreed to comply with the general guidelines contained in the Annex to the LCIA Rules, as a condition of such representation. In permitting any legal representative so to appear, a party shall thereby represent that the legal representative has agreed to such compliance.

18.6 In the event of a complaint by one party against another party's legal representative appearing by name before the Arbitral Tribunal (or of such complaint by the Arbitral Tribunal upon its own initiative), the Arbitral Tribunal may decide, after consulting the parties and granting that legal representative a reasonable opportunity to answer the complaint, whether or not the legal representative has violated the general guidelines. If such violation is found by the Arbitral Tribunal, the Arbitral Tribunal may order any or all of the following sanctions against the legal representative: (i) a written reprimand; (ii) a written caution as to future conduct in the arbitration; and (iii) any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal under Articles 14.4(i) and (ii).

Article 19 *Oral Hearing(s)*

19.1 Any party has the right to a hearing before the Arbitral Tribunal on the parties' dispute at any appropriate stage of the arbitration (as decided by the Arbitral Tribunal), unless the parties have agreed in writing upon a documents-only arbitration. For this purpose, a hearing may consist of several part-hearings (as decided by the Arbitral Tribunal).

19.2 The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, form, content, procedure, time-limits and geographical place. As to form, a hearing may take place by video or telephone conference or in person (or a combination of all three). As to content, the Arbitral Tribunal may require the parties to address a list of specific questions or issues arising from the parties' dispute.

19.3 The Arbitral Tribunal shall give to the parties reasonable notice in writing of any hearing.

19.4 All hearings shall be held in private, unless the parties agree otherwise in writing.

Article 20 *Witness(es)*

20.1 Before any hearing, the Arbitral Tribunal may order any party to give written notice of the identity of each witness that party wishes to call (including rebuttal witnesses), as well as the subject-matter of that witness's testimony, its content and its relevance to the issues in the arbitration.

20.2 Subject to any order otherwise by the Arbitral Tribunal, the testimony of a witness may be presented by a party in written form, either as a signed statement or like document.

20.3 The Arbitral Tribunal may decide the time, manner and form in which these written materials shall be exchanged between the parties and presented to the Arbitral Tribunal; and it may allow, refuse or limit the written and oral testimony of witnesses (whether witnesses of fact or expert witnesses).

20.4 The Arbitral Tribunal and any party may request that a witness, on whose written testimony another party relies, should attend for oral questioning at a hearing before the Arbitral Tribunal. If the Arbitral Tribunal orders that other party to secure the attendance of that witness and the witness refuses or fails to attend the hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony or exclude all or any part thereof altogether as it considers appropriate in the circumstances.

20.5 Subject to the mandatory provisions of any applicable law, rules of law and any order of the Arbitral Tribunal otherwise, it shall not be improper for any party or its legal representatives to interview any potential witness for the purpose of presenting his or her testimony in written form to the Arbitral Tribunal or producing such person as an oral witness at any hearing.

20.6 Subject to any order by the Arbitral Tribunal otherwise, any individual intending to testify to the Arbitral Tribunal may be treated as a witness notwithstanding that the individual is a party to the arbitration or was, remains or has become an officer, employee, owner or shareholder of any party or is otherwise identified with any party.

20.7 Subject to the mandatory provisions of any applicable law, the Arbitral Tribunal shall be entitled (but not required) to administer any appropriate oath to any witness at any hearing, prior to the oral testimony of that witness.

20.8 Any witness who gives oral testimony at a hearing before the Arbitral Tribunal may be questioned by each of the parties under the control of the Arbitral Tribunal. The Arbitral Tribunal may put questions at any stage of such testimony.

Article 21 *Expert(s) to Arbitral Tribunal*

21.1 The Arbitral Tribunal, after consultation with the parties, may appoint one or more experts to report in writing to the Arbitral Tribunal and the parties on specific issues in the arbitration, as identified by the Arbitral Tribunal.

21.2 Any such expert shall be and remain impartial and independent of the parties; and he or she shall sign a written declaration to such effect, delivered to the Arbitral Tribunal and copied to all parties.

21.3 The Arbitral Tribunal may require any party at any time to give to such expert any relevant information or to provide access to any relevant documents, goods, samples, property, site or thing for inspection under that party's control on such terms as the Arbitral Tribunal thinks appropriate in the circumstances.

21.4 If any party so requests or the Arbitral Tribunal considers it necessary, the Arbitral Tribunal may order the expert, after delivery of the expert's written report, to participate in a hearing at

which the parties shall have a reasonable opportunity to question the expert on the report and to present witnesses in order to testify on relevant issues arising from the report.

21.5 The fees and expenses of any expert appointed by the Arbitral Tribunal under this Article 21 may be paid out of the deposits payable by the parties under Article 24 and shall form part of the Arbitration Costs under Article 28.

Article 22 Additional Powers

22.1 The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraphs (viii), (ix) and (x) below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide:

- (i) to allow a party to supplement, modify or amend any claim, defence, cross-claim, defence to cross-claim and reply, including a Request, Response and any other written statement, submitted by such party;
- (ii) to abridge or extend (even where the period of time has expired) any period of time prescribed under the Arbitration Agreement, any other agreement of the parties or any order made by the Arbitral Tribunal;
- (iii) to conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal should itself take the initiative in identifying relevant issues and ascertaining relevant facts and the law(s) or rules of law applicable to the Arbitration Agreement, the arbitration and the merits of the parties' dispute;
- (iv) to order any party to make any documents, goods, samples, property, site or thing under its control available for inspection by the Arbitral Tribunal, any other party, any expert to such party and any expert to the Tribunal;
- (v) to order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant;
- (vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal;
- (vii) to order compliance with any legal obligation, payment of compensation for breach of any legal obligation and specific performance of any agreement (including any arbitration agreement or any contract relating to land);
- (viii) to allow one or more third persons to be joined in the arbitration as a party provided any such third person and the applicant party have consented to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement; and

thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the arbitration;

(ix) to order, with the approval of the LCIA Court, the consolidation of the arbitration with one or more other arbitrations into a single arbitration subject to the LCIA Rules where all the parties to the arbitrations to be consolidated so agree in writing;

(x) to order, with the approval of the LCIA Court, the consolidation of the arbitration with one or more other arbitrations subject to the LCIA Rules commenced under the same arbitration agreement or any compatible arbitration agreement(s) between the same disputing parties, provided that no arbitral tribunal has yet been formed by the LCIA Court for such other arbitration(s) or, if already formed, that such tribunal(s) is(are) composed of the same arbitrators; and

(xi) to order the discontinuance of the arbitration if it appears to the Arbitral Tribunal that the arbitration has been abandoned by the parties or all claims and any cross-claims withdrawn by the parties, provided that, after fixing a reasonable period of time within which the parties shall be invited to agree or to object to such discontinuance, no party has stated its written objection to the Arbitral Tribunal to such discontinuance upon the expiry of such period of time.

22.2 By agreeing to arbitration under the Arbitration Agreement, the parties shall be treated as having agreed not to apply to any state court or other legal authority for any order available from the Arbitral Tribunal (if formed) under Article 22.1, except with the agreement in writing of all parties.

22.3 The Arbitral Tribunal shall decide the parties' dispute in accordance with the law(s) or rules of law chosen by the parties as applicable to the merits of their dispute. If and to the extent that the Arbitral Tribunal decides that the parties have made no such choice, the Arbitral Tribunal shall apply the law(s) or rules of law which it considers appropriate.

22.4 The Arbitral Tribunal shall only apply to the merits of the dispute principles deriving from "ex aequo et bono", "amiable composition" or "honourable engagement" where the parties have so agreed in writing.

22.5 Subject to any order of the Arbitral Tribunal under Article 22.1(ii), the LCIA Court may also abridge or extend any period of time under the Arbitration Agreement or other agreement of the parties (even where the period of time has expired).

22.6 Without prejudice to the generality of Articles 22.1(ix) and (x), the LCIA Court may determine, after giving the parties a reasonable opportunity to state their views, that two or more arbitrations, subject to the LCIA Rules and commenced under the same arbitration agreement between the same disputing parties, shall be consolidated to form one single arbitration subject to the LCIA Rules, provided that no arbitral tribunal has yet been formed by the LCIA Court for any of the arbitrations to be consolidated.

Article 23 *Jurisdiction and Authority*

23.1 The Arbitral Tribunal shall have the power to rule upon its own jurisdiction and authority, including any objection to the initial or continuing existence, validity, effectiveness or scope of the Arbitration Agreement.

23.2 For that purpose, an arbitration clause which forms or was intended to form part of another agreement shall be treated as an arbitration agreement independent of that other agreement. A decision by the Arbitral Tribunal that such other agreement is non-existent, invalid or ineffective shall not entail (of itself) the non-existence, invalidity or ineffectiveness of the arbitration clause.

23.3 An objection by a Respondent that the Arbitral Tribunal does not have jurisdiction shall be raised as soon as possible but not later than the time for its Statement of Defence; and a like objection by any party responding to a cross-claiming party shall be raised as soon as possible but not later than the time for its Statement of Defence to Cross-claim. An objection that the Arbitral Tribunal is exceeding the scope of its authority shall be raised promptly after the Arbitral Tribunal has indicated its intention to act upon the matter alleged to lie beyond its authority. The Arbitral Tribunal may nevertheless admit an untimely objection as to its jurisdiction or authority if it considers the delay justified in the circumstances.

23.4 The Arbitral Tribunal may decide the objection to its jurisdiction or authority in an award as to jurisdiction or authority or later in an award on the merits, as it considers appropriate in the circumstances.

23.5 By agreeing to arbitration under the Arbitration Agreement, after the formation of the Arbitral Tribunal the parties shall be treated as having agreed not to apply to any state court or other legal authority for any relief regarding the Arbitral Tribunal's jurisdiction or authority, except (i) with the prior agreement in writing of all parties to the arbitration, or (ii) the prior authorisation of the Arbitral Tribunal, or (iii) following the latter's award on the objection to its jurisdiction or authority.

Article 24 *Deposits*

24.1 The LCIA Court may direct the parties, in such proportions and at such times as it thinks appropriate, to make one or more payments to the LCIA on account of the Arbitration Costs. Such payments deposited by the parties may be applied by the LCIA Court to pay any item of such Arbitration Costs (including the LCIA's own fees and expenses) in accordance with the LCIA Rules.

24.2 All payments made by parties on account of the Arbitration Costs shall be held by the LCIA in trust under English law in England, to be disbursed or otherwise applied by the LCIA in accordance with the LCIA Rules and invested having regard also to the interests of the LCIA. Each payment made by a party shall be credited by the LCIA with interest at the rate from time to time credited to an overnight deposit of that amount with the bank(s) engaged by the LCIA to manage deposits from time to time; and any surplus income (beyond such interest) shall accrue for the sole benefit of the LCIA. In the event that payments (with such interest) exceed the total amount of the Arbitration Costs at the conclusion of the arbitration, the excess amount shall be returned by the LCIA to the parties as the ultimate default beneficiaries of the trust.

24.3 Save for exceptional circumstances, the Arbitral Tribunal should not proceed with the arbitration without having ascertained from the Registrar that the LCIA is or will be in requisite funds as regards outstanding and future Arbitration Costs.

24.4 In the event that a party fails or refuses to make any payment on account of the Arbitration Costs as directed by the LCIA Court, the LCIA Court may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed (subject to any order or award on Arbitration Costs).

24.5 In such circumstances, the party effecting the substitute payment may request the Arbitral Tribunal to make an order or award in order to recover that amount as a debt immediately due and payable to that party by the defaulting party, together with any interest.

24.6 Failure by a claiming or cross-claiming party to make promptly and in full any required payment on account of Arbitration Costs may be treated by the Arbitral Tribunal as a withdrawal from the arbitration of the claim or cross-claim respectively, thereby removing such claim or cross-claim (as the case may be) from the scope of the Arbitral Tribunal's jurisdiction under the Arbitration Agreement, subject to any terms decided by the Arbitral Tribunal as to the reinstatement of the claim or cross-claim in the event of subsequent payment by the claiming or cross-claiming party. Such a withdrawal shall not preclude the claiming or cross-claiming party from defending as a respondent any claim or cross-claim made by another party.

Article 25 *Interim and Conservatory Measures*

25.1 The Arbitral Tribunal shall have the power upon the application of any party, after giving all other parties a reasonable opportunity to respond to such application and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances:

- (i) to order any respondent party to a claim or cross-claim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner;
- (ii) to order the preservation, storage, sale or other disposal of any documents, goods, samples, property, site or thing under the control of any party and relating to the subject-matter of the arbitration; and
- (iii) to order on a provisional basis, subject to a final decision in an award, any relief which the Arbitral Tribunal would have power to grant in an award, including the payment of money or the disposition of property as between any parties.

Such terms may include the provision by the applicant party of a cross-indemnity, secured in such manner as the Arbitral Tribunal considers appropriate, for any costs or losses incurred by the respondent party in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration.

25.2 The Arbitral Tribunal shall have the power upon the application of a party, after giving all other parties a reasonable opportunity to respond to such application, to order any claiming or cross-claiming party to provide or procure security for Legal Costs and Arbitration Costs by way of

deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances. Such terms may include the provision by that other party of a cross-indemnity, itself secured in such manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by such claimant or cross-claimant in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration. In the event that a claiming or cross-claiming party does not comply with any order to provide security, the Arbitral Tribunal may stay that party's claims or cross-claims or dismiss them by an award.

25.3 The power of the Arbitral Tribunal under Article 25.1 shall not prejudice any party's right to apply to a state court or other legal authority for interim or conservatory measures to similar effect: (i) before the formation of the Arbitral Tribunal; and (ii) after the formation of the Arbitral Tribunal, in exceptional cases and with the Arbitral Tribunal's authorisation, until the final award. After the Commencement Date, any application and any order for such measures before the formation of the Arbitral Tribunal shall be communicated promptly in writing by the applicant party to the Registrar; after its formation, also to the Arbitral Tribunal; and in both cases also to all other parties.

25.4. By agreeing to arbitration under the Arbitration Agreement, the parties shall be taken to have agreed not to apply to any state court or other legal authority for any order for security for Legal Costs or Arbitration Costs.

Article 26 Award(s)

26.1 The Arbitral Tribunal may make separate awards on different issues at different times, including interim payments on account of any claim or cross-claim (including Legal and Arbitration Costs). Such awards shall have the same status as any other award made by the Arbitral Tribunal.

26.2 The Arbitral Tribunal shall make any award in writing and, unless all parties agree in writing otherwise, shall state the reasons upon which such award is based. The award shall also state the date when the award is made and the seat of the arbitration; and it shall be signed by the Arbitral Tribunal or those of its members assenting to it.

26.3 An award may be expressed in any currency, unless the parties have agreed otherwise.

26.4 Unless the parties have agreed otherwise, the Arbitral Tribunal may order that simple or compound interest shall be paid by any party on any sum awarded at such rates as the Arbitral Tribunal decides to be appropriate (without being bound by rates of interest practised by any state court or other legal authority) in respect of any period which the Arbitral Tribunal decides to be appropriate ending not later than the date upon which the award is complied with.

26.5 Where there is more than one arbitrator and the Arbitral Tribunal fails to agree on any issue, the arbitrators shall decide that issue by a majority. Failing a majority decision on any issue, the presiding arbitrator shall decide that issue.

26.6 If any arbitrator refuses or fails to sign the award, the signatures of the majority or (failing a majority) of the presiding arbitrator shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or by the presiding arbitrator.

26.7 The sole or presiding arbitrator shall be responsible for delivering the award to the LCIA Court, which shall transmit to the parties the award authenticated by the Registrar as an LCIA award, provided that all Arbitration Costs have been paid in full to the LCIA in accordance with Articles 24 and 28. Such transmission may be made by any electronic means, in addition to paper form (if so requested by any party). In the event of any disparity between electronic and paper forms, the paper form shall prevail.

26.8 Every award (including reasons for such award) shall be final and binding on the parties. The parties undertake to carry out any award immediately and without any delay (subject only to Article 27); and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.

26.9 In the event of any final settlement of the parties' dispute, the Arbitral Tribunal may decide to make an award recording the settlement if the parties jointly so request in writing (a "Consent Award"), provided always that such Consent Award shall contain an express statement on its face that it is an award made at the parties' joint request and with their consent. A Consent Award need not contain reasons. If the parties do not jointly request a Consent Award, on written confirmation by the parties to the LCIA Court that a final settlement has been reached, the Arbitral Tribunal shall be discharged and the arbitration proceedings concluded by the LCIA Court, subject to payment by the parties of any outstanding Arbitration Costs in accordance with Articles 24 and 28.

Article 27 *Correction of Award(s) and Additional Award(s)*

27.1 Within 28 days of receipt of any award, a party may by written notice to the Registrar (copied to all other parties) request the Arbitral Tribunal to correct in the award any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature. If the Arbitral Tribunal considers the request to be justified, after consulting the parties, it shall make the correction within 28 days of receipt of the request. Any correction shall take the form of a memorandum by the Arbitral Tribunal.

27.2 The Arbitral Tribunal may also correct any error (including any error in computation, any clerical or typographical error or any error of a similar nature) upon its own initiative in the form of a memorandum within 28 days of the date of the award, after consulting the parties.

27.3 Within 28 days of receipt of the final award, a party may by written notice to the Registrar (copied to all other parties), request the Arbitral Tribunal to make an additional award as to any claim or cross-claim presented in the arbitration but not decided in any award. If the Arbitral Tribunal considers the request to be justified, after consulting the parties, it shall make the additional award within 56 days of receipt of the request.

27.4 As to any claim or cross-claim presented in the arbitration but not decided in any award, the Arbitral Tribunal may also make an additional award upon its own initiative within 28 days of the date of the award, after consulting the parties.

27.5 The provisions of Article 26.2 to 26.7 shall apply to any memorandum or additional award made hereunder. A memorandum shall be treated as part of the award.

Article 28 *Arbitration Costs and Legal Costs*

28.1 The costs of the arbitration other than the legal or other expenses incurred by the parties themselves (the “Arbitration Costs”) shall be determined by the LCIA Court in accordance with the Schedule of Costs. The parties shall be jointly and severally liable to the LCIA and the Arbitral Tribunal for such Arbitration Costs.

28.2 The Arbitral Tribunal shall specify by an award the amount of the Arbitration Costs determined by the LCIA Court (in the absence of a final settlement of the parties’ dispute regarding liability for such costs). The Arbitral Tribunal shall decide the proportions in which the parties shall bear such Arbitration Costs. If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to the LCIA under Article 24, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.

28.3 The Arbitral Tribunal shall also have the power to decide by an award that all or part of the legal or other expenses incurred by a party (the “Legal Costs”) be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority.

28.4 The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties’ relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise. The Arbitral Tribunal may also take into account the parties’ conduct in the arbitration, including any co-operation in facilitating the proceedings as to time and cost and any non-co-operation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the award containing such decision.

28.5 In the event that the parties have howsoever agreed before their dispute that one or more parties shall pay the whole or any part of the Arbitration Costs or Legal Costs whatever the result of any dispute, arbitration or award, such agreement (in order to be effective) shall be confirmed by the parties in writing after the Commencement Date.

28.6 If the arbitration is abandoned, suspended, withdrawn or concluded, by agreement or otherwise, before the final award is made, the parties shall remain jointly and severally liable to pay to the LCIA and the Arbitral Tribunal the Arbitration Costs determined by the LCIA Court.

28.7 In the event that the Arbitration Costs are less than the deposits received by the LCIA under Article 24, there shall be a refund by the LCIA to the parties in such proportions as the parties may agree in writing, or failing such agreement, in the same proportions and to the same payers as the deposits were paid to the LCIA.

Article 29 *Determinations and Decisions by LCIA Court*

29.1 The determinations of the LCIA Court with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal, unless otherwise directed

by the LCIA Court. Save for reasoned decisions on arbitral challenges under Article 10, such determinations are to be treated as administrative in nature; and the LCIA Court shall not be required to give reasons for any such determination.

29.2 To the extent permitted by any applicable law, the parties shall be taken to have waived any right of appeal or review in respect of any determination and decision of the LCIA Court to any state court or other legal authority. If such appeal or review takes place due to mandatory provisions of any applicable law or otherwise, the LCIA Court may determine whether or not the arbitration should continue, notwithstanding such appeal or review.

Article 30 *Confidentiality*

30.1 The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.

30.2 The deliberations of the Arbitral Tribunal shall remain confidential to its members, save as required by any applicable law and to the extent that disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under Articles 10, 12, 26 and 27.

30.3 The LCIA does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.

Article 31 *Limitation of Liability*

31.1 None of the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice-Presidents, Honourary Vice-Presidents and members), the Registrar (including any deputy Registrar), any arbitrator, any Emergency Arbitrator and any expert to the Arbitral Tribunal shall be liable to any party howsoever for any act or omission in connection with any arbitration, save: (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; or (ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

31.2 After the award has been made and all possibilities of any memorandum or additional award under Article 27 have lapsed or been exhausted, neither the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice-Presidents, Honourary Vice-Presidents and members), the Registrar (including any deputy Registrar), any arbitrator, any Emergency Arbitrator or any expert to the Arbitral Tribunal shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration; nor shall any party seek to make any of these bodies or persons a witness in any legal or other proceedings arising out of the arbitration.

Article 32 General Rules

32.1 A party who knows that any provision of the Arbitration Agreement has not been complied with and yet proceeds with the arbitration without promptly stating its objection as to such non-compliance to the Registrar (before the formation of the Arbitral Tribunal) or the Arbitral Tribunal (after its formation), shall be treated as having irrevocably waived its right to object for all purposes.

32.2 For all matters not expressly provided in the Arbitration Agreement, the LCIA Court, the LCIA, the Registrar, the Arbitral Tribunal and each of the parties shall act at all times in good faith, respecting the spirit of the Arbitration Agreement, and shall make every reasonable effort to ensure that any award is legally recognised and enforceable at the arbitral seat.

32.3 If and to the extent that any part of the Arbitration Agreement is decided by the Arbitral Tribunal, the Emergency Arbitrator, or any court or other legal authority of competent jurisdiction to be invalid, ineffective or unenforceable, such decision shall not, of itself, adversely affect any order or award by the Arbitral Tribunal or the Emergency Arbitrator or any other part of the Arbitration Agreement which shall remain in full force and effect, unless prohibited by any applicable law.

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<i>Statement of Reply</i>	<i>see Article 15.4.</i>

(N.B. This Index comprises both defined and other undefined terms. All references to any person or party include both masculine and feminine).

ANNEX TO THE LCIA RULES
General Guidelines for the Parties' Legal Representatives
(Articles 18.5 and 18.6 of the LCIA Rules)

Paragraph 1: These general guidelines are intended to promote the good and equal conduct of the parties' legal representatives appearing by name within the arbitration. Nothing in these guidelines is intended to derogate from the Arbitration Agreement or to undermine any legal representative's primary duty of loyalty to the party represented in the arbitration or the obligation to present that party's case effectively to the Arbitral Tribunal. Nor shall these guidelines derogate from any mandatory laws, rules of law, professional rules or codes of conduct if and to the extent that any are shown to apply to a legal representative appearing in the arbitration.

Paragraph 2: A legal representative should not engage in activities intended unfairly to obstruct the arbitration or to jeopardise the finality of any award, including repeated challenges to an arbitrator's appointment or to the jurisdiction or authority of the Arbitral Tribunal known to be unfounded by that legal representative.

Paragraph 3: A legal representative should not knowingly make any false statement to the Arbitral Tribunal or the LCIA Court.

Paragraph 4: A legal representative should not knowingly procure or assist in the preparation of or rely upon any false evidence presented to the Arbitral Tribunal or the LCIA Court.

Paragraph 5: A legal representative should not knowingly conceal or assist in the concealment of any document (or any part thereof) which is ordered to be produced by the Arbitral Tribunal.

Paragraph 6: During the arbitration proceedings, a legal representative should not deliberately initiate or attempt to initiate with any member of the Arbitral Tribunal or with any member of the LCIA Court making any determination or decision in regard to the arbitration (but not including the Registrar) any unilateral contact relating to the arbitration or the parties' dispute, which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal (if comprised of more than one arbitrator) and the Registrar in accordance with Article 13.4.

Paragraph 7: In accordance with Articles 18.5 and 18.6, the Arbitral Tribunal may decide whether a legal representative has violated these general guidelines and, if so, how to exercise its discretion to impose any or all of the sanctions listed in Article 18.6.



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1. INTRODUCTION

1. The purpose of this note¹ is to provide guidance to arbitrators conducting arbitrations in accordance with the LCIA Rules. It addresses independence, impartiality, availability and confidentiality, effective management of time and costs in accordance with an arbitrator's duties under the Rules, and the need to ensure that the LCIA Secretariat is kept informed as to the progress of the arbitration.
2. This note is by no means intended to provide an exhaustive list of "*best practices*" in the conduct of arbitration, nor does it supplant or interpret the LCIA Rules. Rather, the note highlights the broad principles by which Arbitral Tribunals should be guided in the conduct of LCIA arbitrations.
3. Members of the LCIA Secretariat are always available to assist the Arbitral Tribunal with all practical matters relating to the arbitration, and the Tribunal should not hesitate to call for assistance whenever this may be required.
4. References in this note to the LCIA Rules are to the version of the Rules effective 1 October 2014. The principles and guidance contained in this note apply equally to any arbitration being conducted under the LCIA Rules 1998.
5. If you have any questions about LCIA arbitration or the contents of this note, please email us at casework@lcia.org.

2. INDEPENDENCE AND IMPARTIALITY

6. Parties to arbitrations are entitled to expect of the process a just, well-reasoned and enforceable award. To that end, they are entitled to expect arbitrators: to disclose possible conflicts of interest at the outset; to avoid putting themselves in a position where conflicts will arise during the course of the proceedings; to conduct the arbitration fairly, in a timely manner and with careful regard to due process; to maintain the confidentiality of the arbitration; and to reach their decision in an impartial manner.
7. Under Article 5.4 of the LCIA Rules, all arbitrators are, before appointment, required to sign a declaration that there are no circumstances known to them likely to give rise to any justifiable doubts as to their impartiality or independence.
8. In completing their statements of independence, arbitrators should take into account, amongst other things, the existence and nature of any past or present relationships, direct or indirect, with any of the parties or their counsel. Any doubt as to whether a relationship should be disclosed must be resolved in favour of disclosure.
9. There is a continuing obligation on all arbitrators immediately to disclose any further circumstance of which they become aware at any time during the course of the arbitration, which might give rise to conflicts.

3. AVAILABILITY

10. Parties are also entitled to expect in an arbitration that all arbitrators are not only impartial and independent of the parties, but that each arbitrator has also checked, before appointment, that

¹ Also available on the LCIA website at www.lcia.org.

any existing or anticipated diary commitments will permit the arbitrator to fulfil his/her mandate without delay.

11. Accordingly, the LCIA Rules also require an arbitrator, before appointment, to confirm that he/she is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration. This confirmation is provided in the Statement of Independence, Impartiality and Availability, a copy of which the LCIA then provides to the parties.
12. In order to support this statement, the LCIA also asks all arbitrators to complete a form of availability, providing details of the number of hearings, the number of outstanding Awards, and all pre-existing commitments that might impact the arbitrator's ability to devote sufficient time to this arbitration. Completion of this form provides comfort to the LCIA that, in confirming that he/she has availability, an arbitrator has turned his/her mind to such commitments, and allows us confidently to confirm to parties that the selected tribunal has the necessary availability (although we do not at present provide a copy of this form to the parties).
13. An arbitrator's confirmation as to availability imports a commitment not only to devote sufficient time to the proceedings, over an appropriate timeframe, but also to draft any award promptly after the last submission from the parties (oral or written) on the issues to be addressed by that award (noting the requirement in Article 15.10 of the Rules that an arbitrator notify the parties and the LCIA of the timetable for rendering any award and that the Arbitral Tribunal set aside adequate time for deliberations and notify the parties of the same at an early stage in the arbitration).
14. As with disclosures as to independence and impartiality, an arbitrator should keep the parties and the LCIA informed of any commitments that arise after appointment, which might alter his/her earlier confirmation as to availability.

4. COMMUNICATIONS WITH THE PARTIES

15. All communications between the Arbitral Tribunal and the parties must be copied to the LCIA Secretariat.
16. In the event that meetings or hearings are held with the parties (whether by telephone or in person), at which the LCIA is not present, the Arbitral Tribunal should provide an update to the LCIA Secretariat regarding any procedural matters promptly after the relevant meeting or hearing.
17. Prior to the formation of the Arbitral Tribunal, and unless the parties have otherwise agreed in writing, where a candidate or nominee is required to participate in the selection of a presiding arbitrator, that candidate or nominee may consult any party to obtain the views of that party on suitability of any individual as presiding arbitrator, provided that the candidate or nominee informs the LCIA Secretariat of such consultation.
18. Once the Arbitral Tribunal has been formally constituted, it may communicate directly with the parties (with any communication to be copied to the LCIA Secretariat), in accordance with Article 13.1 of the LCIA Rules, without the need for any formal direction to that effect.
19. No arbitrator is permitted, during the course of the arbitration, to engage in any unilateral contact with any party or with any party's representative relating to the arbitration or the parties' dispute. This is important from the perspective of independence and impartiality and is

underlined by Article 13.4 of the Rules and by the Annex, which provides that a legal representative should not initiate unilateral contact with a member of the Arbitral Tribunal without disclosing the contact to the parties, the other members of the Arbitral Tribunal and the LCIA.

5. CONFIDENTIALITY

20. Article 30 of the LCIA Rules imposes duties of confidentiality on parties and on arbitrators, with which arbitrators should familiarise themselves, and with which the Arbitral Tribunal should ensure that it and the parties comply.

6. CONDUCT OF THE ARBITRATION

6.1 The procedural timetable

21. It is beneficial for everyone involved in an arbitration for there to be a clear procedural timetable suitable for the particular case.
22. Although the LCIA Rules provide, at Article 15, a default timetable for the submission of key written statements and documents, Article 14.2 of the Rules encourages the parties to agree on joint proposals for the conduct of their arbitration for consideration by the Arbitral Tribunal. Such agreed proposals should be made in writing or recorded in writing by the Arbitral Tribunal at the parties' request and with their authority.
23. The LCIA would usually expect an Arbitral Tribunal to hold an early procedural conference with the parties, with a view to agreeing a timetable for the proceedings or, if it cannot be agreed, to setting such a timetable. In this regard, under Article 14.1 of the LCIA Rules, the Arbitral Tribunal and the parties are strongly encouraged to make contact as soon as practicable but no later than 21 days from receipt of notification by the LCIA of the formation of the tribunal.
24. Any timetable agreed or set should be realistic and reasonable both to the parties and to the Arbitral Tribunal in light of the circumstances of the particular case and mindful of the obligation on the Arbitral Tribunal to avoid unnecessary expense and delay.
25. The Arbitral Tribunal should review the timetable with the parties at regular intervals throughout the arbitration to ensure that it remains suitable for the particular case and to update it as appropriate: for example, when the Arbitral Tribunal sets a deadline for the last submission from the parties, which might be as early as the first procedural hearing, it should update the timetable to include the dates on which the Arbitral Tribunal will deliberate and the anticipated timetable for the rendering of its award (which timetable should, in accordance with Article 15.10, be revised and re-notified to the parties as necessary).
26. This process of timetable review also enables parties clearly to understand what is required of them (and of the Arbitral Tribunal) and by when.

6.2 Consolidation

27. In the event of related cases, the Arbitral Tribunal should also consider at an early stage whether an application for consolidation is likely to be forthcoming and/or whether consolidation would be desirable.

28. The Arbitral Tribunal's power to consolidate, which is subject to approval by the LCIA Court, is contained in Articles 22.1(ix) and 22.1(x) of the LCIA Rules. In brief, absent agreement of all of the parties, the Arbitral Tribunal may only order consolidation where the relevant arbitrations are all subject to the LCIA Rules, where the arbitrations were commenced under the same or a compatible arbitration agreement between the same parties, and where no Arbitral Tribunal has yet been formed by the LCIA Court in the other arbitrations or the same Arbitral Tribunal is in place.
29. If the Arbitral Tribunal does order consolidation, this should be recorded in a procedural order, which should also clarify the reference to be used in the arbitration (we would suggest adopting the number from the first arbitration in time). From that time forward, the LCIA will consolidate the financial treatment of the arbitrations, such that the members of the Arbitral Tribunal may record all of their time in a single timesheet.

6.3 Concurrent arbitrations

30. If an Arbitral Tribunal does not order consolidation, it may nevertheless conduct the arbitrations, with the agreement of the parties, on a concurrent basis. In that case, however, the members of the Arbitral Tribunal should continue to record their time separately for each particular case, as the LCIA will need to direct separate deposits.

6.4 Meetings and hearings

31. Article 16 of the LCIA Rules provides that meetings and hearings need not be held at the seat or legal place of the arbitration.
32. With a view to saving time and costs, therefore, the Arbitral Tribunal should, in consultation with the parties, hold hearings at the location which is most convenient for all concerned, whether parties, witnesses or the arbitrators themselves.
33. It might, in some cases, be appropriate for certain hearings (for example, procedural conferences) to be held by telephone or by videoconference, rather than in person. The Arbitral Tribunal should also consider, where appropriate, whether some or all of those who must attend any meeting or hearing might do so by video conference, rather than in person (for example, if a witness is unable to travel due to health issues).
34. The Arbitral Tribunal and the parties should also carefully consider a realistic schedule and timeframe for hearings, so as to avoid the need for rescheduling, and to avoid the wasted costs (including the imposition of any cancellation charges, if applicable) caused by late postponement. The Arbitral Tribunal should only adjourn a hearing where there is a good reason for doing so.
35. The Arbitral Tribunal should make every reasonable effort to hold hearings on consecutive days, rather than in separate periods.
36. Consideration should also be given to whether the nature and circumstances of the particular claim and any counterclaim are such that they may (with the agreement of the parties) be decided on the documents alone.

6.5 Conduct of the parties and their legal representatives

37. Article 18 of, and the Annex to, the LCIA Rules focus on the legal representation of a party and provide additional powers to the Arbitral Tribunal to address the undesirable situation where a party or its legal representative engages in conduct designed to disrupt or frustrate the arbitration.
38. Article 18.5 of the 2014 Rules requires each party to ensure that all of its named legal representatives have agreed to comply with the guidelines contained in the Annex to the Rules. If a party complains that another party's representative has violated the guidelines, the Arbitral Tribunal may, if it considers the complaint to be well-founded, issue a written reprimand, issue a written caution as to future conduct in the arbitration, or take any other measure necessary to fulfil the Arbitral Tribunal's duties to act fairly and impartially and to adopt procedures suitable to the arbitration, so as to avoid unnecessary delay and expense.
39. An Arbitral Tribunal should carefully consider the facts of the particular case, and invite comments from the parties as appropriate, before ordering any of the sanctions detailed at Article 18.6 of the Rules.
40. An Arbitral Tribunal is also now expressly empowered, by Article 28, to take parties' conduct into account when awarding costs.
41. In addition, under Articles 18.3 and 18.4 of the 2014 Rules, a party must notify to the Arbitral Tribunal any intended change or addition to its named representatives, and the Arbitral Tribunal may withhold approval of that intended change or addition where the change or addition could compromise the composition of the Arbitral Tribunal or the finality of any Award (on the grounds of possible conflict or similar).
42. In deciding whether or not to grant approval, the Arbitral Tribunal will have regard to the particular circumstances before it, including the general principle that a party may be represented by a legal representative chosen by that party, the stage which the arbitration has reached, the efficacy of maintaining the composition of the Arbitral Tribunal and any likely wasted costs or loss of time resulting from the proposed change or addition.

6.6 Witness evidence

43. For the purposes of Article 20.3 of the LCIA Rules, the Arbitral Tribunal should endeavour to determine as early as possible in the proceedings, the time, manner and form of taking witness evidence.
44. In addition to evidence produced by a party, the LCIA Rules allow an Arbitral Tribunal to appoint its own expert (as to which, see further below).

6.7 The Award

45. One common cause for complaint is the time taken by Arbitral Tribunals to render their award after the close of the proceedings.
46. Once the timetable for the final stages of the arbitration is fixed, by which time the likely length and complexity of the award can be better judged, the Arbitral Tribunal should make an appropriate provision in its diary for deliberations as soon as possible after the last submission contemplated by that timetable and should notify the parties and the LCIA of the time set aside.

This ensures that the parties know, from an early stage, when the Tribunal will deliberate and the likely timing of any Award.

47. Having made provision for deliberations, the Arbitral Tribunal should also seek to make its final award as soon as reasonably possible following the last submission from the parties (oral or written) and shall notify the parties and the Registrar of the timetable for it to make its award, as required by Article 15.10 of the LCIA Rules. Again, this ensures transparency for everyone involved in the arbitration.
48. The simplest way for the Arbitral Tribunal to notify the parties of the time set aside for deliberations and for the timetable for the making of its award is to incorporate these dates into a revised procedural timetable for the arbitration.
49. In accordance with Articles 28.2 of the LCIA Rules, the Arbitral Tribunal shall specify by an award the amount of the Arbitration Costs as determined by the LCIA Court. In order to allow time for such determination to occur, and to ensure the award is not delayed, it is important that Arbitral Tribunals update the LCIA on the amount of their fees and expenses when preparing the draft award and not wait until they have signed the award.
50. Although the LCIA does not scrutinise awards, the Secretariat is happy to review a draft award when asked to do so by an Arbitral Tribunal and to provide comments on non-substantive issues. The Secretariat can also, where asked to do so, provide suggested wording for inclusion in the award specifying the costs of the arbitration.
51. Once complete, the sole or presiding arbitrator should deliver to the LCIA a soft copy and the requisite number of hard copies of the award for onward transmission to the parties by the LCIA, in accordance with Article 26.7 of the Rules. Generally, we require one original for each party, two for the LCIA and one for each member of the Arbitral Tribunal.

7. COSTS OF THE ARBITRATION

52. Another common cause for complaint concerns overly lengthy proceedings. Subject to the overriding principle of due process, therefore, arbitrations should be conducted and concluded as expeditiously as possible, avoiding not only unnecessary delay, but also the unnecessary costs associated with protracted proceedings.
53. By Article 24.3 of the LCIA Rules, the Arbitral Tribunal may not proceed with the arbitration unless it has ascertained from the Registrar that sufficient funds are held on deposit. Arbitrators should, therefore, liaise with the LCIA at the outset regarding the likely costs of the arbitration and should regularly submit to the LCIA interim fee notes during the course of the arbitration to permit the Secretariat to ensure that sufficient funds are held, and advances directed, from time to time.
54. The LCIA Court has approved a standard cancellation formula, which Arbitrators may adopt in respect of time reserved for hearings, but not used, as a result of late postponement or cancellation by the parties. If an Arbitral Tribunal wishes to adopt the formula, it must inform the LCIA Secretariat, which will communicate this to the parties. If a hearing is cancelled, the LCIA Court will consider, in each case, whether it is appropriate for the formula to be invoked in the particular circumstances of the case. We would not normally expect a member of an Arbitral Tribunal to raise cancellation charges if he/she has managed to fill the time that had been set aside for the hearing with other billable work.

55. If the Arbitral Tribunal is aware that a scheduled hearing might be postponed or cancelled, it should remind the parties that the hearing dates are approaching, so that the parties do not inadvertently trigger cancellation charges by failing to give the Arbitral Tribunal adequate notice.
56. Under the LCIA Schedule of Arbitration Costs, which forms part of the Rules, all arbitrators must keep full details of all time spent on the arbitration, including details of the activities on which the time was spent, as well as the amount of time spent on each activity. All invoices/requests for payment on account of fees must be accompanied by a detailed daily breakdown of the time spent by the arbitrator, at the hourly rate agreed with the LCIA. The Secretariat will provide to the parties a copy of that breakdown before settling the arbitrator's fees, unless an arbitrator asks the Secretariat not to do so for one or more reasonable specified grounds. The LCIA is happy to provide an example time sheet on request.
57. No payment, either interim or final, will be made to any arbitrator unless and until the LCIA has satisfied itself that an arbitrator's fees are reasonable in the circumstances of the case and in light of the agreed procedural timetable.
58. The LCIA does not operate on a per diem basis with respect to expenses, but reimburses for expenses actually incurred. All expenses must also be reasonably incurred and reasonable in amount, and all claims for expenses must be supported by invoices or receipts.
59. Prior to incurring expenses, the arbitrator should consult the LCIA Secretariat as to what is considered reasonable, for example, in respect of the class of travel for the distance concerned or the amount of travel time that may be charged to the parties.
60. The Secretariat is happy to assist arbitrators to make hotel reservations for pending hearings and, where available, will advise the Arbitral Tribunal of hotels at which we are able to secure preferential rates.
61. Any payment on account of an arbitrator's fees and expenses is paid from the deposits that have been lodged by the parties, rather than being paid by the LCIA. Accordingly, all invoices/requests for payment should be addressed to the parties to the arbitration, sent care of the LCIA. In most cases, invoices should be split 50/50 between the parties. Where there are multiple parties, or where not all of the parties to an arbitration have advanced deposits, the Arbitral Tribunal should feel free to contact the Secretariat, which will provide guidance on format.
62. Invoices/requests for payment should generally be rendered in the currency of account between the Arbitral Tribunal and the parties: in other words, if an arbitrator is charging €400 per hour, and deposits have been directed in Euros, the relevant invoice or request should be in Euros. Where an arbitrator requests payment in a currency other than the currency of account, the arbitrator will bear the risk of any loss on exchange rates. Further, where an arbitrator's bank imposes a transfer charge for receiving funds, this charge will be for the arbitrator to bear.
63. As noted above, by Article 28.2 of the LCIA Rules, Arbitral Tribunals must specify in their final Award the total amount of the costs of the arbitration. As these costs must be submitted to, and approved by, the LCIA Court in advance, it is essential that arbitrators keep their timesheets fully up to date, so that their Award is not delayed by the LCIA Secretariat having to chase for final details of the time spent, and costs incurred, for approval by the LCIA Court.

64. Arbitrators are encouraged, as early in the proceedings as possible, to advise the LCIA of any taxes that might apply to their fees, as this will assist the LCIA when calculating the amount of deposits to be requested from the parties.
65. Both inside and outside of the EU, local taxes may apply to an arbitrator's fees and expenses, which taxes should be included in the arbitrator's invoices as applicable.
66. With respect to EU VAT, an arbitrator billing from within the EU might need to raise separate invoices for parties to reflect the VAT consequences under relevant legislation.
67. The Secretariat is happy to assist with any enquiries from arbitrators on VAT or other taxes on a case by case basis, but might need to suggest, in certain circumstances, that an arbitrator obtain his/her own advice from a relevant specialist.

8. SECRETARIES TO TRIBUNALS

68. Subject to the express written agreement of the parties, an Arbitral Tribunal may, if it considers it appropriate in a particular case, appoint a tribunal secretary to assist it with the internal management of the case.
69. The duties of the tribunal secretary should, however, neither conflict with those for which the parties have contracted with the LCIA, nor constitute any delegation of the Arbitral Tribunal's authority.
70. The LCIA Secretariat will deal with all matters required of it under the LCIA Rules; will provide any reminders that may be required on the procedural timetable; and will, if requested, finalise arrangements for hearing venues, transcripts and so on.
71. Tribunal secretaries should, therefore, confine their activities to such matters as organising papers for the Arbitral Tribunal, highlighting relevant legal authorities, maintaining factual chronologies, reserving hearing rooms, and sending correspondence on behalf of the Arbitral Tribunal.
72. On the basis that the secretary's work will save the Arbitral Tribunal time, then an hourly rate in the range of £50 to £150 per hour would generally be considered reasonable. The LCIA's practice is to pay the secretary's fees out of the deposits that have been lodged by the parties.
73. If an Arbitral Tribunal intends to appoint a tribunal secretary, it should inform the LCIA once it has secured the agreement of the parties, at which time we will write to the intended secretary to ask him/her to complete a statement of independence. Once that process is complete, we would suggest that the appointment of the secretary be recorded in a procedural order.

9. EXPERTS TO TRIBUNALS

74. After consulting the parties, an Arbitral Tribunal may, if it considers it appropriate in a particular case, appoint one or more experts to report in writing to the Arbitral Tribunal and to the parties on specific issues in the arbitration under Article 21 of the Rules.
75. Any expert appointed by the Arbitral Tribunal must be and remain impartial and independent of the parties. If an Arbitral Tribunal decides to appoint an expert, it should therefore inform the LCIA at the earliest opportunity in order that we can ask the expert to complete an appropriate statement of independence and impartiality.

76. In accordance with Article 21.5, the fees and expenses of the expert are usually paid out of the deposits paid by the parties to the LCIA under Article 24 of the Rules. In order that we can ensure that sufficient funds are held on account, we ask that the Arbitral Tribunal keep us informed of the anticipated fees and expenses of any expert and that they inform us if the Arbitral Tribunal considers it necessary, or if a party has asked, that any such expert participate at an oral hearing after delivery of his/her written report.

10. KEEPING THE SECRETARIAT INFORMED

77. The Arbitral Tribunal should, in all circumstances, keep the Secretariat fully informed of progress during the course of the arbitration and ensure that we are copied on all correspondence to and from the parties. The Secretariat's ability properly to administer the arbitration depends on it being kept informed.
78. In this context, the LCIA would also ask that the Arbitral Tribunal provide a short update to the Secretariat following any procedural hearing, particularly if a written procedural order capturing the key information from that hearing is not immediately forthcoming.
79. The Arbitral Tribunal should also be mindful of the express obligations in the Rules to provide updates to the parties and the LCIA (for example, Article 15.10 in the context of preparation of Awards).

11. IMPORTANT NOTE

80. The LCIA is a neutral and independent arbitral institution, providing administrative services only, and neither practices law, nor renders legal services. Neither arbitrators, nor parties, nor legal representatives should, therefore, interpret, or rely upon, these notes as any form of legal advice. Rather, these notes are drafted only with a view to facilitating the diligent and timely conduct of arbitrations under the LCIA Rules.

Issue date: 29 June 2015



MILAN
CHAMBER OF
ARBITRATION

ARBITRATION RULES

IN FORCE AS FROM 1 MARCH 2019



MODEL CLAUSE

All disputes - included those of not contractual nature - arising out of, related or connected to this agreement shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by a sole arbitrator/three arbitrators, appointed in accordance with the Rules, which are deemed to be incorporated by reference into this clause.

Further and specific models can be found on the website www.cameraarbitrale.com

The present model clause is a basis to defer disputes to arbitration. Professionals, companies and other users are invited to contact the Chamber of Arbitration for assistance when drafting their arbitration clause.

The Italian version of the Arbitration Rules is the official text.

The Secretariat performs its tasks in Italian, English or French.

The Chamber of Arbitration reserves the right to supplement, modify or substitute the present Rules, determining the date upon which the new rules come into effect, by order of the Board of Directors of the Chamber of Arbitration.

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PREAMBLE – THE CHAMBER OF ARBITRATION

TASKS AND BODIES OF THE CHAMBER OF ARBITRATION

1. The Chamber of Arbitration of Milan, an entity of the Chamber of Commerce of Milan, performs the following tasks:
 - a. it administers arbitral proceedings under the Rules of the Chamber of Arbitration of Milan (the Rules);
 - b. at the request of the parties, it appoints arbitrators and designates neutrals and experts in proceedings not applying the Rules;
 - c. it appoints arbitrators and offers its services according to the Procedure for arbitral proceedings under the Arbitration Rules of the United Nation Commission for International Trade Law (UNCITRAL).
2. The Chamber of Arbitration performs the tasks provided for in the Rules through the Arbitral Council and the Secretariat.

I – GENERAL PROVISIONS

ART. 1 – SCOPE OF THE APPLICATION

1. The Rules shall apply where so provided by the arbitral clause or any other agreement of the parties, however expressed. A reference in the agreement to the Chamber of Arbitration of Milan, or to the Chamber of Commerce of Milan, the Chamber of Commerce of Lodi, the Chamber of Commerce of Monza and Brianza or the Chamber of Commerce of Milan, Monza-Brianza and Lodi, however labelled, shall be deemed to provide for the application of the Rules.
2. The Rules shall apply where so provided by an agreement between the Chamber of Arbitration and the institution mentioned by the arbitration clause or a subsequent agreement of the parties.
3. Apart from the above provisions, the Rules shall apply where:
 - a. a party files a personally signed request for arbitration proposing arbitration under the Rules; and
 - b. the other party accepts this proposal by a personally signed statement within the time limit set by the Secretariat.
4. Where a party objects to the application of the Rules before the Arbitral Tribunal is constituted, the Arbitral Council shall decide on the admissibility of the arbitration.
5. The decision of the Arbitral Council that the arbitration is admissible shall not be binding on the Arbitral Tribunal.

ART. 2 – RULES APPLICABLE TO THE PROCEEDINGS

1. The arbitral proceedings shall be governed by the Rules, by the rules agreed upon by the parties up to the constitution of the Arbitral Tribunal if consistent with the Rules and by those set by the Arbitral Tribunal.

2. In any case, mandatory provisions that are applicable to the arbitral proceedings shall apply.
3. In any case, the principles of due process and equal treatment of the parties shall apply.

ART. 3 – RULES APPLICABLE TO THE MERITS OF THE DISPUTE

1. The arbitral Tribunal shall decide on the merits of the dispute in accordance with the rules of law unless the parties expressly provided that the Tribunal decide *ex aequo et bono*.
2. The Arbitral Tribunal shall decide in accordance with the rules chosen by the parties.
3. In the absence of any agreement pursuant to Para. 2, the Arbitral Tribunal shall apply the rules it determines to be appropriate, taking into account the nature of the relationship, the qualities of the parties and any other relevant circumstance.
4. In any case, the Arbitral Tribunal shall take into account trade usages.

ART. 4 – SEAT OF THE ARBITRATION

1. The parties shall fix the seat of the arbitration, in Italy or abroad, in their arbitration agreement.
2. In the absence of any agreement as to the seat, the seat of the arbitration shall be Milan.
3. Notwithstanding the provision in Para. 2, the Arbitral Council may fix the seat of the arbitration elsewhere, taking into account the requests of the parties and any other circumstance.
4. The Arbitral Tribunal may determine that hearings or other procedural acts take place in a location other than the seat.

ART. 5 – LANGUAGE OF THE ARBITRATION

1. The language of arbitration shall be agreed upon by the parties in their arbitration agreement or subsequently until the Arbitral Tribunal is constituted.
2. In the absence of any agreement by the parties, the Arbitral Tribunal shall determine the language of the arbitration.
3. The Arbitral Tribunal may accept the submission of documents in a language other than the language of the arbitration and may order that them to be accompanied by a translation into the language of the arbitration.

ART. 6 – FILING AND SENDING THE ACTS

1. The parties file briefs and documents with the Secretariat in accordance with the latter's direction.
2. The Secretariat shall dispatch briefs and communications by any appropriate means allowing for a formal proof of delivery.

ART. 7 – TIME LIMITS

1. The expiration of a time-limit set by the Rules or by the Arbitral Council, the Secretariat or the Arbitral Tribunal shall not entail a lapse of a party's right, unless so determined by the Rules or by the order setting the said time-limit.
2. The Arbitral Council, Secretariat and Arbitral Tribunal may extend a time limit they have set before it expires. Time limits that entail lapse of rights may be extended only for justified reasons or by agreement of all parties.

ARBITRATION RULES

3. The initial day shall be excluded from the calculation of time limits. Where the date of expiry falls on a Saturday or on a non-working day, it shall be extended to the first subsequent working day.

ART. 8 – CONFIDENTIALITY

1. The Chamber of Arbitration, the parties, their counsel, the Arbitral Tribunal and the expert witnesses shall keep the proceedings and the arbitral award confidential, except in the case it has to be used to protect one's rights or the rules of law so provide.
2. For purposes of research, the Chamber of Arbitration may publish or agree to publish the arbitral award in anonymous format, unless any of the parties objects to publication within 30 days from the filing of the arbitral award.

ART. 9 – FAIR CONDUCT

1. The Chamber of Arbitration, the arbitrators, the experts, the parties and their counsel shall act in good faith along any phase of the proceedings.
2. The parties commit to enforce the awards, the orders and decision of the arbitrators.
3. The Arbitral Tribunal may sanction any breach of its decisions and any unlawful conduct that is contrary to good faith.
4. When deciding on the allocation of the costs, the Arbitral Tribunal shall take into consideration the conduct of the parties and their counsel.

II – COMMENCEMENT OF THE PROCEEDINGS

ART. 10 – REQUEST FOR ARBITRATION

1. Claimant shall file a request for arbitration with the Secretariat.
2. The request shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:
 - a. The names and domicile addresses of the parties;
 - b. A description of the dispute;
 - c. A statement of the claims and of their economic value;
 - d. The appointment of the arbitrator or any other relevant indications as to the number of arbitrators and the method for their selection;
 - e. A statement of evidence, if any, required in support of the claim and any documents that the party deems appropriate to produce;
 - f. A brief statement, if any, as to the rules applicable to the merits of the dispute or as to the ex aequo et bono decision, the seat and the language of the arbitration;
 - g. The power of attorney conferred on counsel, if any;
 - h. The arbitration agreement.
3. As for running of any time limit set by the Rules, the Secretariat shall send the request for arbitra-

tion to the Respondent within five days from the filing. Claimant may send the request for arbitration directly to Respondent, provided that the request is also filed with the Secretariat.

ART. 11 – REPLY TO THE REQUEST FOR ARBITRATION

1. Respondent shall file its reply to the request for arbitration with counterclaims if any, with the Secretariat within thirty days from the receipt of the request by the Secretariat. The Secretariat may extend this time limit for justified reasons.
2. The statement shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:
 - a. The name and domicile of the Respondent;
 - b. A statement of its defence, however brief;
 - c. A statement of counterclaims, if any, and of their value;
 - d. The appointment of the arbitrator or any relevant indications as to the number of arbitrators and the method for their selection;
 - e. The evidence, if any, in support of the statement of defence and all documents that the party deems useful appropriate to produce;
 - f. A brief statement, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or as to the ex aequo et bono decision, the seat and the language of the arbitration;
 - g. The power of attorney conferred on counsel, if any.
3. The Secretariat shall send the reply to Claimant within five working days from the filing. Respondent may send the reply directly to Claimant, provided that the reply is also filed with the Secretariat.
4. Where Respondent does not file its reply or does not attend any other phase of the proceedings, the arbitration shall proceed without it.

ART. 12 – CONSOLIDATION OF ARBITRAL PROCEEDINGS BEFORE THE CONSTITUTION OF THE ARBITRAL TRIBUNAL

Before the constitution of the Arbitral Tribunal, the Arbitral Council may consolidate two or more arbitral proceedings pending before the Chamber of Arbitration where:

- a. all the parties agree to consolidate, and
 - b. the requests for arbitration are based on the same arbitration agreement or on compatible arbitration agreements as for the way of appointment of the arbitrators and the seat of the arbitration.
- In this case, any subsequent arbitral proceedings are consolidate to the one where the request for arbitration was first filed with the Secretariat.

ART. 13 – LACK OF JURISDICTION OF THE ARBITRAL TRIBUNAL

Any objection to the existence, the validity or the effectiveness of the arbitration agreement or lack of jurisdiction of the Arbitral Tribunal shall be raised in the first brief or at the first hearing following the claim to which the objection relates, or shall be deemed to be waived.

III – THE ARBITRAL TRIBUNAL

ART. 14 – NUMBER OF ARBITRATORS

1. The parties may determine the number of arbitrators.
2. Where the parties have not agreed upon the number of the arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator unless the Arbitral Council considers a panel of three arbitrators to be appropriate because of the complexity or the economic value of the dispute.
3. If the agreement to arbitrate provides for an even number of arbitrators, the Arbitral Council shall appoint an additional arbitrator unless otherwise agreed by the parties.

ART. 15 – APPOINTMENT OF THE ARBITRATORS

1. The arbitrators shall be appointed in accordance with the procedures established by the parties in the arbitration agreement and the Rules.
2. Unless otherwise agreed in the arbitration agreement, the sole arbitrator shall be appointed by the Arbitral Council.
3. Where the parties have agreed to appoint the sole arbitrator jointly without indicating a time limit, this time limit shall be set by the Secretariat. If the parties fail to reach an agreement, the sole arbitrator shall be appointed by the Arbitral Council.
4. Unless otherwise agreed in the arbitration agreement or provided by any mandatory rule, the Arbitral panel shall be appointed in the following manner:
 - a. Each party shall appoint an arbitrator in the request for arbitration and the statement of defence; if a party fails to do so, the arbitrator shall be appointed by the Arbitral Council;
 - b. The president of the Arbitral Tribunal shall be appointed by the Arbitral Council. The parties may, however, provide for the president to be appointed by the arbitrators appointed by the parties jointly. If the arbitrators fail to reach an agreement within the time limit set by the Secretariat where the parties have not indicated any, the president shall be appointed by the Arbitral Council.
5. Where the parties have different nationalities or registered offices in different countries, the Arbitral Council shall appoint as sole arbitrator or president of the Arbitral Tribunal a person of a nationality other than those of the parties, unless otherwise agreed by the parties. Under particular circumstances, and provided that none of the parties objects thereto within the time limit set by the Secretariat, the Arbitral Council may appoint a sole arbitrator or a president sharing the nationality of one of the parties.

ART. 16 – APPOINTMENT OF ARBITRATORS IN MULTI-PARTY ARBITRATION

1. Where the request for arbitration is filed by or against several parties, where the arbitration agreement provides for a panel without delegating its whole appointment to another authority and the parties form two sides when filing their introductory briefs, Art. 15, Para. 4 shall apply.
2. Regardless of the arbitration agreement, if the parties do not form two sides when filing the request for arbitration and the statement of defence, the Arbitral Council, without considering any appointment made by any of the parties, shall appoint the Arbitral Tribunal.

ART. 17 – CORPORATE LAW ARBITRATION

Where the arbitration agreement contained in the statute or bylaw of a company subject to Italian law does not refer the power to appoint any arbitrators to an authority other than the company itself, the Arbitral Council shall appoint the Arbitral Tribunal.

ART. 18 – INCOMPATIBILITY

1. The following persons cannot be appointed as arbitrators:
 - a. members of the Board, members of the Arbitral Council and auditors of the Chamber of Arbitration;
 - b. employees of the Chamber of Arbitration.
2. The Arbitral Council cannot appoint as arbitrators any professional partners, employees and those who have an ongoing cooperative professional relationship with the persons indicated at point a.

ART. 19 – ACCEPTANCE BY ARBITRATORS

The Secretariat shall inform the arbitrators of their appointment. The arbitrators shall give notice of their acceptance to the Secretariat within the time limit it set.

ART. 20 – STATEMENT OF INDEPENDENCE AND CONFIRMATION OF ARBITRATORS

1. The arbitrators shall submit their statement of independence to the Secretariat within the time limit it sets.
2. In the statement of independence the arbitrator shall disclose, specifying the time and duration:
 - a. Any relationship with the parties, their counsel and any other person or entity involved in the arbitration, even on a financial relationship basis, which may affect his/her impartiality or independence;
 - b. Any personal or economic interest, either direct or indirect, in the dispute;
 - c. Any bias or reservation as to the subject matter of the dispute;
3. The Secretariat shall forward a copy of the statement of independence to the parties. Within ten days from receipt of the statement, each party may file written comments with the Secretariat.

ART. 21 – OBSERVATIONS OF THE PARTIES, CONFIRMATION AND CHALLENGE OF ARBITRATORS

1. The Secretariat shall forward a copy of the statement of independence to the parties. Within 10 days from receipt of the statement, each party may file written comments with the Secretariat or a reasoned challenge.
2. After expiration of the time limit set in Para. 1, the arbitrator shall be confirmed by the Secretariat if he/she has filed an unqualified statement of independence and none of the parties has filed any comments thereon, nor any challenge is filed. In any other case, the Arbitral Council shall decide.
3. Each party may file a reasoned challenge against an arbitrator grounded on any circumstance that may lead to cast a doubt on his/her independence or impartiality.
4. The Secretariat shall transmit the observation or the challenge to the arbitrators and the other parties and shall set a time limit for filing comments, if any.

ART. 22 – REPLACEMENT OF ARBITRATORS

1. An arbitrator shall be replaced by another arbitrator where:
 - a. The arbitrator does not accept the appointment or resigns after accepting it;
 - b. The arbitrator is not confirmed;
 - c. The arbitrator is removed by all parties;
 - d. The Arbitral Council upholds a challenge against the arbitrator;
 - e. The Arbitral Council, after consulting the parties and the arbitrators, removes the arbitrator for violation of the duties of the Arbitral Tribunal under these Rules and the Code of Ethics or for other serious grounds;
 - f. The arbitrator dies or is no longer able to perform his/her tasks due to infirmity or on other serious grounds.
2. The Secretariat may suspend the proceedings in any of the cases indicated in Para. 1. In any case, when the suspension is lifted, the time limit for filing the award is extended to 90 days, if, by the elapse of time during the suspension, the time limit is less than 90 days.
3. A new arbitrator shall be appointed by the same authority that appointed the substituted arbitrator. If a replacement arbitrator must also be substituted, the new arbitrator shall be appointed by the Arbitral Council or in accordance with the provisions that the latter sets.
4. The Arbitral Council shall determine the fees, if any, due to the substituted arbitrator, taking into account the work done and the reasons for the replacement and any other relevant element.
5. In case of the replacement of an arbitrator, the newly constituted Arbitral Tribunal may decide to repeat all or some of the acts of the proceedings taken place up to that moment.

ART. 23 – IRREGULAR FORMATION OF THE ARBITRAL TRIBUNAL

Where the Arbitral Tribunal acknowledges the violation of a mandatory rule applicable to the proceedings or of the Rules in the appointment of its members, it may file a reasoned order with the Secretariat to return the files that implies a withdrawal of all the members of the Arbitral Tribunal. In this case, the substitutive arbitrators are appointed in accordance with the Rules.

IV – THE PROCEEDINGS

ART. 24 – CONSTITUTION OF THE ARBITRAL TRIBUNAL

1. The Secretariat shall transmit the request for arbitration and the statement of defence to the arbitrators, together with all annexed documents, when the advance payment is made.
2. The arbitrators shall constitute the Arbitral Tribunal as promptly as possible, also by taking into account the needs of the parties, and in any case within thirty days from receipt of the briefs and documents forwarded by the Secretariat. The Secretariat may extend this time limit for justified reasons.
3. The constitution of the Arbitral Tribunal shall take place by an act dated and signed by the arbitrators.

ART. 25 – POWERS OF THE ARBITRAL TRIBUNAL

1. The Arbitral Tribunal sets conditions and time limits to conduct any further steps of the proceedings when it constitutes and in any case no later than at the first hearing.
2. At any time after the commencement of the arbitration, the Arbitral Tribunal may require proof of the powers of any party representatives.
3. At any time in the proceedings, the Arbitral Tribunal may attempt to settle the dispute between the parties, including by addressing them to attempt mediation at the Mediation Service of the Chamber of Arbitration of Milan.
4. Where multiple proceedings related to the same dispute are pending before the Arbitral Tribunal, the Tribunal orders their consolidation.
5. Where multiple proceedings connected to the same dispute are pending before the Arbitral Tribunal, the Tribunal may order their consolidation.
6. Where the same proceedings concern several disputes, the Arbitral Tribunal may order their separation.
7. If a third party requests to join a pending arbitration or if one of the parties to the arbitration seeks a third party's intervention, the Arbitral Tribunal shall decide the application after consulting the parties, taking into consideration all the relevant circumstances of the case.

ART. 26 – INTERIM OR PROVISIONAL MEASURES

1. At request of a party, the Arbitral Tribunal may issue all urgent and provisional measures of protection, also of anticipatory nature, that are not barred by mandatory provisions applicable to the proceedings.
2. In any case, unless otherwise agreed by the parties, the Arbitral Tribunal, at request of a party, has the power to adopt any determination of provisional nature with binding contractual effect upon the parties.
3. The Arbitral Tribunal may order the party requesting an interim measure to provide appropriate security for costs as a condition to issue the measure.
4. Any request for interim measures made by a party to a judicial authority does not imply any waiver of the effects of the arbitration agreement or of the request for arbitration, if any.

ART. 27 – HEARINGS

1. The dates of the hearings shall be determined by the Arbitral Tribunal after consultation with the Secretariat and shall be communicated to the parties.
2. The parties may attend at the hearing either in person or through duly empowered representatives and may be assisted by counsel. The Arbitral Tribunal may grant the attendance by any appropriate means.
3. Minutes shall be taken of the hearings.
4. Unless otherwise agreed by the parties, hearings shall be held in private.

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ART. 28 – TAKING OF EVIDENCE

1. The Arbitral Tribunal leads the case by taking all the relevant and admissible evidence adduced in the manner it deems appropriate.
2. The Arbitral Tribunal shall freely evaluate all evidence, with the exception of that which constitutes legal proof under the mandatory provisions applicable to the proceedings or to the merits of the dispute.
3. The Arbitral Tribunal may delegate the taking of evidence to one of its members.

ART. 29 – EXPERT WITNESSES

1. At the request of one of the parties or by its own initiative, the Arbitral Tribunal may appoint one or more expert witnesses or delegate the appointment to the Chamber of Arbitration.
2. The expert witness shall comply with the duties of independence imposed on the arbitrators under these Rules. The provisions on confirmation and challenge relating to arbitrators shall also apply.
3. The expert witness of the Arbitral Tribunal shall allow the parties and their expert, if any, to assist in the expert's activities.

ART. 30 – NEW CLAIMS

The Arbitral Tribunal, after consulting the parties, shall decide on the admissibility of new claims, taking into account all circumstances, including the stage of the proceedings.

ART. 31 – CONCLUSIONS

1. When it deems that the case is ready for issuing the final award, the Arbitral Tribunal shall close the phase for discussing the case, even on the claims or issues it intends to decide only, and it may invite the parties to file their conclusions.
2. The Arbitral Tribunal may set a time limit for filing final statements, for rebuttal statements and may schedule a final hearing.
3. After the closing of the phase for discussing the case, the parties cannot file new claims, plead new facts, submit new documents or propose the taking of fresh evidence, unless the Arbitral Tribunal decides otherwise.

ART. 32 – SETTLEMENT AND WITHDRAWAL

1. The parties or their counsel shall inform the Secretariat that they withdraw their claims in the event of a settlement or on other grounds, thereby relieving the Arbitral Tribunal of the obligation to render an award.
2. The closing of the proceedings is declared by the Arbitral Council or by the Secretariat when the case ends before the constitution of the Arbitral Tribunal.

V – THE ARBITRAL AWARD

ART. 33 – DELIBERATION, FORM AND CONTENTS OF THE AWARD

1. The award shall be deliberated with the participation of all the members of the Arbitral Tribunal and may be by majority decision. In the latter case, the award shall state that it was deliberated with the participation of all the arbitrators and shall state the reason for the missing signature.
2. The award shall be in writing and shall indicate:
 - a. The arbitrators, the parties and their counsel;
 - b. The arbitration agreement;
 - c. The seat of the arbitration;
 - d. The conclusions of the parties;
 - e. The reasons upon which the decision is based, even in summary;
 - f. The decision (dictum);
 - g. The decision on the allocation of the costs of the proceedings, with reference to the decision on the costs of the Arbitral Council, and on the legal costs of the parties;

ART. 34 – SCRUTINY ON THE FORM OF THE AWARD

1. The arbitrators may request a scrutiny on the form of a draft of the award before signing it.
2. The Secretariat indicates to the arbitrators the time limit for the arbitrators to submit the draft of the award and any non-compliance with the formal requirements under this Article asking for an examination of the draft award.

ART. 35 – FILING AND NOTIFICATION OF THE AWARD

1. The Arbitral Tribunal shall file the award with the Secretariat in as many original copies as there are parties plus one.
2. The Secretariat shall forward the original award to each party within ten days of the filing.

ART. 36 – TIME LIMIT FOR FILING THE FINAL AWARD

1. The Arbitral Tribunal shall file the final award with the Secretariat within six months from its constitution, unless otherwise agreed by the parties in the arbitration agreement.
2. In any case, the Secretariat may extend the time limit for the filing of the award, even on its own initiative, unless it deems appropriate to refer the case to the Arbitral Council.
3. The Secretariat shall suspend the time limit in the cases expressly provided for in these Rules or for any other justified reason.

ART. 37 – PARTIAL AWARD AND INTERIM AWARD

1. The Arbitral Tribunal may render one or more awards, including of a partial or interim nature.
2. Awards contemplated by the previous Article shall not affect the time limit for filing the final award, unless a request for extension is filed with the Chamber of Arbitration.
3. The provisions of these Rules on the award shall apply to partial and interim awards. An interim award shall not contain a decision on the costs of the proceedings and on the legal costs.

ART. 38 – CORRECTION OF THE AWARD

1. A request for the correction of any clerical or counting error of an award shall be filed with the Secretariat within 30 days from receipt of the award.
2. The Arbitral Tribunal shall, after consulting the parties, decide the application within 60 days from receipt of the request.
3. The decision of the Arbitral Tribunal accepting the correction shall be an integral part of the award.
4. In any case, no additional cost will be charged to the parties for the correction of an award, unless otherwise agreed by the Chamber of Arbitration.

VI - COSTS OF THE PROCEEDINGS

ART. 39 – VALUE OF DISPUTE

1. The costs of the arbitration depend upon the value of the dispute, which is the sum of the claims filed by all parties.
2. The Secretariat shall determine the value of the dispute on the basis of the request for arbitration and the statement of defence, as well as of any further indications given by the parties and the Arbitral Tribunal. The criteria for determining the value of the dispute are set in Annexe B to these Rules, which is an integral part of the Rules.
3. At any stage of the proceedings the Secretariat, where it deems it appropriate, having heard the Arbitral Tribunal where possible, may divide the value of the dispute in relation to the claims of each party and may direct each party to pay the costs related to its claims.
4. In case of division of the value of the dispute, the fees of the Chamber of Arbitration and of the Arbitral Tribunal may not exceed the maximum of the fees determined on the basis of the cumulated value of the dispute, as in Para. 1.

ART. 40 – COSTS OF THE PROCEEDINGS

1. The Arbitral Council shall determine the costs of the arbitration before the award is filed.
2. The Arbitral Council shall inform the Arbitral Tribunal and the parties of its determination of the costs which the Arbitral Tribunal shall receive in the award. The determination of the Arbitral Council shall not affect the decision of the Arbitral Tribunal as to the allocation of the costs of the proceedings to the parties.
3. Where the arbitration ends before the Arbitral Tribunal is constituted, the Secretariat shall determine the costs of the proceedings.
4. The costs of the arbitration shall include:
 - a. Fees of the Chamber of Arbitration;
 - b. Fees of the Arbitral Tribunal;
 - c. Fees of the expert witnesses of the Arbitral Tribunal;
 - d. Reimbursement of expenses of the Chamber of Arbitration, of the arbitrators and of the expert witnesses.

5. The fees of the Chamber of Arbitration for administering the arbitration shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. In case of an anticipated conclusion to the arbitration, lower fees may be determined. The included and excluded activities of the Chamber of Arbitration are listed in Annexe B of to these Rules, which is an integral part of the latter.
6. The fees of the Arbitral Tribunal shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. When determining the fees of the Arbitral Tribunal, the Arbitral Council shall take into account the work done, the complexity of the dispute, the duration of the arbitration, the conduct of the arbitrator and any other circumstance. In case of an anticipated conclusion of the proceedings, lower fees than the minimum provided for in the Schedule may be determined. Lower or higher fees may be determined in exceptional cases.
7. The fees of the expert witnesses of the Arbitral Tribunal shall be determined in equity, also taking into account the schedule of professional fees of the expert, national court schedules of fees and any other circumstance, having heard the parties and the Arbitral Tribunal where possible.
8. The expenses of arbitrators and expert witnesses of the Arbitral Tribunal shall be supported by receipts. If such receipts are not produced, the expenses shall be deemed to be included in the fees.
9. The parties are jointly liable for the payment of the costs of the proceedings.

ART. 41 – ADVANCE AND FINAL DEPOSITS

1. When the time limit to file the reply to the request for arbitration expires, the Secretariat shall direct the parties to make an advance on the costs of the arbitration, setting a time limit for the parties to make it.
2. The Secretariat may direct the parties to make further advances in relation to work done or to any change of the amount in dispute, setting a time limit for these advances.
3. The Secretariat shall direct the balance of the costs of the proceedings based on the final determination of the Arbitral Council and before the award is filed, setting a time limit for the payment of the balance.
4. The payments contemplated by Para. 1, 2 and 3 shall be made by all the parties in equal shares where the Secretariat determines a single value for the dispute, totalling all the claims filed by the parties. Where the Secretariat determines different values of the dispute in relation to the claims of the parties, it shall direct each party to pay the full amount of the advance relating to its claim, as determined in accordance with Para. 1, 2 and 3.
5. For the purpose of these payments, the Secretariat may consider several parties as one, also taking into account the manner in which the Arbitral Tribunal is constituted or the mutual interests of the parties.
6. If a party so requests, and gives reasons for this request, the Secretariat may accept a bank or insurance guarantee for the amounts set at Para. 1, 2 and 3, setting terms and conditions.

ART. 42 – FAILURE TO DEPOSIT

1. Where a party fails to lodge an advance as requested, the Secretariat may direct another the other party to make a substitute payment, setting a time limit there for, or may divide the value of the dispute, if it has not already done so, and direct each party to deposit an amount based on the value of its claims, setting a time limit therefore.
2. If any of the advances directed is not made within the time limit set therefore, the Secretariat may suspend the entire proceedings or only the proceedings related to the claim to which the lack of payment relates. The Secretariat shall lift the suspension when the payment is made.
3. Where the parties do not deposit the amount within one month of the notice of the order of suspension under Para. 2, the Secretariat, having heard the Arbitral Tribunal where constituted, may declare the closing of the entire proceedings, or the proceedings related to the claim to which the lack of payment relates, without affecting the arbitral agreement.

ART. 43 – THIRD PARTY FUNDING

1. The party that is funded by a third party in relation to the proceedings and its outcome shall disclose the existence of the funding and the identity of the funder.
2. Such a disclosure shall be repeated along the proceedings, until its conclusion, where supervening facts so require or upon request by the Arbitral or the Secretariat.

VII - EMERGENCY ARBITRATOR

ART. 44 – EMERGENCY ARBITRATOR

1. Where the arbitration agreement was concluded after the entry into force of the Rules, and unless otherwise provided by the parties, prior to the confirmation of the arbitrators a party may file an application, even without notice to the other party, for the appointment of an emergency arbitrator for a measures and determinations provided by Art. 26. The application shall contain the names of the parties and the arbitration agreement, the factual elements and the juridical grounds on which the request relies, and proof of payment of the amount referred in the annexed schedule.
2. The Chamber of Arbitration appoints the emergency arbitrator and collects his/her statement of independence. The Secretariat provides the arbitrator with the application and the documents attached thereto within 5 days from the date on which the application was filed.
3. Within 15 days from receiving the files, provided that the due process is respected and any appropriate measure is conducted, the arbitrator issues the requested interim, urgent and provisional measures by way of an order, where he/she deems that the application is manifestly grounded.

4. Where the applying party so requests, within 5 days from receiving the files, the arbitrator may issue the order without notice to the other party if prior disclosure risks causing serious harm to the applying party. In this case, the arbitrator, where his/her order admits the application, schedules a hearing within 10 days to discuss the case with the parties and sets any time limit to submit any briefs. At the hearing or in any case within a further 5 days period, provided that the due process is respected, the arbitrator issues an order to confirm, amend or revoking any measures that was previously granted.
5. Without any prejudice to the decision of the Arbitral Tribunal in the award, the order of the emergency arbitrator may provisionally allocate the costs of the proceedings determined by the Chamber of Arbitration and the legal costs borne by the parties.
6. Any party may file with the Secretariat a reasoned challenge against the arbitrator within 3 days from receiving his/her statement of independence or from the date when it becomes aware of the ground for challenge. The Arbitral Council decides on the challenge as promptly as possible after having heard the arbitrator. Where the challenge is upheld, any measure becomes ineffective.
7. The arbitrator may make its order subject to the provision of appropriate security for costs.
8. The order can be challenged, amended and revoked before the Arbitral Tribunal once constituted. Until the Arbitral Tribunal is constituted, the arbitrator remains competent for any request for amendment or revocation of the order.
9. Unless the application is filed together with or after the request for arbitration, the request for arbitration shall be filed within the Secretariat within the mandatory time limit of 60 days from the filing of the application, or within the time limit set by the emergency arbitrator that in case can not be shorter than 15 days. Failing such a condition, the emergency measure become ineffective.
10. The emergency arbitrator shall not act as arbitrator in any arbitration related to the disputes that gave rise to the application.

VIII – PROVISIONAL PROVISIONS

ART. 45 – ENTRY INTO FORCE

1. These Rules shall be in force as from 1 March 2019.
2. Unless otherwise agreed by the parties, these Rules shall apply to arbitrations commenced after the date on which the Rules entered into force.

ANNEXE “A”

BODIES OF THE CHAMBER OF ARBITRATION

THE ARBITRAL COUNCIL

1. The Arbitral Council has general competence over all matters relating to the administration of arbitral proceedings and issues all orders relating thereto, without prejudice to the Secretariat's functions under the Rules.
2. The Arbitral Council is composed of a minimum of seven up to a maximum of eleven members, one of whom acts as president and one as deputy, all appointed for three years by the Board of the Chamber of Arbitration.
3. The Board of the Chamber of Arbitration may appoint both Italian and foreign experts as members of the Arbitral Council.
4. The meetings of the Arbitral Council are chaired by its president or, if absent, by the deputy or, if both are absent, by its oldest member.
5. The meetings of the Arbitral Council are valid where at least three members are present.
6. The meetings of the Arbitral Council may be held by any means of telecommunication.
7. The Arbitral Council shall reach its decisions by majority of its voting members. In case of deadlock, the vote of the meeting's president shall prevail.
8. In case of urgency, the president of the Arbitral Council – or, if prevented, the deputy or the oldest member - may take any measures relating to the administration of arbitral proceedings that fall within the competence of the Arbitral Council, and then inform the Arbitral Council thereof at its next following meeting.
9. When the member of the Arbitral Council abstains, he/she shall leave the meeting whilst the discussion of the matter on which he/she is abstaining continues and any measures arising are agreed.
The abstention will not affect the quorum necessary for the validity of the meeting.

THE SECRETARIAT

1. The Secretariat performs the tasks set out in the Rules or delegated by the Arbitral Council and issues all related orders. Moreover, the Secretariat:
 - a. Acts as the Arbitral Council's secretariat, taking minutes of the Council's meetings and signing the Council's orders;
 - b. Keeps the Arbitral Council informed on the status of arbitral proceedings;
 - c. Forwards the orders of the Arbitral Council and its own orders to the parties and to the Arbitral Tribunal, as well as to any other addressee entitled to receive them;
 - d. Receives all written submissions and documents from the parties and the Arbitral Tribunal;
 - e. Creates and maintains the files of the arbitral proceedings;

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- f. Forwards notices at the request of the Arbitral Council and the Arbitral Tribunal;
 - g. Issues certified copies of submissions and documents at the request of the parties, as well as declarations and certificates relating to the arbitral proceedings;
 - h. Sets any time limit that is due in application of the Rules;
 - i. May suspend the proceedings where all the parties that filed their briefs so request for as long as it determines and in any other case where the Rules so provided.
2. The Secretariat performs its tasks through the General Director and its representatives.

ANNEXE “B”

CRITERIA FOR DETERMINING THE VALUE OF THE DISPUTE

1. The value of the dispute shall be the sum of all the claims filed by the parties that aim at obtaining a declarative order, an order to pay or perform or an order that establishes a new juridical situation.
2. Where a party files primary and subsidiary claims, only the primary claims shall be taken into account for determining the value of the dispute.
3. Where it is necessary to make a preliminary estimate of several alternative claims, rather than subordinate claims, filed by the parties in order to determine the subject matter of a claim or claim for set-off, the value of the dispute shall be determined on the basis of the sum of these claims.
4. Where a party seeks to ascertain a credit while only seeking a declarative order, an order to pay or perform or an order that modifies the existing juridical situation with respect to a part thereof, the value of the claim shall be the total amount of the credit to be ascertained.

ANNEXE “C”

FEES OF THE CHAMBER OF ARBITRATION: INCLUDED AND EXCLUDED ACTIVITIES

1. The following activities shall be included in the fees of the Chamber of Arbitration indicated in the Schedule of Fees:
 - a. Managing and administering proceedings as defined in the Preamble to these Rules with respect to each body of the Chamber of Arbitration;
 - b. Receiving and transmitting the introductory briefs;
 - c. Convening and hosting hearings on its premises;
 - d. Staff attendance at hearings and taking minutes of the hearings mentioned at point c.
2. The following activities and services are excluded from the fees of the Chamber of Arbitration and shall be paid for separately, if requested:
 - a. Copies of briefs and documents filed by the parties where the number of copies is insufficient, including the photocopies of documents made by the Secretariat for the Expert to the Arbitral Tribunal;
 - b. Adding fiscal stamps to briefs where needed.
3. The following further activities and services are excluded from the fees of the Chamber of Arbitration, and represent a specific cost where requested:
 - a. Recording and transcription of hearings;
 - b. Interpretation services;
 - c. Videoconference;
 - d. Travel expenses for the Secretariat attending hearings held outside the premises of the Chamber of Arbitration;
 - e. Copies of briefs and documents in case of collection of the dossier.

CODE OF ETHICS OF ARBITRATORS

ART. 1 – ACCEPTANCE OF THE CODE OF ETHICS

1. An arbitrator accepting a mandate in an arbitration administered by the Chamber of Arbitration of Milan shall act in accordance with the Rules of the Chamber of Arbitration and this Code of Ethics, independent of the party that appointed him.
2. This Code of Ethics shall apply by analogy to Expert to the arbitral body appointed in the arbitral proceedings administered by the Chamber of Arbitration.

ART. 2 – PARTY-APPOINTED ARBITRATOR

A party-appointed arbitrator shall be bound by all the duties under this Code of Ethics throughout the entire course of the proceedings; he may contact the party or its counsel regarding the appointment of the President of the Arbitral Tribunal if asked to appoint him. The indications given by the party shall not be binding on the arbitrator.

ART. 3 – COMPETENCE

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary competence with respect to his adjudicating function and the subject matter of the dispute.

ART. 4 – AVAILABILITY AND DEDICATION

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to devote the necessary time and attention to the arbitration to perform and complete his task as expeditiously, diligently and efficiently as possible.

ART. 5 – IMPARTIALITY

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary impartiality characterizing the adjudicating function he undertakes in the interest of all parties.

ART. 6 – INDEPENDENCE

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be objectively independent. He shall remain independent during the entire arbitral proceedings as well as after the award is filed, during the period in which annulment of the award can be sought.

ART. 7 – STATEMENT OF IMPARTIALITY AND INDEPENDENCE

1. In order to guarantee his impartiality and independence, the arbitrator shall supply the written statement provided for by the Rules of the Chamber of Arbitration when accepting his mandate.

2. All doubts as to the opportunity to disclose a fact, circumstance or relationship shall be resolved in favour of disclosure.
3. Where facts, circumstances and relationships that should have been disclosed are subsequently discovered, the Chamber of Arbitration may deem that this fact is a ground for replacing the arbitrator during the proceedings or not confirming him in other arbitral proceedings.

ART. 8 – DEVELOPMENT OF THE PROCEEDINGS

The arbitrator shall promote a thorough and expeditious development of the proceedings. In particular, he shall decide on the date and manner of the hearings in such a way as to allow for the equal treatment of all parties and the full compliance with the due process of law.

ART. 9 – UNILATERAL CONTACTS

In the entire course of the proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel. Where there is such a unilateral contact, the arbitrator shall immediately notify the Chamber of Arbitration so that the Chamber can inform the other parties and arbitrators.

ART. 10 – SETTLEMENT

The arbitrator may at all stages suggest the possibility of a settlement or conciliation of the dispute to the parties but may not influence their decision by indicating that he has already reached a decision on the outcome of the proceedings.

ART. 11 – DELIBERATION OF THE AWARD

1. The arbitrators deliberate the award by expressing and discussing their respective opinions.
2. The deliberation of the award is held in private.
3. The arbitrator shall refrain from any obstructive or non-cooperative behaviour and promptly participate in the deliberation. He shall remain free to refuse to sign the award where the decision is taken by majority vote by the Arbitral Tribunal.

ART. 12 – FEES AND COSTS

1. The arbitrator shall not accept any direct or indirect arrangement on fees and expenses with any of the parties or their counsel.
2. The arbitrator shall be entitled to a fee and reimbursement of expenses as solely determined by the Chamber of Arbitration in accordance with its Schedule of Fees, which is deemed to be approved by the arbitrator when accepting his mandate.
3. The arbitrator shall avoid unreasonable and unjustified expenses that can increase the costs of the proceedings in an unjustified manner.

ART. 13 – VIOLATION OF THE CODE OF ETHICS

The arbitrator who does not comply with this Code of Ethics may be replaced by the Chamber of Arbitration, which, may also refuse to confirm him/her in subsequent proceedings by taking into consideration the seriousness and the relevance of this violation.

FEES (EURO) - IN FORCE AS FROM 1 MARCH 2019

	VALUE OF DISPUTE (€)		FEE CHAMBER OF ARBITRATION	FEE SOLE ARBITRATOR	FEE ARBITRAL PANEL
				MIN - MAX	MIN - MAX
1	Up to 25.000		400	600 - 1.500	1.600 - 3.800
2	25.001	50.000	1.000	1500 - 2.500	3.800 - 6.000
3	50.001	100.000	1.700	2.500 - 4.500	6.000 - 12.000
4	100.001	250.000	3.500	4.500 - 10.000	12.000 - 25.000
5	250.001	500.000	7.000	10.000 - 18.000	25.000 - 40.000
6	500.001	1.000.000	12.000	18.000 - 25.000	40.000 - 70.000
7	1.000.001	2.500.000	18.000	25.000 - 40.000	70.000 - 100.000
8	2.500.001	5.000.000	24.000	40.000 - 70.000	100.000 - 150.000
9	5.000.001	10.000.000	30.000	70.000 - 90.000	150.000 - 220.000
10	10.000.001	25.000.000	40.000	90.000 - 120.000	220.000 - 280.000
11	25.000.001	50.000.000	55.000	120.000 - 150.000	280.000 - 350.000
12	50.000.001	100.000.000	70.000	150.000 - 180.000	350.000 - 450.000
13	Above 100.000.000		70.000	180.000	450.000
			+ 0,1% of the amount exceeding 100.000.000	+ 0,05% of the amount exceeding 100.000.000	+ 0,12% of the amount exceeding 100.000.000
			Maximum amount 140.000	Maximum amount 240.000	Maximum amount 600.000

This Schedule of Fees enters into force on **1 March 2019** and it shall apply to all arbitrations starting from the above mentioned date. Fees do not include VAT and any other legal and fiscal duties mandated by law. Fees are indicated entirely and shall be apportioned among the parties. Payments shall be made either by cheque made out to the Chamber of Arbitration of Milan (Camera Arbitrale di Milano) or by bank transfer to account n. 000061000X20 Banca Popolare di Sondrio, Via Santa Maria Fulcorina 1, Milano IBAN: IT53 W 05696 01600 000061000X20 - SWIFT: POSOIT22

EMERGENCY ARBITRATOR - FEES (EURO) - IN FORCE AS FROM 1 MARCH 2019

FEE CHAMBER OF ARBITRATION	FEE EMERGENCY ARBITRATOR	TOTAL
4.000	16.000	20.000

The applying party anticipates the fees of the Chamber of Arbitration and of the emergency arbitrator. The fees of the Chamber of Arbitration and of the emergency arbitrator are total and include any respective expense. Where it is not expressly provided otherwise, the provisions of the Rules apply to the emergency arbitration, with particular reference to Chapter VI - COSTS OF THE PROCEEDINGS.



MILAN
CHAMBER OF
ARBITRATION

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CAMERA
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MILANO

ARBITRATION RULES
REGLEMENT D'ARBITRAGE
REGOLAMENTO ARBITRALE



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ARBITRATION RULES REGLEMENT D'ARBITRAGE REGOLAMENTO ARBITRALE

entry into force 1 january 2010
entrée en vigueur 1 janvier 2010
in vigore dal 1° gennaio 2010



CAMERA
ARBITRALE
MILANO

ARBITRATION RULES



www.camera-arbitrale.com

*The Italian version of the Arbitration Rules is the official text, while they may be published in various languages.
The Secretariat performs its tasks in Italian, English or French.*

The Chamber of Arbitration reserves the right to supplement, modify and substitute the present Rules, determining the date upon which the new rules come into effect, by order of the Board of Directors of the Chamber of Arbitration.

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MODEL CLAUSE

All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by a sole arbitrator/three arbitrators, appointed in accordance with the Rules, which are deemed to be incorporated by reference into this clause.

Further and specific models can be found on the website www.camera-arbitrale.com

The present model clause is a basis, which can be used to defer disputes to arbitration.

Professionals, companies and other users are invited to contact the Chamber of Arbitration for assistance when drafting their arbitration clause.

PREAMBLE - THE CHAMBER OF ARBITRATION

TASKS AND BODIES OF THE CHAMBER OF ARBITRATION

1. The Chamber of Arbitration of Milan, an entity of the Chamber of Commerce of Milan, performs the following tasks:
 - a. it administers arbitral proceedings under the Rules of the Chamber of Arbitration of Milan (the Rules);
 - b. at the request of the parties, it appoints arbitrators in proceedings not applying the Rules;
 - c. at the request of the parties, it appoints arbitrators under the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL).
2. The Chamber of Arbitration performs the tasks provided for in the Rules through the Arbitral Council and the Secretariat.

THE ARBITRAL COUNCIL

1. The Arbitral Council has general competence over all matters relating to the administration of arbitral proceedings and issues all orders relating thereto, without prejudice to the Secretariat's functions under the Rules.
2. The Arbitral Council is composed of a minimum of seven up to a maximum of eleven members, one of whom acts as president and one as deputy, all appointed for three years by the Board of the Chamber of Arbitration.
3. The Board of the Chamber of Arbitration may appoint both Italian and foreign experts as members of the Arbitral Council.
4. The meetings of the Arbitral Council are chaired by its president or, if absent, by the deputy or, if both are absent, by its oldest member.
5. The meetings of the Arbitral Council are valid where at least three members are present.
6. The meetings of the Arbitral Council may be held by any means of telecommunication.
7. The Arbitral Council shall reach its decisions by majority of its voting members. In case of deadlock, the vote of the meeting's president shall prevail.
8. In case of urgency, the president of the Arbitral Council - or, if prevented, the deputy or the oldest member - may take any measures relating to the administration of arbitral proceedings that fall within the competence of the Arbitral Council, and then inform the Arbitral Council thereof at its next following meeting.
9. When the member of the Arbitral Council abstains, he/she shall leave the meeting whilst the discussion of the matter on which he/she is abstaining continues and any measures arising are agreed. The abstention will not affect the quorum necessary for the validity of the meeting.

THE SECRETARIAT

1. The Secretariat performs the tasks set out in the Rules or delegated by the Arbitral Council and issues all related orders. Moreover, the Secretariat:
 - a. acts as the Arbitral Council's secretariat, taking minutes of the

- Council's meetings and signing the Council's orders;
 - b. keeps the Arbitral Council informed on the status of arbitral proceedings;
 - c. forwards the orders of the Arbitral Council and its own orders to the parties and to the Arbitral Tribunal, as well as to any other addressee entitled to receive them;
 - d. receives all written submissions and documents from the parties and the Arbitral Tribunal;
 - e. creates and maintains the files of the arbitral proceedings;
 - f. forwards notices at the request of the Arbitral Council and the Arbitral Tribunal;
 - g. issues certified copies of submissions and documents at the request of the parties, as well as declarations and certificates relating to the arbitral proceedings.
2. The Secretariat performs its tasks through the Secretary General, the Deputy Secretary General and its delegated officers.

I - GENERAL PROVISIONS

ART. 1 – SCOPE OF THE APPLICATION

1. The Rules shall apply where so provided by the arbitral clause or other agreement between the parties, however expressed. A reference in the agreement to the Chamber of Arbitration of Milan or to the Chamber of Commerce of Milan shall be deemed to provide for the application of the Rules.
2. Apart from paragraph 1, the Rules shall apply where:
 - a. a party files a personally signed request for arbitration proposing arbitration under the Rules;
 - b. the other party accepts this proposal by a personally signed statement within the time limit set by the Secretariat.

ART. 2 – RULES APPLICABLE TO THE PROCEEDINGS

1. The arbitral proceedings shall be governed by the Rules, by the rules agreed upon by the parties up to the constitution of the Arbitral Tribunal if consistent with the Rules, or, in default, by the rules set by the Arbitral Tribunal.
2. In any case, mandatory provisions that are applicable to the arbitral proceedings shall apply.
3. In any case, the principles of due process and equal treatment of the parties shall apply.

ART. 3 – RULES APPLICABLE TO THE MERITS OF THE DISPUTE

1. The Arbitral Tribunal shall decide on the merits of the dispute in accordance with the rules of law unless the parties expressly provided that the Tribunal decide *ex aequo et bono*.
2. The Arbitral Tribunal shall decide in accordance with the rules chosen by the parties.
3. In the absence of any agreement pursuant to paragraph 2, the Arbitral Tribunal shall apply the rules it determines to be appropriate, taking into account the nature of the relationship, the qualities

- of the parties and any other relevant circumstance.
4. In any case, the Arbitral Tribunal shall take into account trade usages.

ART. 4 – SEAT OF THE ARBITRATION

1. The parties shall fix the seat of the arbitration, in Italy or abroad, in their arbitration agreement.
2. In the absence of any agreement as to the seat, the seat of the arbitration shall be Milan.
3. Notwithstanding the provision in paragraph 2, the Arbitral Council may fix the seat of the arbitration elsewhere, taking into account the requests of the parties and any other circumstance.
4. The Arbitral Tribunal may determine that hearings or other procedural acts take place in a location other than the seat.

ART. 5 – LANGUAGE OF THE ARBITRATION

1. The language of the arbitration shall be agreed upon by the parties in their arbitration agreement or subsequently until the Arbitral Tribunal is constituted.
2. In the absence of any agreement by the parties, the Arbitral Tribunal shall determine the language of the arbitration.
3. The Arbitral Tribunal may accept the submission of documents in a language other than the language of the arbitration and may order them to be accompanied by a translation into the language of the arbitration.

ART. 6 – FILING AND SENDING OF THE ACTS

1. The parties shall file briefs with the Secretariat as follows: one original for the Chamber of Arbitration and one for each party, plus as many copies as there are arbitrators. Any attached documents shall be filed in one copy for the Chamber of Arbitration, one copy for each party and as many copies as there are arbitrators.
2. The Secretariat shall send notices intended for them to parties, arbitrators, experts and third parties by registered mail, courier, e-mail or by any other appropriate means allowing for a formal proof of delivery.

ART. 7 – TIME LIMITS

1. The expiration of a time-limit set by the Rules or by the Arbitral Council, the Secretariat or the Arbitral Tribunal shall not entail a lapse of a party's rights, unless so determined by the Rules or by the order setting the said time-limit.
2. The Arbitral Council, Secretariat and Arbitral Tribunal may extend a time limit they have set before it expires. Time-limits that entail lapse of rights may be extended only for justified reasons or by agreement of all parties.
3. The initial day shall be excluded from the calculation of time-limits. Where the date of expiry falls on a Saturday or on a official holiday, it shall be extended to the first subsequent working day.

ART. 8 – CONFIDENTIALITY

1. The Chamber of Arbitration, the parties, the Arbitral Tribunal and the Expert shall keep the proceedings and the arbitral award confidential, except in the case it has to be used to protect one's rights.
2. For purposes of research, the Chamber of Arbitration may publish the arbitral award in anonymous format, unless, during the proceedings, any of the parties objects to publication.

II – COMMENCEMENT OF THE PROCEEDINGS

ART. 9 – REQUEST FOR ARBITRATION

1. Claimant shall file a request for arbitration with the Secretariat.
2. The request shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:
 - a. the names and domicile addresses of the parties;
 - b. a description of the dispute;
 - c. a statement of the claims and of their economic value;
 - d. the appointment of the arbitrator or any relevant indications as to the number of arbitrators and the method for their selection;
 - e. a statement of evidence, if any, required in support of the claim and any documents that the party deems appropriate to produce;
 - f. a brief statement, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or as to the *ex aequo et bono* decision, the seat and the language of the arbitration;
 - g. the power of attorney conferred on counsel, if already appointed;
 - h. the arbitration agreement.
3. The Secretariat shall send the request for arbitration to the Respondent within five working days from the filing. Claimant may send the request for arbitration directly to Respondent, provided that the request is also filed simultaneously with the Secretariat. In any case, any time-limit set by the Rules will run from the sending of the request made by the Secretariat.

ART. 10 – STATEMENT OF DEFENCE

1. Respondent shall file its statement of defence, with counterclaims if any, with the Secretariat within thirty days from the receipt of the request by the Secretariat. The Secretariat may extend this time limit for justified reasons.
2. The statement shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:
 - a. the name and domicile of Respondent;
 - b. a statement of its defence, however brief;
 - c. a statement of counterclaims, if any, and of their value;
 - d. the appointment of the arbitrator or any relevant indications as to the number of arbitrators and the method for their selection;
 - e. the evidence, if any, in support of the statement of defence and all documents that the party deems useful appropriate to produce;

- f. a brief statement, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or as to the *ex aequo et bono* decision, the seat and the language of the arbitration;
- g. the power of attorney conferred on counsel, if already appointed.
3. The Secretariat shall send the statement of defence to Claimant within five working days from the filing. Respondent may send the statement of defence directly to Claimant, provided that the statement is also filed with the Secretariat.
4. Where Respondent does not file a statement of defence, the arbitration shall proceed without it.

ART. 11 – ADMISSIBILITY OF THE ARBITRAL PROCEEDINGS

1. Where a party objects to the application of these Rules before the Arbitral Tribunal is constituted, the Arbitral Council shall decide on the admissibility of the arbitration.
2. The decision of the Arbitral Council that the arbitration is admissible shall not be binding on the Arbitral Tribunal.

ART. 12 – LACK OF JURISDICTION OF THE ARBITRAL TRIBUNAL

Any objection to the existence, the validity or the effectiveness of the arbitration agreement or lack of jurisdiction of the Arbitral Tribunal shall be raised in the first brief or at the first hearing following the claim to which the objection relates, or shall be deemed to be waived.

III – THE ARBITRAL TRIBUNAL

ART. 13 – NUMBER OF ARBITRATORS

1. The parties may determine the number of arbitrators.
2. Where the parties have not agreed upon the number of the arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator, unless the Arbitral Council considers a panel of three arbitrators to be appropriate because of the complexity or the economic value of the dispute.
3. If the agreement to arbitrate provides for an even number of arbitrators, the Arbitral Council shall appoint an additional arbitrator, unless otherwise agreed by the parties.

ART. 14 – APPOINTMENT OF THE ARBITRATORS

1. The arbitrators shall be appointed in accordance with the procedures established by the parties in the arbitration agreement.
2. Unless otherwise agreed in the arbitration agreement, the sole arbitrator shall be appointed by the Arbitral Council.
3. Where the parties have agreed to appoint the sole arbitrator jointly without indicating a time limit, this time limit shall be set by the Secretariat. If the parties fail to reach an agreement, the sole arbitrator shall be appointed by the Arbitral Council.
4. Unless otherwise agreed in the arbitration agreement, the arbitral panel shall be appointed in the following manner:
 - a. each party shall appoint an arbitrator in the request for arbitra-

- tion and the statement of defence; if a party fails to do so, the arbitrator shall be appointed by the Arbitral Council;
- b. the president of the Arbitral Tribunal shall be appointed by the Arbitral Council. The parties may, however, provide for the president to be appointed by the arbitrators appointed by the parties jointly. If the arbitrators fail to reach an agreement within the time limit indicated by the parties, or within the time limit set by the Secretariat where the parties have not indicated any, the president shall be appointed by the Arbitral Council.
5. Where the parties have different nationalities or registered offices in different countries, the Arbitral Council shall appoint as sole arbitrator or president of the Arbitral Tribunal a person of a nationality other than those of the parties, unless otherwise agreed by the parties.

ART. 15 – APPOINTMENT OF ARBITRATORS IN MULTI-PARTY ARBITRATION

1. Where the request for arbitration is filed by or against several parties, if the parties form two sides when filing the request for arbitration and the statement of defence and the arbitration agreement provides for a panel of arbitrators, each group shall appoint an arbitrator and the Arbitral Council shall appoint the president, unless the arbitration agreement delegates the appointment of the entire panel or of the president to another authority.
2. Regardless of the arbitration agreement, if the parties do not form two sides when filing the request for arbitration and the statement of defence, the Arbitral Council, without considering any appointment made by any of the parties, shall appoint the Arbitral Tribunal.

ART. 16 – INCOMPATIBILITY

The following persons cannot be appointed as arbitrators:

- a. members of the Board, members of the Arbitral Council and auditors of the Chamber of Arbitration;
- b. employees of the Chamber of Arbitration;
- c. professional partners, employees and all who have an ongoing cooperative professional relationship with the persons indicated at point a, unless the parties agreed otherwise.

ART. 17 – ACCEPTANCE BY ARBITRATORS

The Secretariat shall inform the arbitrators of their appointment. Within ten days of receiving this notice, the arbitrators shall give notice of their acceptance to the Secretariat.

ART. 18 – STATEMENT OF INDEPENDENCE AND CONFIRMATION OF ARBITRATORS

1. When giving notice of their acceptance the arbitrators shall submit their statement of independence to the Secretariat.
2. In the statement of independence the arbitrator shall disclose, specifying the time and duration:
 - a. any relationship with the parties, their counsel or any other person or entity involved in the arbitration which may affect his/her

- impartiality or independence;
- b. any personal or economic interest, either direct or indirect, in the subject matter of the dispute;
- c. any bias or reservation as to the subject matter of the dispute;
- 3. The Secretariat shall forward a copy of the statement of independence to the parties. Within ten days from receipt of the statement, each party may file written comments with the Secretariat.
- 4. After expiration of the time limit set in paragraph 3, the arbitrator shall be confirmed by the Secretariat if he/she has filed an unqualified statement of independence and none of the parties has filed any comments thereon. In any other case, the Arbitral Council shall decide whether or not the arbitrator shall be confirmed.
- 5. The statement of independence shall be re-submitted during the course of the arbitration until its conclusion in the event of supervening facts or at the request of the Secretariat.

ART. 19 – CHALLENGE OF ARBITRATORS

- 1. Each party may file a reasoned challenge against an arbitrator on any ground that casts a doubt on his/her independence or impartiality.
- 2. The challenge shall be filed with the Secretariat within ten days from receipt of the statement of independence or from the date when the party becomes aware of the ground for the challenge.
- 3. The Secretariat shall transmit the challenge to the arbitrators and the other parties and shall set a time limit for filing comments, if any.
- 4. The Arbitral Council shall decide on the challenge.

ART. 20 – REPLACEMENT OF ARBITRATORS

- 1. An arbitrator shall be replaced by another arbitrator where:
 - a. the arbitrator does not accept the appointment or resigns after accepting it;
 - b. the arbitrator is not confirmed;
 - c. the arbitrator is removed by all parties;
 - d. the Arbitral Council upholds a challenge against the arbitrator;
 - e. the Arbitral Council, after consulting the parties and the Arbitral Tribunal, removes the arbitrator for violation of the duties of the Arbitral Tribunal under these Rules or for other serious grounds;
 - f. the arbitrator dies or is no longer able to perform his/her tasks due to infirmity or on other serious grounds.
- 2. The Secretariat may suspend the proceedings in any of the cases indicated in paragraph 1. In any case, when the suspension is lifted, the time limit for filing the award is extended to 90 days, if, by the elapse of time during the suspension, the time limit is less than 90 days.
- 3. A new arbitrator shall be appointed by the same authority that appointed the substituted arbitrator. If a replacement arbitrator must also be substituted, the new arbitrator shall be appointed by the Arbitral Council.
- 4. The Arbitral Council shall determine the fees, if any, due to the substituted arbitrator, taking into account the work done and the reasons for the replacement.

5. In case of the replacement of an arbitrator, the newly constituted Arbitral Tribunal may decide to repeat all or some of the acts of the proceedings taken place up to that moment.

IV – THE PROCEEDINGS

ART. 21 – CONSTITUTION OF THE ARBITRAL TRIBUNAL

1. The Secretariat shall transmit the request for arbitration and the statement of defence to the arbitrators, together with all annexed documents, when the advance payment is made.
2. The arbitrators shall constitute the Arbitral Tribunal within thirty days from receipt of the briefs and documents forwarded by the Secretariat. The Secretariat may extend this time limit for justified reasons.
3. The constitution of the Arbitral Tribunal shall take place by written minutes, dated and signed by the arbitrators, setting further steps and time limits to conduct the proceedings.
4. Where an arbitrator is replaced after the Arbitral Tribunal is constituted, the Secretariat shall transmit the briefs and documents of the proceedings to the new arbitrator. The new Arbitral Tribunal shall be constituted pursuant to paragraphs 2 and 3.

ART. 22 – POWERS OF THE ARBITRAL TRIBUNAL

1. At any time in the proceedings, the Arbitral Tribunal may attempt to settle the dispute between the parties, including by addressing them to the Mediation Service of the Chamber of Arbitration of Milan.
2. The Arbitral Tribunal may issue all urgent and provisional measures of protection, also of anticipatory nature, that are not barred by mandatory provisions applicable to the proceedings.
3. Where multiple proceedings are pending before the Arbitral Tribunal, the Tribunal may order their consolidation, if it deems them to be connected.
4. Where the same proceedings concern several disputes, the Arbitral Tribunal may order their separation.
5. If a third party requests to join a pending arbitration or if one of the parties to the arbitration seeks a third party's intervention, the Arbitral Tribunal shall decide the application after consulting the parties, taking into consideration all the relevant circumstances of the case.

ART. 23 – ORDERS OF THE ARBITRAL TRIBUNAL

1. Except as provided for the award, the Arbitral Tribunal shall give its decisions by way of orders.
2. Orders shall be issued by majority. The arbitrators are not required to meet in personal conference.
3. Orders shall be in writing and may be signed by the president of the Arbitral Tribunal alone.

ART. 24 – HEARINGS

1. The dates of the hearings shall be determined by the Arbitral

- Tribunal after consultation with the Secretariat and shall be communicated to the parties.
2. The parties may appear at the hearing either in person or through duly empowered representatives and may be assisted by counsel with power of attorney.
 3. Minutes shall be taken of the hearings of the Arbitral Tribunal.

ART. 25 – TAKING OF EVIDENCE

1. The Arbitral Tribunal leads the case by taking all the relevant and admissible evidence adduced in the manner it deems appropriate.
2. The Arbitral Tribunal shall freely evaluate all evidence, with the exception of that which constitutes legal proof under mandatory provisions applicable to the proceedings or to the merits of the dispute.
3. The Arbitral Tribunal may delegate the taking of evidence to one of its members.

ART. 26 – EXPERT

1. At the request of one of the parties or by its own initiative, the Arbitral Tribunal may appoint one or more Experts or delegate the appointment to the Chamber of Arbitration.
2. The Expert shall comply with the duties of independence imposed on the arbitrators under these Rules. The challenge provisions relating to arbitrators shall also apply.
3. Where any Expert is appointed, the parties may appoint their own experts.
4. The Expert of the Arbitral Tribunal shall allow the parties and their experts, if any, to assist in the Expert's activities.

ART. 27 – NEW CLAIMS

The Arbitral Tribunal, after consulting the parties, shall decide on the admissibility of new claims, taking into account all circumstances, including the stage of the proceedings.

ART. 28 – CONCLUSIONS

1. When it deems that the case is ready for issuing the final award, the Arbitral Tribunal shall close the phase for taking of evidence and invite the parties to file their conclusions.
2. The Arbitral Tribunal may set a time limit for filing final statements, for rebuttal statements and may schedule a final hearing.
3. After the closing of the phase for taking of evidence, the parties cannot file new claims, plead new facts, submit new documents or propose the taking of fresh evidence, unless the Arbitral Tribunal decides otherwise.
4. The above shall also apply where the Arbitral Tribunal deems it appropriate to issue a partial award, only with respect to the subject of that award.

ART. 29 – SETTLEMENT AND WITHDRAWAL

The parties or their counsel shall inform the Secretariat that they with-

draw their claims in the event of a settlement or on other grounds, thereby relieving the Arbitral Tribunal of the obligation to render an award.

V – THE ARBITRAL AWARD

ART. 30 – DELIBERATION, FORM AND CONTENTS OF THE AWARD

1. The award shall be deliberated with the participation of all the members of the Arbitral Tribunal and may be by majority decision. In the latter case, the award shall state that it was deliberated with the participation of all the arbitrators and shall state the reason for the missing signature.
2. The award shall be in writing and shall indicate:
 - a. the arbitrators, the parties and their counsel;
 - b. the arbitration agreement;
 - c. the seat of the arbitration;
 - d. the conclusions of the parties;
 - e. the reasons upon which the decision is based, even in summary;
 - f. the decision (dictum);
 - g. the decision on the allocation of the costs of the proceedings, with reference to the decision on the costs of the Arbitral Council, and on the legal costs of the parties;
3. Each signature shall indicate its date. The arbitrators may sign at different places and times.
4. The Secretariat shall indicate any non-compliance with the formal requirements under this Article to the arbitrators asking for an examination of the draft award before signing it.

ART. 31 – FILING AND NOTIFICATION OF THE AWARD

1. The Arbitral Tribunal shall file the award with the Secretariat in as many original copies as there are parties plus one.
2. The Secretariat shall forward the original award to each party within ten days of the filing.

ART. 32 – TIME LIMIT FOR FILING THE FINAL AWARD

1. The Arbitral Tribunal shall file the final award with the Secretariat within six months from its constitution, unless otherwise agreed by the parties in the arbitration agreement.
2. In any case, the Arbitral Council may extend the time limit for the filing of the award, even on its own initiative, or, where there is consent by the parties to an extension, the Secretariat may do so.
3. The Secretariat shall suspend the time limit in the cases expressly provided for in these Rules and for any other justified reason.

ART. 33 – PARTIAL AWARD AND INTERIM AWARD

1. The Arbitral Tribunal may render one or more awards, including of a partial or interim nature.
2. Awards contemplated by the previous Article shall not affect the time limit for filing the final award, unless a request for extension is filed with the Chamber of Arbitration.

3. The provisions of these Rules on the award shall apply to partial and interim awards. An interim award shall not contain a decision on the costs of the proceedings and on the legal costs.

ART. 34 – CORRECTION OF THE AWARD

1. A request for the correction of an award shall be filed with the Secretariat within 30 days from receipt of the award.
2. The Arbitral Tribunal shall, after consulting the parties, decide the application within 60 days from receipt of the request.
3. The decision of the Arbitral Tribunal accepting the correction shall be an integral part of the award.
4. In any case, no additional cost will be charged to the parties for the correction of an award, unless otherwise agreed by the Chamber of Arbitration.

VI – COSTS OF THE PROCEEDINGS

ART. 35 – VALUE OF DISPUTE

1. The costs of the arbitration depend upon the value of the dispute, which is the sum of the claims filed by all parties.
2. The Secretariat shall determine the value of the dispute on the basis of the request for arbitration and the statement of defence, as well as of any further indications given by the parties and the Arbitral Tribunal. The criteria for determining the value of the dispute are set in Annexe A to these Rules, which is an integral part of the Rules.
3. At any stage of the proceedings the Secretariat, where it deems it appropriate, may divide the value of the dispute in relation to the claims of each party and may direct each party to pay the costs related to its claims.
4. In case of division of the value of the dispute, the fees of the Chamber of Arbitration and of the Arbitral Tribunal may not exceed the maximum of the fees determined on the basis of the cumulated value of the dispute, as in paragraph 1.

ART. 36 – COSTS OF THE PROCEEDINGS

1. The Arbitral Council shall determine the costs of the arbitration before the award is filed.
2. The Arbitral Council shall inform the Arbitral Tribunal and the parties of its determination of the costs which the Arbitral Tribunal shall indicate in the award. The determination of the Arbitral Council shall not affect the decision of the Arbitral Tribunal as to the allocation of the costs to the parties.
3. Where the arbitration ends before the Arbitral Tribunal is constituted, the Secretariat shall determine the costs of the proceedings.
4. The costs of the arbitration shall include:
 - a. fees of the Chamber of Arbitration;
 - b. fees of the Arbitral Tribunal;
 - c. fees of the Expert of the Arbitral Tribunal;
 - d. reimbursement of expenses of the Chamber of Arbitration, of the arbitrators and of the Expert.

5. The fees of the Chamber of Arbitration for administering the arbitration shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. In case of an anticipated conclusion to the arbitration, lower fees may be determined. The included and excluded activities of the Chamber of Arbitration are listed in Annexe B of to these Rules, which is an integral part of the latter.
6. The fees of the Arbitral Tribunal shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. When determining the fees of the Arbitral Tribunal, the Arbitral Council shall take into account the work done, the complexity of the dispute, the duration of the arbitration and any other circumstance. In case of an anticipated conclusion of the proceedings, lower fees than the minimum provided for in the Schedule may be determined. Lower or higher fees may be determined in exceptional cases.
7. The fees of the Expert of the Arbitral Tribunal shall be determined in equity, also taking into account the schedule of professional fees of the Expert, national court schedules of fees and any other circumstance.
8. The expenses of arbitrators and Expert of the Arbitral Tribunal shall be supported by receipts. If such receipts are not produced, the expenses shall be deemed to be included in the fees.

ART. 37 – ADVANCE AND FINAL DEPOSITS

1. When the request for arbitration and the statement of defence are filed, the Secretariat shall direct the parties to make an advance on the costs of the arbitration, setting a time limit for the parties to make it.
2. The Secretariat may direct the parties to make further advances in relation to work done or to any change of the amount in dispute, setting a time limit for these advances.
3. The Secretariat shall direct the balance of the costs of the proceedings based on the final determination of the Arbitral Council and before the award is filed, setting a time limit for the payment of the balance.
4. The payments contemplated by paragraphs 1, 2 and 3 shall be made by all the parties in equal shares where the Secretariat determines a single value for the dispute, totalling all the claims filed by the parties. Where the Secretariat determines different values of the dispute in relation to the claims of the parties, it shall direct each party to pay the full amount of the advance relating to its claim, as determined in accordance with paragraphs 1, 2 and 3.
5. For the purpose of these payments, the Secretariat may consider several parties as one, taking into account the manner in which the Arbitral Tribunal is constituted or the mutual interests of the parties.
6. If a party so requests, and gives reasons for this request, the Secretariat may accept a bank or insurance guarantee for the amounts set at paragraphs 1, 2 and 3, setting terms and conditions.

ART. 38 – FAILURE TO DEPOSIT

1. Where a party fails to lodge an advance as requested, the Secretariat may direct another the other party to make a substitute payment, setting a time limit there for, or may divide the value of the dispute, if it has not already done so, and direct each party to deposit an amount based on the value of its claims, setting a time limit therefore.
2. If any of the advances directed is not made within the time limit set therefore, the Secretariat may suspend the entire proceedings or only the proceedings related to the claim to which the lack of payment relates. The Secretariat shall lift the suspension when the payment is made.
3. Where the parties do not deposit the amount within one month of the notice of the order of suspension under paragraph 2, the Secretariat may declare the closing of the entire proceedings, or the proceedings related to the claim to which the lack of payment relates, without affecting the arbitral agreement.

VII – PROVISIONAL PROVISIONS

ART. 39 – ENTRY INTO FORCE

1. These Rules shall be in force as from 1 January 2010.
2. Unless otherwise agreed by the parties, these Rules shall apply to arbitrations commenced after the date on which the Rules entered into force.

ANNEXE "A"

CRITERIA FOR DETERMINING THE VALUE OF THE DISPUTE

1. The value of the dispute shall be the sum of all the claims filed by the parties that aim at obtaining a declarative order, an order to pay or perform or an order that establishes a new juridical situation.
2. Where a party files primary and subsidiary claims, only the primary claims shall be taken into account for determining the value of the dispute.
3. Where it is necessary to make a preliminary estimate of several alternative claims, rather than subordinate claims, filed by the parties in order to determine the subject matter of a claim or claim for set-off, the value of the dispute shall be determined on the basis of the sum of these claims.
4. Where a party seeks to ascertain a credit while only seeking a declarative order, an order to pay or perform or an order that modifies the existing juridical situation with respect to a part thereof, the value of the claim shall be the total amount of the credit to be ascertained.
5. The value of a credit claimed as set-off shall not be calculated if it is lower than or equal to the credit claimed by the other party. If it is higher, only the value in excess shall be considered.
6. Where a party modifies the value of its original claims when filing its conclusions, the value of the claims shall be considered with respect to the claims that the Arbitral Tribunal has examined.
7. Where the value of the dispute is undetermined and undeterminable, the Chamber of Arbitration shall determine it in equity.
8. The Chamber of Arbitration may determine the value of the dispute according to criteria other than those provided for in the above paragraphs, where the application of these criteria is manifestly unjust.

ANNEXE "B"

FEES OF THE CHAMBER OF ARBITRATION: INCLUDED AND EXCLUDED ACTIVITIES

1. The following activities shall be included in the fees of the Chamber of Arbitration indicated in the Schedule of Fees:
 - a. managing and administering proceedings as defined in the Preamble to these Rules with respect to each body of the Chamber of Arbitration;
 - b. receiving and transmitting briefs;
 - c. controlling the formal validity of briefs;
 - d. convening and hosting hearings on its premises;
 - e. staff attendance at hearings and taking minutes of the hearings mentioned at point d.
2. The following activities and services are excluded from the fees of the Chamber of Arbitration and shall be paid for separately, if requested:
 - a. photocopying briefs and documents filed by the parties where the number of copies is insufficient, including the photocopies of documents made by the Secretariat for the Expert to the Arbitral Tribunal;
 - b. adding fiscal stamps to briefs where needed;
 - c. recording of hearings and transcription of tapes;
 - d. interpretation services;
 - e. videoconference;
 - f. travel expenses for the Secretariat attending hearings held outside the premises of the Chamber of Arbitration;
 - g. photocopies of briefs and documents in case of collection of the dossier.

CODE OF ETHICS OF ARBITRATORS

ART. 1 – ACCEPTANCE OF THE CODE OF ETHICS

1. An arbitrator accepting a mandate in an arbitration administered by the Chamber of Arbitration of Milan shall act in accordance with the Rules of the Chamber of Arbitration and this Code of Ethics, independent of the party that appointed him.
2. This Code of Ethics shall apply by analogy to Expert to the arbitral body appointed in the arbitral proceedings administered by the Chamber of Arbitration.

ART. 2 – PARTY-APPOINTED ARBITRATOR

A party-appointed arbitrator shall be bound by all the duties under this Code of Ethics throughout the entire course of the proceedings; he/she may contact the party or its counsel regarding the appointment of the President of the Arbitral Tribunal if asked to appoint him/her. The indications given by the party shall not be binding on the arbitrator.

ART. 3 – COMPETENCE

When accepting his/her mandate, the arbitrator shall, to the best of his/her knowledge, be able to perform his task with the necessary competence with respect to his/her adjudicating function and the subject matter of the dispute.

ART. 4 – AVAILABILITY

When accepting his/her mandate, the arbitrator shall, to the best of his/her knowledge, be able to devote the necessary time and attention to the arbitration to perform and complete his/her task as expeditiously as possible.

ART. 5 – IMPARTIALITY

When accepting his/her mandate, the arbitrator shall, to the best of his/her knowledge, be able to perform his/her task with the necessary impartiality characterizing the adjudicating function he/she undertakes in the interest of all parties.

ART. 6 – INDEPENDENCE

When accepting his/her mandate, the arbitrator shall, to the best of his/her knowledge, be objectively independent. He/she shall remain independent during the entire arbitral proceedings as well as after the award is filed, during the period in which annulment of the award can be sought.

ART. 7 – STATEMENT OF IMPARTIALITY AND INDEPENDENCE

1. In order to guarantee his/her impartiality and independence, the arbitrator shall supply the written statement provided for by the Rules of the Chamber of Arbitration when accepting his/her mandate.

2. All doubts as to the opportunity to disclose a fact, circumstance or relationship shall be resolved in favour of disclosure.
3. Where facts, circumstances and relationships that should have been disclosed are subsequently discovered, the Chamber of Arbitration may deem that this fact is a ground for replacing the arbitrator during the proceedings or not confirming him/her in other arbitral proceedings.

ART. 8 – DEVELOPMENT OF THE PROCEEDINGS

The arbitrator shall promote a thorough and expeditious development of the proceedings. In particular, he/she shall decide on the date and manner of the hearings in such a way as to allow for the equal treatment of all parties and the full compliance with the due process of law.

ART. 9 – UNILATERAL CONTACTS

In the entire course of the proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel. Where there is such a unilateral contact, the arbitrator shall immediately notify the Chamber of Arbitration so that the Chamber can inform the other parties and arbitrators.

ART. 10 – SETTLEMENT

The arbitrator may at all stages suggest the possibility of a settlement or conciliation of the dispute to the parties but may not influence their decision by indicating that he/she has already reached a decision on the outcome of the proceedings.

ART. 11 – DELIBERATION OF THE AWARD

The arbitrator shall refrain from any obstructive or non-cooperative behaviour and promptly participate in the deliberation. He/she shall remain free to refuse to sign the award where the decision is taken by majority vote by the Arbitral Tribunal.

ART. 12 – COSTS

1. The arbitrator shall not accept any direct or indirect arrangement on fees and expenses with any of the parties or their counsel.
2. The arbitrator shall be entitled to a fee and reimbursement of expenses as solely determined by the Chamber of Arbitration in accordance with its Schedule of Fees, which is deemed to be approved by the arbitrator when accepting his/her mandate.
3. The arbitrator shall avoid superfluous expenses that can increase the costs of the proceedings in an unjustified manner.

ART. 13 – VIOLATION OF THE CODE OF ETHICS

The arbitrator who does not comply with this Code of Ethics shall be replaced by the Chamber of Arbitration, which may also refuse to confirm him in subsequent proceedings because of this violation.



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REGLEMENT D'ARBITRAGE



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*La version italienne du présent Règlement fait foi.
Le Règlement d'Arbitrage est traduit en plusieurs langues.
Les communications effectuées par le Secrétariat Général dans l'exercice
de ses fonctions le sont en langues italienne, anglaise ou française.*

*La Chambre Arbitrale peut modifier les dispositions du présent Règlement,
y ajouter ou les substituer en tout ou partie. En ce cas, la date d'entrée en
vigueur des nouvelles règles est fixée par délibération du Conseil
d'Administration de la Chambre Arbitrale.*

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CLAUSE TYPE

Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés par arbitrage suivant le Règlement de la Chambre Arbitrale de Milan, par un arbitre/trois arbitres, nommé(s) conformément à ce Règlement.

Des clauses types spécifiques peuvent être consultées sur notre site www.camera-arbitrale.com

La clause type susmentionnée ne constitue qu'une base permettant de déférer d'éventuels différends à l'arbitrage.

Les professionnels, entreprises et ceux qui sont intéressés à divers titres par l'arbitrage peuvent contacter la Chambre Arbitrale afin d'être assistés dans la rédaction de leur clause d'arbitrage.

PREAMBULE - LA CHAMBRE ARBITRALE

FONCTIONS ET ORGANES DE LA CHAMBRE ARBITRALE

1. La Chambre Arbitrale de Milan, instituée auprès de la Chambre de Commerce, exerce les fonctions suivantes:
 - a. elle administre les procédures d'arbitrage selon le Règlement;
 - b. sur demande des parties, elle nomme les arbitres dans les procédures qui ne sont pas administrées conformément au Règlement;
 - c. sur demande des parties, elle nomme les arbitres selon le Règlement de la Commission des Nations Unies pour le Droit Commercial International (CNUDCI).
2. La Chambre Arbitrale exerce les fonctions prévues par le Règlement par l'intermédiaire du Conseil Arbitral et du Secrétariat Général.

LE CONSEIL ARBITRAL

1. Le Conseil Arbitral a une compétence générale pour toutes les questions relatives à l'administration des procédures d'arbitrage et adopte toutes les mesures y afférentes, à l'exception des compétences attribuées au Secrétariat Général par le Règlement.
2. Le Conseil Arbitral est composé de sept membres au minimum et de onze membres au maximum, parmi lesquels sont choisis un président et un vice-président, nommés pour trois ans par le Conseil d'Administration de la Chambre Arbitrale.
3. Le Conseil d'Administration de la Chambre Arbitrale peut nommer comme membres du Conseil Arbitral des experts italiens comme étrangers.
4. Les réunions du Conseil Arbitral sont présidées par le président ou, en son absence, par le vice-président ou, en leur absence, par le membre le plus ancien.
5. Les réunions du Conseil Arbitral sont valablement tenues en présence de trois de ses membres au moins.
6. Les réunions du Conseil Arbitral peuvent se dérouler par tous moyens de télécommunication.
7. Le Conseil Arbitral délibère à la majorité des votants. En cas d'égalité, la voix du président de séance prévaut.
8. En cas d'urgence, le président du Conseil Arbitral - ou en son absence, le vice-président ou le membre le plus ancien - peut adopter des mesures relatives à l'administration des procédures d'arbitrage qui sont de la compétence du Conseil Arbitral, en informant le Conseil lors de la première réunion suivante.
9. Le conseiller qui estime devoir s'abstenir quitte la réunion pour toute la durée de la discussion et durant l'adoption des mesures en question. Son abstention n'a pas d'incidence sur le quorum nécessaire pour la validité de la réunion.

LE SECRÉTARIAT GÉNÉRAL

1. Le Secrétariat exerce les fonctions que lui attribue le Règlement ou que lui délègue le Conseil Arbitral, et prend les mesures correspondantes. En outre, le Secrétariat Général:
 - a. agit comme secrétariat du Conseil Arbitral, en se chargeant de la tenue des procès-verbaux de séances, lesquels retranscrivent les mesures prises;

- b. rend compte au Conseil Arbitral de l'état des procédures arbitrales;
 - c. communique les mesures prises par le Conseil Arbitral ou par lui-même aux parties et au Tribunal Arbitral, ainsi qu'à chaque autre destinataire de celles-ci;
 - d. reçoit des parties et du Tribunal Arbitral tous les actes écrits et les documents;
 - e. constitue et conserve les dossiers des procédures arbitrales;
 - f. exécute les communications requises par le Conseil Arbitral et par le Tribunal Arbitral;
 - g. remet aux parties, sur requête de celles-ci, une copie conforme des actes et des documents, ainsi que les attestations et les certificats relatifs à la procédure arbitrale.
2. Le Secrétariat Général exerce ses fonctions par l'intermédiaire du Secrétaire Général, du Vice-Secrétaire Général et de ses membres qui y sont préposés.

I - DISPOSITIONS GENERALES

ART. 1 - APPLICATION DU REGLEMENT

1. Le Règlement est applicable s'il y est fait une référence quelconque dans la convention d'arbitrage ou dans une autre convention entre les parties. Si la convention renvoie à la Chambre Arbitrale de Milan ou à la Chambre de Commerce de Milan, un tel renvoi est interprété comme volonté d'application du Règlement.
2. En dehors de ce qui est prévu au paragraphe 1 ci-dessus, le Règlement est applicable si les conditions suivantes sont remplies:
 - a. une partie dépose une demande d'arbitrage souscrite par elle et contenant la proposition de recourir à un arbitrage soumis au Règlement;
 - b. l'autre partie accepte cette proposition par une déclaration signée personnellement dans le délai indiqué par le Secrétariat Général.

ART. 2 - REGLES APPLICABLES A LA PROCEDURE

1. La procédure arbitrale est régie par le Règlement, par les règles fixées par les parties d'un commun accord jusqu'à la constitution du Tribunal Arbitral dans la mesure où elles sont compatibles avec le Règlement ou, à défaut, par les règles fixées par le Tribunal Arbitral.
2. Dans tous les cas, demeure réservée l'application des règles impératives applicables à la procédure arbitrale.
3. Dans tous les cas, le principe du contradictoire et le principe d'égalité de traitement des parties sont assurés.

ART. 3 - REGLES APPLICABLES AU FOND DU LITIGE

1. Le Tribunal Arbitral tranche le fond du litige en droit si les parties n'ont pas expressément prévu qu'il se prononce en équité.
2. Le Tribunal Arbitral applique les règles de droit choisies par les parties.
3. A défaut d'un tel choix, le Tribunal Arbitral applique les règles qu'il estime les plus appropriées, tenant compte de la nature de la relation contractuelle, de la qualité des parties et de toute autre circonstance pertinente en l'espèce.

4. Dans tous les cas, le Tribunal Arbitral tient compte des usages du commerce.

ART. 4 – SIEGE DE L'ARBITRAGE

1. Le siège de l'arbitrage, qui peut être en Italie ou à l'étranger, est fixé par les parties dans la convention d'arbitrage.
2. A défaut, le siège de l'arbitrage est Milan.
3. Par dérogation à ce qui est prévu au paragraphe 2 ci-dessus, le Conseil Arbitral peut fixer le siège de l'arbitrage en un autre lieu, en tenant compte des requêtes des parties et de toute autre circonstance.
4. Le Tribunal Arbitral peut prévoir que des audiences ou d'autres actes de procédure se déroulent dans des lieux différents du siège.

ART. 5 – LANGUE DE L'ARBITRAGE

1. La langue de l'arbitrage est choisie par accord des parties dans la convention d'arbitrage ou postérieurement jusqu'à la constitution du Tribunal Arbitral.
2. A défaut d'accord entre les parties, la langue de l'arbitrage est déterminée par le Tribunal Arbitral.
3. Le Tribunal Arbitral peut autoriser la production de documents rédigés dans une langue différente de celle de l'arbitrage et peut ordonner que les documents soient accompagnés d'une traduction dans la langue de l'arbitrage.

ART. 6 – DEPOT ET TRANSMISSION DES ACTES

1. Les parties doivent déposer les actes de procédure auprès du Secrétariat Général. A cette fin, elles déposent un original pour la Chambre Arbitrale, un original pour chacune des autres parties et autant de copies qu'il y a d'arbitres. Les documents produits doivent être déposés en un exemplaire pour la Chambre Arbitrale, un exemplaire pour chacune des parties et autant d'exemplaires qu'il y a d'arbitres.
2. Le Secrétariat Général transmet aux parties, aux arbitres, aux consultants techniques et aux tiers les actes et les communications qui leur sont destinés par lettre recommandée, courrier express, courrier électronique ou par tout autre moyen approprié.

ART. 7 – DELAIS

1. Sauf disposition expresse du Règlement ou de la mesure qui les ordonne, les délais fixés par le Règlement, par le Conseil Arbitral, le Secrétariat Général ou le Tribunal Arbitral ne sont pas à peine de déchéance.
2. Le Conseil Arbitral, le Secrétariat Général et le Tribunal Arbitral peuvent proroger, avant leur échéance, les délais qu'ils ont fixés. Les délais fixés à peine de forclusion ne peuvent être prorogés que pour justes motifs ou avec le consentement de toutes les parties.
3. Le calcul d'un délai ne tient pas compte du jour de l'événement qui le fait courir. Si le délai arrive à échéance un samedi ou un jour férié, il est prorogé jusqu'au jour ouvrable suivant.

ART. 8 – CONFIDENTIALITE

1. La Chambre Arbitrale, les parties, le Tribunal Arbitral et les consultants techniques sont tenus d'observer la confidentialité de la procédure et de la sentence, sauf la nécessité d'agir pour protéger un droit.
2. A moins qu'une des parties ne s'y soit opposée pendant la procédure, la Chambre Arbitrale peut, à des fins scientifiques, publier des sentences sous forme anonyme.

II – LA PHASE INITIALE

ART. 9 – DEMANDE D'ARBITRAGE

1. Le demandeur doit déposer la demande d'arbitrage auprès du Secrétariat Général.
2. La demande doit être signée par la partie demanderesse ou par son conseil muni d'un pouvoir de représentation. Elle contient ou est accompagnée de:
 - a. l'indication du nom et du domicile des parties;
 - b. la description du litige;
 - c. l'indication des demandes et leur quantification;
 - d. la désignation de l'arbitre ou les indications utiles sur le nombre d'arbitres et sur les modalités de leur choix;
 - e. l'indication éventuelle des moyens de preuve dont l'admission est demandée à l'appui de la demande, et tout document que la partie estime utile de produire;
 - f. toutes indications éventuelles quant aux règles applicables à la procédure, aux règles applicables au fond, à l'éventuel accord des parties de le voir trancher en équité, ainsi qu'au siège et à la langue de l'arbitrage;
 - g. le mandat de représentation du conseil, si celui-ci a été désigné;
 - h. la convention arbitrale.
3. Le Secrétariat Général transmet la demande d'arbitrage au défendeur dans les cinq jours ouvrables à compter de la date du dépôt. Le demandeur peut également transmettre directement la demande d'arbitrage au défendeur, à condition de la déposer également auprès du Secrétariat Général qui en effectuera en tous cas la transmission pour compter les délais prévus par le présent Règlement.

ART. 10 – REPONSE A LA DEMANDE D'ARBITRAGE

1. Le défendeur doit déposer auprès du Secrétariat Général sa réponse à la demande d'arbitrage, accompagnée des éventuelles demandes reconventionnelles, dans les trente jours suivant la réception de la demande d'arbitrage transmise par le Secrétariat Général. Ce délai peut être prorogé par le Secrétariat Général pour de justes motifs.
2. La réponse doit être signée par la partie ou par son conseil muni d'un pouvoir de représentation. Elle contient ou est accompagnée de:
 - a. l'indication du nom et du domicile du défendeur;
 - b. l'exposé, même bref et sommaire, des moyens de défense;
 - c. l'indication des éventuelles demandes reconventionnelles et leur quantification;
 - d. la désignation de l'arbitre ou les indications utiles sur le nombre d'arbitres et sur les modalités de leur choix;

- e. l'indication éventuelle des moyens de preuve dont l'admission est demandée et tout document que la partie estime utile de produire;
 - f. toutes indications éventuelles quant aux règles applicables à la procédure, aux règles applicables au fond, à l'éventuel accord des parties de le voir trancher en équité, ainsi qu'au siège et à la langue de l'arbitrage;
 - g. le mandat de représentation du conseil, si celui-ci a été désigné.
3. Le Secrétariat Général transmet la réponse à la demande d'arbitrage au demandeur dans les cinq jours ouvrables à compter de la date du dépôt. Le défendeur peut aussi transmettre directement la réponse à la demande d'arbitrage au demandeur, à condition de la déposer également auprès du Secrétariat Général.
 4. Dans le cas où le défendeur ne déposerait pas de mémoire en réponse, l'arbitrage se poursuit en son absence.

ART. 11 – MISE EN ŒUVRE DE LA PROCEDURE

1. Si une partie conteste l'application du Règlement avant la constitution du Tribunal Arbitral, le Conseil Arbitral décide si la procédure peut se poursuivre ou non.
2. Si le Conseil Arbitral décide que la procédure d'arbitrage peut se poursuivre, cette décision est prise sans préjudice de toute décision du Tribunal Arbitral à cet égard.

ART. 12 – INCOMPETENCE DU TRIBUNAL ARBITRAL

L'exception relative à l'existence, la validité ou l'efficacité de la convention arbitrale, ou relative à l'incompétence du Tribunal Arbitral, doit, à peine de forclusion, être soulevée dans le premier acte de procédure ou lors de la première audience qui suit la demande à laquelle l'exception se réfère.

III – LE TRIBUNAL ARBITRAL

ART. 13 – NOMBRE D'ARBITRES

1. Le nombre d'arbitres est fixé par les parties.
2. A défaut d'accord des parties sur le nombre d'arbitres, le Tribunal Arbitral est composé d'un arbitre unique. Toutefois, le Conseil Arbitral peut déférer le litige à un collège de trois membres s'il l'estime opportun en raison de la complexité ou de la valeur du litige.
3. Si la convention d'arbitrage prévoit un nombre pair d'arbitres, un arbitre supplémentaire est désigné par le Conseil Arbitral, sauf accord différent des parties.

ART. 14 – NOMINATION DES ARBITRES

1. Les arbitres sont nommés conformément aux règles établies par les parties dans la convention d'arbitrage.
2. Sauf prévision contraire de la convention d'arbitrage, l'arbitre unique est nommé par le Conseil Arbitral.
3. Si les parties ont convenu de nommer l'arbitre unique d'un commun accord sans indiquer de délai pour ce faire, ce délai est fixé par le

Secrétariat Général. Si les parties ne parviennent pas à un accord dans ce délai, l'arbitre unique est nommé par le Conseil Arbitral.

4. S'il n'en est pas convenu autrement dans la convention d'arbitrage, le collège arbitral est constitué comme suit:
 - a. chaque partie nomme un arbitre dans la demande d'arbitrage et dans la réponse à la demande d'arbitrage; à défaut, l'arbitre est nommé par le Conseil Arbitral;
 - b. le président du Tribunal Arbitral est nommé par le Conseil Arbitral. Les parties peuvent convenir que le président sera nommé d'un commun accord par les arbitres qu'elles ont déjà nommés. Si les arbitres ne parviennent pas à un accord dans le délai convenu par les parties ou, à défaut, fixé par le Secrétariat Général, le président est nommé par le Conseil Arbitral.
5. Sauf accord contraire des parties, si celles-ci sont de nationalités différentes ou ont leur siège social dans des Etats différents, le Conseil Arbitral nomme comme arbitre unique ou président du Tribunal Arbitral une personne de nationalité tierce.

ART. 15 – NOMINATION DES ARBITRES DANS UN ARBITRAGE MULTI-PARTITE

1. En présence d'une demande formée par plusieurs parties ou contre plusieurs parties, si les parties forment deux groupes lors du dépôt des actes introductifs et si la convention d'arbitrage prévoit un collège de trois arbitres, chaque groupe nomme un arbitre et le Conseil Arbitral nomme le président à moins que la convention arbitrale ne prévoie que cette nomination soit faite par un tiers.
2. Nonobstant toute prévision contraire de la convention arbitrale et toute désignation d'arbitre effectuée par les parties, si celles-ci ne forment pas deux groupes lors du dépôt des actes introductifs, le Conseil Arbitral désigne le Tribunal Arbitral.

ART. 16 – INCOMPATIBILITES

Ne peuvent être nommés arbitres:

- a. les membres du Conseil d'Administration, du Conseil Arbitral et les commissaires aux comptes de la Chambre Arbitrale;
- b. les employés de la Chambre Arbitrale;
- c. les associés, employés et ceux qui ont des rapports stables de collaboration professionnelle avec les personnes mentionnées sous la lettre a ci-dessus, sauf volonté commune des parties en sens contraire.

ART. 17 – ACCEPTATION DES ARBITRES

Le Secrétariat Général informe les arbitres de leur nomination. Les arbitres doivent transmettre au Secrétariat Général leur déclaration d'acceptation dans les dix jours suivant la réception de cette communication.

ART. 18 – DECLARATION D'INDEPENDANCE ET CONFIRMATION DES ARBITRES

1. Les arbitres doivent transmettre au Secrétariat Général leur déclaration d'indépendance avec leur déclaration d'acceptation.

2. Dans sa déclaration d'indépendance, l'arbitre doit indiquer les circonstances suivantes, en précisant leur date et leur durée:
 - a. toute relation avec les parties, leurs conseils ou toute autre personne impliquée dans l'arbitrage pouvant avoir une incidence sur son indépendance et son impartialité;
 - b. tout intérêt personnel ou économique, direct ou indirect, relatif à l'objet du litige;
 - c. tout préjugé ou prévention à l'égard de l'objet du litige.
3. Le Secrétariat Général transmet copie de la déclaration d'indépendance aux parties. Chaque partie peut communiquer ses observations écrites au Secrétariat Général dans les dix jours de la réception de cette déclaration.
4. A l'échéance du délai prévu au paragraphe 3 ci-dessus, l'arbitre est confirmé par le Secrétariat Général s'il a envoyé une déclaration d'indépendance sans réserves et si les parties n'ont pas fait valoir d'observations. Dans tous les autres cas, c'est le Conseil Arbitral qui se prononce sur la confirmation.
5. La déclaration d'indépendance doit être réitérée tout au long de la procédure arbitrale si des faits survenus après la nomination de l'arbitre la rendent nécessaire ou si le Secrétariat Général le requiert.

ART. 19 – RECUSATION DES ARBITRES

1. Chaque partie peut déposer une demande motivée de récusation des arbitres pour tout motif susceptible de mettre en doute leur indépendance ou leur impartialité.
2. La demande doit être déposée auprès du Secrétariat Général dans les dix jours de la réception de la déclaration d'indépendance ou de la connaissance du motif de récusation.
3. La demande est communiquée aux arbitres et aux autres parties par le Secrétariat Général, qui leur assigne un délai pour la communication d'éventuelles observations.
4. Le Conseil Arbitral statue sur la demande de récusation.

ART. 20 – REMPLACEMENT DES ARBITRES

1. L'arbitre est remplacé par un nouvel arbitre dans les hypothèses suivantes:
 - a. l'arbitre n'accepte pas sa nomination ou y renonce après l'avoir acceptée;
 - b. l'arbitre n'est pas confirmé;
 - c. l'arbitre est révoqué par toutes les parties;
 - d. le Conseil Arbitral accepte une demande de récusation formée à l'encontre de l'arbitre;
 - e. le Conseil Arbitral, après avoir consulté les parties et le Tribunal Arbitral, destitue l'arbitre en raison de la violation des devoirs imposés par le Règlement ou pour tout autre motif grave;
 - f. l'arbitre meurt ou n'est plus en mesure d'assumer sa fonction pour cause d'infirmité ou pour un autre motif grave.
2. Le Secrétariat Général peut suspendre la procédure dans chacune des hypothèses prévues au paragraphe 1 ci-dessus. Dans tous les cas, lorsque la procédure reprend son cours, le délai restant à courir pour le dépôt de la sentence est porté à 90 jours lorsqu'un délai inférieur

- reste encore à courir.
3. Le nouvel arbitre est nommé par la même personne qui avait nommé l'arbitre remplacé. Si l'arbitre nommé en remplacement doit être à son tour remplacé, le nouvel arbitre est nommé par le Conseil Arbitral.
 4. Le Conseil Arbitral définit le cas échéant la rémunération due à l'arbitre remplacé en tenant compte de l'activité accomplie par ce dernier et du motif du remplacement.
 5. En cas de remplacement de l'arbitre, le nouveau Tribunal Arbitral peut décider de la reprise totale ou partielle de la procédure qui s'est déroulée jusqu'alors.

IV – LA PROCEDURE

ART. 21 – CONSTITUTION DU TRIBUNAL ARBITRAL

1. Dès le versement de la provision initiale, le Secrétariat Général transmet aux arbitres les actes introductifs avec les documents qui y sont joints.
2. Les arbitres se constituent en Tribunal Arbitral dans les trente jours à compter de la réception des actes et des documents transmis par le Secrétariat Général. Ce délai peut être prorogé par le Secrétariat pour de justes motifs.
3. La constitution du Tribunal Arbitral intervient par la rédaction d'un procès-verbal daté et signé par les arbitres, contenant les modalités et les délais relatifs à la poursuite de la procédure.
4. Si un ou plusieurs arbitres sont remplacés après la constitution du Tribunal Arbitral, le Secrétariat Général transmet aux nouveaux arbitres une copie des actes et des documents de la procédure. La constitution du nouveau Tribunal Arbitral est alors effectuée conformément aux paragraphes 2 et 3 ci-dessus.

ART. 22 – POUVOIRS DU TRIBUNAL ARBITRAL

1. Le Tribunal Arbitral peut, à tout moment de la procédure, tenter de concilier les parties, au besoin en les invitant à une tentative de médiation offerte par le Service de Médiation de la Chambre Arbitrale de Milan.
2. Le Tribunal Arbitral peut prononcer toutes les mesures conservatoires, urgentes et provisoires, ainsi que toutes mesures avant dire droit, qui ne sont pas interdites par des règles impératives applicables à la procédure.
3. Le Tribunal Arbitral, lorsqu'il est saisi de plusieurs procédures pendantes, peut décider de les consolider s'il estime qu'elles sont connexes.
4. Si une même procédure concerne plusieurs litiges, le Tribunal Arbitral peut décider de la scinder.
5. Si un tiers demande à participer à un arbitrage en cours ou si une partie à un arbitrage demande la participation d'un tiers, le Tribunal Arbitral statue sur la demande après consultation des parties et en tenant compte de toutes les circonstances pertinentes.

ART. 23 – ORDONNANCES DU TRIBUNAL ARBITRAL

1. Sauf les dispositions relatives à la sentence, le Tribunal Arbitral prend ses décisions sous forme d'ordonnance.
2. Les ordonnances sont rendues à la majorité. La conférence personnelle des arbitres n'est pas nécessaire à cette fin.
3. Les ordonnances doivent être écrites et peuvent être signées par le seul président du Tribunal Arbitral.

ART. 24 – AUDIENCES

1. Les audiences sont fixées par le Tribunal Arbitral en consultation avec le Secrétariat Général et sont communiquées aux parties.
2. Les parties peuvent comparaître aux audiences personnellement ou par des représentants disposant des pouvoirs nécessaires. Elle peuvent être assistées de conseils munis d'une procuration.
3. Un procès-verbal est rédigé à chaque audience du Tribunal Arbitral.

ART. 25 – INSTRUCTION DE L'AFFAIRE

1. Le Tribunal Arbitral instruit l'affaire par tous les moyens qu'il estime admissibles et pertinents. Il conduit la procédure d'administration de la preuve de la manière qu'il estime être la plus appropriée.
2. Le Tribunal Arbitral apprécie librement toutes les preuves, sauf celles qui ont valeur de preuve légale selon des règles impératives applicables à la procédure ou au fond du litige.
3. Le Tribunal Arbitral peut déléguer à un de ses membres la charge de recevoir les preuves dont il a admis la production.

ART. 26 – EXPERTISE

1. Le Tribunal Arbitral peut désigner, sur demande d'une des parties ou d'office, un ou plusieurs experts ou en déléguer la désignation à la Chambre Arbitrale.
2. L'expert désigné par le Tribunal Arbitral est soumis aux devoirs d'indépendance imposés par le Règlement aux arbitres, et la procédure de récusation prévue pour les arbitres lui est applicable.
3. Si des experts sont désignés par le Tribunal Arbitral, les parties peuvent désigner leurs propres experts.
4. L'expert désigné d'office doit permettre aux parties et aux experts éventuellement désignés par les parties d'assister aux expertises.

ART. 27 – DEMANDES NOUVELLES

Le Tribunal Arbitral, après avoir entendu les parties, se prononce sur l'admissibilité de demandes nouvelles en tenant compte de toutes circonstances pertinentes, y compris l'état de la procédure.

ART. 28 – DERNIER ETAT DES DEMANDES ET MEMOIRES FINAUX

1. Lorsqu'il estime la procédure en état pour le prononcé de la sentence finale, le Tribunal Arbitral prononce la clôture des débats et invite les parties à préciser le dernier état de leurs demandes.
2. Le Tribunal Arbitral peut en outre impartir aux parties un délai pour le dépôt de mémoires finaux et de mémoires en réplique, et fixer une audience de plaidoiries.
3. Sauf décision contraire du Tribunal Arbitral, après la clôture de l'instruction, les parties ne peuvent plus former de demandes nouvelles,

- formuler de nouvelles allégations, produire de nouveaux documents ou proposer de nouvelles mesures d'instruction.
4. Les paragraphes qui précèdent s'appliquent également lorsque le Tribunal Arbitral rend une sentence partielle, dans la limite de l'objet de cette sentence.

ART. 29 – TRANSACTION ET DESISTEMENT D'INSTANCE

En cas de transaction ou pour tout autre motif, les parties ou leurs conseils communiquent au Secrétariat Général qu'elles se désistent de l'instance arbitrale, exonérant ainsi le Tribunal Arbitral de son obligation de rendre la sentence.

V – LA SENTENCE ARBITRALE

ART. 30 – DELIBERATION, FORME ET CONTENU DE LA SENTENCE

1. La sentence est délibérée avec la participation de tous les membres du Tribunal Arbitral. Elle est rendue à la majorité des voix et doit en ce cas faire mention de la participation de tous les arbitres à la délibération ainsi éventuellement que de l'empêchement ou du refus des arbitres non signataires.
2. La sentence est établie par écrit et contient:
 - a. l'indication des arbitres, des parties et de leurs conseils;
 - b. l'indication de la convention arbitrale;
 - c. l'indication du siège de l'arbitrage;
 - d. l'indication des conclusions des parties;
 - e. l'exposition, même sommaire, des motifs de la décision;
 - f. le dispositif;
 - g. la décision sur la répartition des coûts de la procédure faisant référence à la décision du Conseil Arbitral liquidant lesdits frais, et sur les frais de défense supportés par les parties.
3. La sentence doit comporter le lieu et la date de chaque signature. Elle peut être signée par chaque arbitre en des lieux et à des dates différentes.
4. Le Secrétariat Général signale d'éventuels manquements aux conditions de forme prévues par le présent article aux arbitres qui sollicitent l'examen de leur projet de sentence avant de la signer.

ART. 31 – DEPOT ET COMMUNICATION DE LA SENTENCE

1. Le Tribunal Arbitral dépose la sentence auprès du Secrétariat Général en autant d'originaux qu'il y a de parties plus un.
2. Le Secrétariat Général transmet à chaque partie un original de la sentence dans les dix jours à compter de la date du dépôt.

ART. 32 – DELAI POUR LE DEPOT DE LA SENTENCE FINALE

1. Sauf prévision contraire de la convention d'arbitrage, le Tribunal Arbitral doit déposer sa sentence finale auprès du Secrétariat Général dans les six mois suivant la date de sa constitution.
2. Dans tous les cas, le délai prévu pour le dépôt de la sentence peut être prorogé même d'office par le Conseil Arbitral. Il peut l'être également, en cas d'accord des parties sur la prorogation, par le Secrétariat Général.

3. Le délai est suspendu par le Secrétariat Général dans les cas expressément prévus par le Règlement ainsi qu'en cas d'autres justes motifs.

ART. 33 – SENTENCE PARTIELLE ET NON DEFINITIVE

1. Le Tribunal Arbitral peut se prononcer en une ou plusieurs sentences, même partielles ou intérimaires.
2. Le prononcé d'une sentence partielle ou intérimaire ne modifie pas le délai du dépôt de la sentence finale, sauf la faculté de solliciter de la Chambre Arbitrale une prorogation de ce délai.
3. Les dispositions du Règlement relatives à la sentence arbitrale sont applicables aux sentences partielles et intérimaires. La sentence intérimaire ne comporte pas de décision sur les frais de procédure et frais de défense.

ART. 34 – CORRECTION DE LA SENTENCE

1. La demande de correction doit être déposée auprès du Secrétariat Général dans les 30 jours à compter de la réception de la sentence.
2. Le Tribunal Arbitral statue par ordonnance, après avoir entendu les parties, dans un délai de 60 jours à compter de la réception de la demande.
3. L'ordonnance du Tribunal Arbitral fait, lorsque la demande de correction est accueillie, partie intégrante de la sentence.
4. Dans tous les cas, sauf décision contraire de la Chambre Arbitrale, la demande de correction n'entraîne pas de frais supplémentaires à la charge des parties.

VI – COUTS DE PROCEDURE

ART. 35 – VALEUR DU LITIGE

1. La valeur du litige, aux fins de la définition des coûts de procédure, est constituée par la somme des demandes présentées par toutes les parties.
2. Le Secrétariat Général détermine la valeur du litige sur la base des actes introductifs et sur la base des indications ultérieures des parties et du Tribunal Arbitral. Les critères utilisés pour la détermination de la valeur du litige sont indiqués dans l'Annexe A du Règlement, qui en fait partie intégrante.
3. A chaque étape de la procédure, le Secrétariat Général peut, s'il l'estime approprié, fixer la valeur du litige séparément pour les demandes de chaque partie, et réclamer à chacune une somme fixée en considération de ces demandes.
4. En cas de subdivision de la valeur du litige, les honoraires de la Chambre Arbitrale et du Tribunal Arbitral ne pourront être supérieurs au maximum des Tarifs déterminés sur la base de la valeur totale du litige comme indiqué au premier paragraphe du présent article.

ART. 36 – COUTS DE PROCEDURE

1. La liquidation des coûts de procédure est effectuée par le Conseil Arbitral avant le dépôt de la sentence.
2. La décision de liquidation est communiquée aux parties et au

- Tribunal Arbitral, qui la mentionne dans la partie de la sentence relative à la décision sur les coûts. La liquidation prononcée par le Conseil Arbitral ne porte pas préjudice à la décision du Tribunal Arbitral quant à l'allocation des frais de l'arbitrage entre les parties.
3. Si la procédure se conclut avant la constitution du Tribunal Arbitral, la liquidation des coûts de la procédure est décidée par le Secrétariat Général.
 4. Les coûts de procédure sont composés des éléments suivants:
 - a. honoraires de la Chambre Arbitrale;
 - b. honoraires du Tribunal Arbitral;
 - c. honoraires des experts désignés d'office;
 - d. remboursement des frais de la Chambre Arbitrale, des arbitres et des experts désignés d'office.
 5. Les honoraires de la Chambre Arbitrale pour l'administration de la procédure sont déterminés sur la base de la valeur du litige, selon les Tarifs annexés au Règlement. Les honoraires de la Chambre Arbitrale peuvent être fixés pour une valeur inférieure en cas de conclusion anticipée de la procédure. Les activités incluses et celles exclues des honoraires de la Chambre Arbitrale sont indiquées dans l'Annexe B du Règlement, qui en fait partie intégrante.
 6. Les honoraires du Tribunal Arbitral sont déterminés sur la base de la valeur du litige, d'après les Tarifs annexés au Règlement. Lorsqu'il détermine les honoraires du Tribunal Arbitral, le Conseil Arbitral tient compte de l'activité effectuée, de la complexité du litige, de la durée de la procédure et de toute autre circonstance. En cas de conclusion anticipée de la procédure, des honoraires inférieurs au minimum tarifaire peuvent être déterminés. Dans des cas extraordinaires, des honoraires inférieurs au minimum ou supérieurs au maximum tarifaire peuvent être déterminés.
 7. Les honoraires des experts désignés par le Tribunal Arbitral sont déterminés de façon équitable, en tenant compte du barème professionnel, du barème judiciaire et de toute autre circonstance.
 8. Les frais remboursables des arbitres et des experts nommés par le Tribunal Arbitral doivent être justifiés par des documents. A défaut de présentation de ceux-ci, ces frais seront considérés comme inclus dans les honoraires.

ART. 37 – DEPOTS ANTICIPES ET FINAUX

1. Après l'échange des actes introductifs, le Secrétariat Général réclame aux parties une provision initiale et fixe un délai pour son paiement.
2. Le Secrétariat Général peut réclamer aux parties des provisions complémentaires en fonction de l'activité accomplie ou de l'évolution de la valeur litigieuse. En ce cas, il fixe un délai pour leur paiement.
3. Le Secrétariat Général réclame le solde des coûts de procédure à la suite de la liquidation définitive décidée par le Conseil Arbitral et avant le dépôt de la sentence. En ce cas, il fixe un délai pour son paiement.
4. Les sommes prévues aux paragraphes 1, 2 et 3 ci-dessus sont réclamées à toutes les parties dans la même mesure si le Secrétariat Général définit une valeur unique du litige calculée en faisant la somme des demandes de toutes les parties. Lorsque le Secrétariat

Général définit les valeurs litigieuses de façon distincte pour les demandes de chaque partie, il réclame les sommes prévues aux paragraphes 1, 2 et 3 à chaque partie en totalité relativement aux demandes auxquelles elles se rapportent.

5. Aux fins de la demande de paiement, le Secrétariat Général peut considérer plusieurs parties comme une seule. Il tient, pour ce faire, compte des modalités de constitution du Tribunal Arbitral ou de l'homogénéité des intérêts des parties.
6. Sur demande motivée d'une partie, le Secrétariat Général peut autoriser une partie à fournir une garantie bancaire ou d'assurance pour le paiement des sommes prévues aux paragraphes 1, 2 et 3 ci-dessus. En ce cas, il en détermine les conditions.

ART. 38 – DEFAUT DE DEPOT DES FONDS

1. Si une partie ne procède pas au dépôt des fonds requis, le Secrétariat Général peut demander à l'autre partie d'y procéder dans un délai qu'il fixe. Le Secrétariat Général peut aussi, s'il ne l'a pas déjà fait, diviser la valeur du litige et demander à chaque partie de procéder, dans un délai qu'il fixe, au dépôt d'une somme correspondant à la valeur de ses demandes.
2. Le Secrétariat Général peut, en cas de défaut de dépôt des fonds requis dans le délai imparti, suspendre la procédure, y compris pour la seule demande à laquelle les fonds impayés sont relatifs. La suspension est levée par le Secrétariat Général après vérification de la réception du dépôt.
3. Le Secrétariat Général peut, en l'absence de paiement et au terme d'un délai d'un mois à compter de la communication de la mesure de suspension prévue au paragraphe 2 ci-dessus, déclarer l'extinction de la procédure, et ce même de manière limitée à la demande à laquelle les fonds impayés sont relatifs, sans que cela n'affecte pour autant l'efficacité de la convention arbitrale.

VII – DISPOSITIONS TRANSITOIRES

ART. 39 – ENTREE EN VIGUEUR

1. Le présent Règlement entre en vigueur le 1^{er} janvier 2010.
2. Sauf accord contraire des parties, le nouveau Règlement est applicable aux procédures engagées après son entrée en vigueur.

ANNEXE "A"

CRITERES POUR LA DETERMINATION DE LA VALEUR DU LITIGE

1. Toutes les demandes formées par les parties, qu'elles visent à obtenir une décision déclaratoire, une décision constitutive ou une condamnation, contribuent à former la valeur du litige.
2. Si une partie forme une demande principale et une à titre subsidiaire, on retient, aux fins de la valeur du litige, la seule demande principale.
3. Si la quantification de la créance objet de la demande ou de l'exception de compensation requiert l'évaluation préliminaire de plusieurs prétentions formées par la partie alternativement et non subsidiairement entre elles, la valeur du litige est déterminée par la somme des valeurs de ces prétentions.
4. Si une partie demande la constatation d'une créance par une décision déclaratoire, une décision constitutive ou une condamnation portant sur une partie seulement de cette créance, la valeur de la demande est déterminée par le montant total de la créance objet de la constatation.
5. La valeur de la créance opposée en compensation n'est pas prise en compte si elle est inférieure ou égale à la valeur de la créance formée par la partie adverse. Si elle est supérieure, on ne prend en compte que l'excédent.
6. Si une partie, en précisant ses conclusions, modifie la valeur des demandes formées précédemment, la valeur des demandes se calcule conformément à celles pour lesquelles le Tribunal arbitral a effectué les activités de constatation.
7. Si la valeur du litige n'est ni déterminée, ni déterminable, la Chambre Arbitrale l'établit par une appréciation équitable.
8. La Chambre Arbitrale peut déterminer la valeur du litige selon des paramètres différents de ceux prévus sous les points précédents, si leur application apparaît manifestement inéquitable.

ANNEXE "B"

HONORAIRES DE LA CHAMBRE ARBITRALE: ACTIVITES COMPRISES ET ACTIVITES EXCLUES

1. Sont comprises dans les honoraires de la Chambre Arbitrale indiqués dans le Tarif les activités suivantes:
 - a. gestion et administration des procédures telles que définies dans le Préambule du Règlement, en relation avec chaque organe de la Chambre Arbitrale;
 - b. réception et transmission des actes;
 - c. contrôle de régularité formelle des actes;
 - d. convocation et tenue des audiences dans ses propres locaux;
 - e. présence du personnel lors des audiences et tenue du procès-verbal des audiences comme précisées à l'alinéa d.
2. Sont exclus des honoraires de la Chambre Arbitrale et constituent des éléments de rémunération spécifique, sur requête, les activités et services suivants:
 - a. photocopies des actes et documents déposés par les parties en un nombre insuffisant d'exemplaires, y compris les éventuelles copies d'actes et documents effectuées par le Secrétariat Général pour l'expert;
 - b. régularisation du droit de timbre sur les actes (apposition);
 - c. enregistrement des audiences et transcription des bandes magnétiques y relatives;
 - d. service d'interprètes;
 - e. vidéoconférence;
 - f. frais de déplacement du personnel du Secrétariat Général éventuellement présent aux audiences qui ont lieu à l'extérieur des propres locaux;
 - g. photocopies des actes et documents à raison de la demande de retrait de dossier.

CODE DE DEONTOLOGIE DE L'ARBITRE

ART. 1 – ACCEPTATION DU CODE DE DEONTOLOGIE

1. Celui qui accepte la nomination d'arbitre dans un arbitrage administré par la Chambre Arbitrale de Milan, qu'il soit nommé par les parties, par les autres arbitres, par la Chambre Arbitrale ou par un autre sujet, s'engage à accomplir sa fonction conformément au Règlement de la Chambre Arbitrale de Milan et conformément au présent Code de déontologie.
2. Le Code de déontologie s'applique également à l'expert nommé par le Tribunal Arbitral dans les procédures arbitrales administrées par la Chambre Arbitrale.

ART. 2 – ARBITRE NOMME PAR LES PARTIES

L'arbitre nommé par une partie doit respecter à chaque phase de la procédure tous les devoirs imposés par le présent Code de déontologie; il peut entendre la partie qui l'a nommé ou son conseil à l'occasion de la nomination du président du Tribunal Arbitral, s'il a été chargé d'y pourvoir. Les indications fournies par cette partie ne lient pas l'arbitre.

ART. 3 – COMPETENCE

L'arbitre, quand il accepte sa mission, doit être certain de pouvoir l'accomplir avec la compétence requise par sa fonction de juge et par la matière objet du litige.

ART. 4 – DISPONIBILITE

L'arbitre, quand il accepte sa mission, doit être certain de pouvoir consacrer à l'arbitrage le temps et l'attention nécessaires, afin d'accomplir et terminer sa tâche le plus rapidement possible.

ART. 5 – IMPARTIALITE

L'arbitre, quand il accepte sa mission, doit être certain de pouvoir l'accomplir avec l'impartialité indispensable et inhérente à sa fonction de juge et doit s'apprêter à l'accomplir dans l'intérêt de toutes les parties, évitant toute pression externe, directe ou indirecte.

ART. 6 – INDEPENDANCE

L'arbitre, quand il accepte sa mission, doit être objectivement dans une situation d'indépendance absolue. Il doit conserver son indépendance à toute étape de la procédure et même après le dépôt de la sentence finale, pendant la durée d'un éventuel recours contre cette dernière.

ART. 7 – DECLARATION D'IMPARTIALITE ET D'INDEPENDANCE

1. Pour garantir son impartialité et son indépendance, l'arbitre, quand il accepte sa mission, doit remettre la déclaration écrite prévue par le Règlement de la Chambre Arbitrale.
2. Tout doute relatif à l'opportunité de divulguer ou non un fait, une circonstance ou une relation doit être résolu en faveur de la déclaration.
3. L'établissement successif de faits, circonstances ou relations qui auraient du être divulgués peut être évalué par la Chambre Arbitrale

comme cause de substitution de l'arbitre, même d'office, au cours de la procédure et de non-confirmation dans une nouvelle procédure.

ART. 8 – DEROULEMENT DE LA PROCEDURE

L'arbitre doit favoriser le déroulement complet et rapide de la procédure. Il doit en particulier fixer les délais et les modalités des audiences de sorte que les parties soient sur un pied d'égalité totale et dans le respect absolu du principe du contradictoire.

ART. 9 – COMMUNICATIONS UNILATERALES

L'arbitre doit éviter, dans chaque phase de la procédure, toute communication unilatérale avec quelque partie que ce soit ou ses défenseurs sans en informer immédiatement la Chambre Arbitrale pour qu'elle le communique aux autres parties et aux autres arbitres.

ART. 10 – TRANSACTION

L'arbitre peut toujours suggérer aux parties l'opportunité d'une transaction ou d'une conciliation, mais il ne doit pas influencer leur décision en leur faisant comprendre qu'il est déjà parvenu à un jugement sur l'issue de la procédure.

ART. 11 – DELIBERATION DE LA SENTENCE ARBITRALE

L'arbitre doit éviter tout comportement d'obstruction ou de non-collaboration, en garantissant une participation prompte aux phases de délibération de la sentence. La faculté de ne pas signer la sentence, en cas de délibération prise à la majorité du Tribunal Arbitral, lui est reconnue.

ART. 12 – FRAIS

1. L'arbitre ne peut accepter aucun accord direct ou indirect avec les parties ou leurs conseils relatif aux honoraires et aux frais.
2. Les honoraires de l'arbitre sont déterminés exclusivement par la Chambre Arbitrale d'après les tarifs fixés par cette dernière, considérés comme approuvés par l'arbitre au moment de l'acceptation de sa mission.
3. L'arbitre doit éviter les frais superflus qui peuvent faire augmenter sans motifs les coûts de la procédure.

ART. 13 – VIOLATION DU CODE DE DEONTOLOGIE

L'arbitre qui ne respecte pas les normes du présent Code de déontologie est remplacé, même d'office, par la Chambre Arbitrale, laquelle, suite à une telle violation, peut également lui refuser la confirmation dans des procédures ultérieures.



CAMERA
ARBITRALE
MILANO

REGOLAMENTO ARBITRALE



www.camera-arbitrale.com

Il Regolamento è tradotto in numerose lingue. Tuttavia, la versione ufficiale è quella italiana.

La Segreteria Generale compie comunicazioni in lingua italiana, inglese o francese.

La Camera Arbitrale può integrare, modificare e sostituire il presente Regolamento, fissando la data dalla quale le nuove regole entrano in vigore, con deliberazione approvata dal Consiglio di Amministrazione della Camera Arbitrale.

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CLAUSOLA MODELLO

Tutte le controversie derivanti dal presente contratto o in relazione allo stesso saranno risolte mediante arbitrato secondo il Regolamento della Camera Arbitrale di Milano, da un arbitro unico/tre arbitri, nominato/i in conformità a tale Regolamento.

Ulteriori e specifici modelli sono reperibili visitando il sito www.camera-arbitrale.com

Il modello di clausola qui indicato non costituisce che una base utilizzabile per deferire eventuali controversie in arbitrato.

Professionisti, imprese e coloro che risultano a vario titolo interessati possono contattare la Camera Arbitrale per avere assistenza nella fase di redazione della clausola.

PREAMBOLO – LA CAMERA ARBITRALE

FUNZIONI E ORGANI DELLA CAMERA ARBITRALE

1. La Camera Arbitrale di Milano, istituita presso la Camera di Commercio di Milano, svolge le seguenti funzioni:
 - a. amministra i procedimenti di arbitrato secondo il Regolamento;
 - b. su istanza delle parti, nomina gli arbitri in procedimenti non amministrati secondo il Regolamento;
 - c. su istanza delle parti, nomina gli arbitri secondo il Regolamento di arbitrato della Commissione delle Nazioni Unite per il Diritto Commerciale Internazionale (Uncitral).
2. La Camera Arbitrale svolge le funzioni previste dal Regolamento mediante il Consiglio Arbitrale e la Segreteria Generale.

IL CONSIGLIO ARBITRALE

1. Il Consiglio Arbitrale ha competenza generale su tutte le materie attinenti all'amministrazione dei procedimenti di arbitrato e adotta tutti i relativi provvedimenti, salve le competenze attribuite dal Regolamento alla Segreteria Generale.
2. Il Consiglio Arbitrale è composto da un numero minimo di sette a un numero massimo di undici membri, tra i quali sono scelti un presidente e un vicepresidente, tutti nominati per un triennio dal Consiglio di Amministrazione della Camera Arbitrale.
3. Il Consiglio di Amministrazione della Camera Arbitrale può nominare quali membri del Consiglio Arbitrale esperti sia italiani sia stranieri.
4. Le riunioni del Consiglio Arbitrale sono presiedute dal presidente o, in sua assenza, dal vicepresidente ovvero, in assenza del vicepresidente, dal membro più anziano.
5. Le riunioni del Consiglio Arbitrale sono valide con la presenza di almeno tre membri.
6. Le riunioni del Consiglio Arbitrale possono svolgersi mediante ogni mezzo di telecomunicazione.
7. Il Consiglio Arbitrale adotta i provvedimenti a maggioranza dei votanti. In caso di parità prevale il voto del presidente della riunione.
8. Nei casi di urgenza, il presidente del Consiglio Arbitrale – o, in caso di suo impedimento, il vicepresidente o il componente più anziano – può adottare i provvedimenti relativi all'amministrazione dei procedimenti arbitrali di competenza del Consiglio Arbitrale, informandone il Consiglio nella prima riunione successiva.
9. Il consigliere che ritenga di astenersi si assenta dalla riunione per tutto il tempo della discussione e dell'adozione dei relativi provvedimenti. La sua astensione non incide sul quorum necessario per la validità della riunione.

LA SEGRETERIA GENERALE

1. La Segreteria Generale svolge le funzioni attribuite dal Regolamento o delegate dal Consiglio Arbitrale, adottando i relativi provvedimenti. Inoltre, la Segreteria Generale:
 - a. agisce come segreteria del Consiglio Arbitrale, curando la verbalizzazione delle sue sedute e sottoscrivendone i provvedimenti;

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- b. riferisce al Consiglio Arbitrale sullo stato dei procedimenti arbitrali;
 - c. comunica i provvedimenti del Consiglio Arbitrale e i propri provvedimenti alle parti e al Tribunale Arbitrale, nonché ad ogni altro destinatario dei medesimi;
 - d. riceve dalle parti e dal Tribunale Arbitrale tutti gli atti scritti e i documenti;
 - e. forma e conserva i fascicoli dei procedimenti arbitrali;
 - f. compie le comunicazioni richieste dal Consiglio Arbitrale e dal Tribunale Arbitrale;
 - g. rilascia alle parti, a loro richiesta, copia conforme degli atti e dei documenti, nonché attestazioni e certificazioni relative al procedimento arbitrale.
2. La Segreteria Generale svolge le sue funzioni tramite il Segretario Generale, il Vicesegretario Generale e i funzionari delegati.

I - DISPOSIZIONI GENERALI

ART. 1 – APPLICAZIONE DEL REGOLAMENTO

1. Il Regolamento è applicato se richiamato con qualsiasi espressione dalla convenzione arbitrale o altra convenzione tra le parti. Se la convenzione fa rinvio alla Camera Arbitrale di Milano o alla Camera di Commercio di Milano, tale rinvio è interpretato come previsione di applicazione del Regolamento.
2. Al di fuori di quanto previsto dal comma 1, il Regolamento è applicato se ricorrono le seguenti condizioni:
 - a. una parte deposita una domanda di arbitrato sottoscritta personalmente dalla parte stessa e contenente la proposta di ricorrere a un arbitrato disciplinato dal Regolamento;
 - b. l'altra parte accetta tale proposta, con dichiarazione sottoscritta personalmente, entro il termine indicato dalla Segreteria Generale.

ART. 2 – NORME APPLICABILI AL PROCEDIMENTO

1. Il procedimento arbitrale è retto dal Regolamento, dalle regole fissate di comune accordo dalle parti sino alla costituzione del Tribunale Arbitrale in quanto compatibili con il Regolamento medesimo o, in difetto, dalle regole fissate dal Tribunale Arbitrale.
2. In ogni caso, sono fatte salve le norme inderogabili applicabili al procedimento arbitrale.
3. In ogni caso, è attuato il principio del contraddittorio e della parità di trattamento delle parti.

ART. 3 – NORME APPLICABILI AL MERITO DELLA CONTROVERSIA

1. Il Tribunale Arbitrale decide il merito della controversia secondo diritto se le parti non hanno espressamente previsto che decida secondo equità.
2. Il Tribunale Arbitrale decide secondo le norme scelte dalle parti.
3. In difetto della concorde indicazione prevista dal comma 2, il Tribunale Arbitrale applica le norme che ritiene appropriate, tenuto conto della natura del rapporto, della qualità delle parti e di ogni altra circostanza rilevante nel caso di specie.
4. In ogni caso, il Tribunale Arbitrale tiene conto degli usi del commercio.

ART. 4 - SEDE DELL'ARBITRATO

1. La sede dell'arbitrato, che può essere in Italia o all'estero, è fissata dalle parti nella convenzione arbitrale.
2. In mancanza, la sede dell'arbitrato è Milano.
3. In deroga a quanto previsto dal comma 2, il Consiglio Arbitrale può fissare la sede dell'arbitrato in altro luogo, tenuto conto delle richieste delle parti e di ogni altra circostanza.
4. Il Tribunale Arbitrale può prevedere che si svolgano in luogo diverso dalla sede udienze o altri atti del procedimento.

ART. 5 - LINGUA DELL'ARBITRATO

1. La lingua dell'arbitrato è scelta di comune accordo dalle parti nella convenzione arbitrale o successivamente sino alla costituzione del Tribunale Arbitrale.
2. In difetto di accordo tra le parti, la lingua dell'arbitrato è determinata dal Tribunale Arbitrale.
3. Il Tribunale Arbitrale può autorizzare la produzione di documenti redatti in una lingua diversa da quella dell'arbitrato e può ordinare che i documenti siano accompagnati da una traduzione nella lingua dell'arbitrato.

ART. 6 - DEPOSITO E TRASMISSIONE DEGLI ATTI

1. Le parti devono depositare gli atti presso la Segreteria Generale in un originale per la Camera Arbitrale, in un originale per ciascuna altra parte e in tante copie quanti sono gli arbitri. I documenti prodotti vanno depositati in una copia per la Camera Arbitrale, una copia per ciascuna altra parte e in tante copie quanti sono gli arbitri.
2. La Segreteria Generale trasmette alle parti, agli arbitri, ai consulenti tecnici e ai terzi gli atti e le comunicazioni loro destinate con lettera raccomandata, corriere, posta elettronica ovvero con ogni altro mezzo idoneo alla loro ricezione.

ART. 7 - TERMINI

1. I termini previsti dal Regolamento o fissati dal Consiglio Arbitrale, dalla Segreteria Generale o dal Tribunale Arbitrale non sono a pena di decadenza, se la decadenza non è espressamente prevista dal Regolamento o stabilita dal provvedimento che li fissa.
2. Il Consiglio Arbitrale, la Segreteria Generale e il Tribunale Arbitrale possono prorogare, prima della scadenza, i termini da essi fissati. I termini fissati a pena di decadenza possono essere prorogati soltanto per giustificati motivi ovvero con il consenso di tutte le parti.
3. Nel computo dei termini non si calcola il giorno iniziale. Se il termine scade il sabato o un giorno festivo, esso è prorogato al giorno successivo non festivo.

ART. 8 - RISERVATEZZA

1. La Camera Arbitrale, le parti, il Tribunale Arbitrale e i consulenti tecnici sono tenuti a osservare la riservatezza del procedimento e del lodo, fatta salva la necessità di avvalersi di quest'ultimo per la tutela di un proprio diritto.
 2. A fini di studio, la Camera Arbitrale può curare la pubblicazione in forma anonima dei lodi, salva l'indicazione contraria anche di una sola delle parti manifestata nel corso del procedimento.
-

II - LA FASE INIZIALE

ART. 9 - DOMANDA DI ARBITRATO

1. L'attore deve depositare presso la Segreteria Generale la domanda di arbitrato.
2. La domanda è sottoscritta dalla parte o dal difensore munito di procura e contiene ovvero è accompagnata da:
 - a. il nome e il domicilio delle parti;
 - b. la descrizione della controversia;
 - c. l'indicazione delle domande e del relativo valore economico;
 - d. la nomina dell'arbitro o le indicazioni utili sul numero degli arbitri e sulle modalità della loro scelta;
 - e. l'eventuale indicazione dei mezzi di prova richiesti a sostegno della domanda e ogni documento che la parte ritenga utile produrre;
 - f. le eventuali indicazioni sulle norme applicabili al procedimento, sulle norme applicabili al merito della controversia ovvero sulla pronuncia secondo equità, sulla sede e sulla lingua dell'arbitrato;
 - g. la procura conferita al difensore, se questo è stato nominato;
 - h. la convenzione arbitrale.
3. La Segreteria Generale trasmette la domanda di arbitrato al convenuto entro cinque giorni lavorativi dalla data del deposito. L'attore può anche trasmettere direttamente la domanda di arbitrato al convenuto, fermo restando il deposito della domanda stessa presso la Segreteria Generale, che ne cura in ogni caso la trasmissione al fine della decorrenza dei termini regolamentari.

ART. 10 - MEMORIA DI RISPOSTA

1. Il convenuto deve depositare presso la Segreteria Generale la memoria di risposta, con eventuali domande riconvenzionali, entro trenta giorni dal ricevimento della domanda di arbitrato trasmessa dalla Segreteria Generale. Tale termine può essere prorogato dalla Segreteria Generale per giustificati motivi.
2. La risposta è sottoscritta dalla parte o dal difensore munito di procura e contiene ovvero è accompagnata da:
 - a. il nome e il domicilio del convenuto;
 - b. l'esposizione, anche breve e sommaria, della difesa;
 - c. l'indicazione delle eventuali domande riconvenzionali e del relativo valore economico;
 - d. la nomina dell'arbitro o le indicazioni utili sul numero degli arbitri e sulle modalità della loro scelta;
 - e. l'eventuale indicazione dei mezzi di prova richiesti e ogni documento che la parte ritenga utile produrre;
 - f. le eventuali indicazioni sulle norme applicabili al procedimento, sulle norme applicabili al merito della controversia ovvero sulla pronuncia secondo equità, sulla sede e sulla lingua dell'arbitrato;
 - g. la procura conferita al difensore, se questo è stato nominato.
3. La Segreteria Generale trasmette la memoria di risposta all'attore entro cinque giorni lavorativi dalla data del deposito. Il convenuto può anche trasmettere direttamente la memoria di risposta all'attore, fermo restando il deposito della memoria stessa presso la Segreteria Generale.

4. Nel caso in cui il convenuto non depositi la memoria di risposta, l'arbitrato prosegue in sua assenza.

ART. 11 – PROCEDIBILITÀ DELL'ARBITRATO

1. Se una parte contesta l'applicabilità del Regolamento prima della costituzione del Tribunale Arbitrale, il Consiglio Arbitrale dichiara la procedibilità o l'improcedibilità dell'arbitrato.
2. Se il Consiglio Arbitrale dichiara la procedibilità dell'arbitrato, rimane impregiudicata ogni decisione del Tribunale Arbitrale al riguardo.

ART. 12 – INCOMPETENZA DEL TRIBUNALE ARBITRALE

L'eccezione circa l'esistenza, la validità o l'efficacia della convenzione arbitrale o circa la competenza del Tribunale Arbitrale deve essere proposta, a pena di decadenza, nel primo atto o nella prima udienza successiva alla domanda cui l'eccezione si riferisce.

III – IL TRIBUNALE ARBITRALE

ART. 13 – NUMERO DEGLI ARBITRI

1. Il numero degli arbitri è fissato dalle parti.
2. In assenza di accordo delle parti sul numero degli arbitri, il Tribunale Arbitrale è composto da un arbitro unico. Tuttavia, il Consiglio Arbitrale può deferire la controversia a un collegio di tre membri, se lo ritiene opportuno per la complessità o per il valore della controversia.
3. In caso di indicazione di un numero pari di arbitri, un ulteriore arbitro, se le parti non hanno diversamente convenuto, è nominato dal Consiglio Arbitrale.

ART. 14 – NOMINA DEGLI ARBITRI

1. Gli arbitri sono nominati secondo le regole stabilite dalle parti nella convenzione arbitrale.
2. Se non è diversamente stabilito nella convenzione arbitrale, l'arbitro unico è nominato dal Consiglio Arbitrale.
3. Se le parti hanno stabilito di nominare l'arbitro unico di comune accordo senza indicare un termine, tale termine viene assegnato dalla Segreteria Generale. Se l'accordo tra le parti non viene raggiunto, l'arbitro unico è nominato dal Consiglio Arbitrale.
4. Se non è diversamente stabilito nella convenzione arbitrale, il collegio arbitrale è così nominato:
 - a. ciascuna parte, nella domanda di arbitrato e nella memoria di risposta, nomina un arbitro; se la parte non vi provvede, l'arbitro è nominato dal Consiglio Arbitrale;
 - b. il presidente del Tribunale Arbitrale è nominato dal Consiglio Arbitrale. Le parti possono stabilire che il presidente sia nominato di comune accordo dagli arbitri già nominati dalle stesse. Se gli arbitri non vi provvedono entro il termine indicato dalle parti o, in mancanza, assegnato dalla Segreteria Generale, il presidente è nominato dal Consiglio Arbitrale.
5. Se le parti hanno diversa nazionalità o sede legale in Stati diversi, il

Consiglio Arbitrale nomina quale arbitro unico o quale presidente del Tribunale Arbitrale una persona di nazionalità terza, salva diversa e concorde indicazione delle parti.

ART. 15 – NOMINA DEGLI ARBITRI NELL'ARBITRATO CON PLURALITÀ DI PARTI

1. In presenza di una domanda proposta da più parti o contro più parti, se al momento del deposito degli atti introduttivi le stesse si raggruppano in due sole unità e la convenzione arbitrale prevede un collegio arbitrale, ciascuna unità nomina un arbitro e il Consiglio Arbitrale nomina il presidente, salvo che la convenzione arbitrale non deleghi la nomina dell'intero collegio arbitrale o del presidente del collegio ad altri soggetti.
2. Anche in deroga a quanto previsto nella convenzione arbitrale, se al momento del deposito degli atti introduttivi le parti non si raggruppano in due unità, il Consiglio Arbitrale, senza tener conto di alcuna nomina effettuata dalle parti, nomina il Tribunale Arbitrale.

ART. 16 – INCOMPATIBILITÀ

Non possono essere nominati arbitri:

- a. i membri del Consiglio di Amministrazione e del Consiglio Arbitrale, nonché i revisori dei conti della Camera Arbitrale;
- b. i dipendenti della Camera Arbitrale;
- c. gli associati professionali, i dipendenti e coloro che hanno stabili rapporti di collaborazione professionale con le persone indicate sub a, fatta salva la diversa e concorde volontà delle parti.

ART. 17 – ACCETTAZIONE DEGLI ARBITRI

La Segreteria Generale comunica agli arbitri la loro nomina. Gli arbitri devono trasmettere alla Segreteria Generale la dichiarazione di accettazione entro dieci giorni dalla ricezione della comunicazione.

ART. 18 – DICHIARAZIONE DI INDIPENDENZA E CONFERMA DEGLI ARBITRI

1. Con la dichiarazione di accettazione gli arbitri devono trasmettere alla Segreteria Generale la dichiarazione di indipendenza.
2. Nella dichiarazione di indipendenza l'arbitro deve indicare, precisandone periodo e durata:
 - a. qualunque relazione con le parti, i loro difensori od ogni altro soggetto coinvolto nell'arbitrato, rilevante in rapporto alla sua imparzialità e indipendenza;
 - b. qualunque interesse personale o economico, diretto o indiretto, relativo all'oggetto della controversia;
 - c. qualunque pregiudizio o riserva nei confronti della materia del contendere.
3. La Segreteria Generale trasmette copia della dichiarazione di indipendenza alle parti. Ciascuna parte può comunicare le proprie osservazioni scritte alla Segreteria Generale entro dieci giorni dalla ricezione della dichiarazione.
4. Decorso il termine previsto dal comma 3, l'arbitro è confermato dalla Segreteria Generale se ha inviato una dichiarazione di indipendenza senza rilievi e se le parti non hanno comunicato osservazioni. In

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- ogni altro caso, sulla conferma si pronuncia il Consiglio Arbitrale.
5. La dichiarazione di indipendenza deve essere ripetuta nel corso del procedimento arbitrale, fino alla sua conclusione, se si rende necessario per fatti sopravvenuti o su richiesta della Segreteria Generale.

ART. 19 – RICUSAZIONE DEGLI ARBITRI

1. Ciascuna parte può depositare una istanza motivata di ricusazione degli arbitri per ogni motivo idoneo a porre in dubbio la loro indipendenza o imparzialità.
2. L'istanza deve essere depositata presso la Segreteria Generale entro dieci giorni dalla ricezione della dichiarazione di indipendenza o dalla conoscenza del motivo di ricusazione.
3. L'istanza è comunicata agli arbitri e alle altre parti dalla Segreteria Generale che assegna loro un termine per l'invio di eventuali osservazioni.
4. Sull'istanza di ricusazione decide il Consiglio Arbitrale.

ART. 20 – SOSTITUZIONE DEGLI ARBITRI

1. L'arbitro è sostituito con la nomina di un nuovo arbitro nelle seguenti ipotesi:
 - a. l'arbitro non accetta l'incarico o vi rinuncia dopo aver accettato;
 - b. l'arbitro non è confermato;
 - c. l'arbitro è revocato da tutte le parti;
 - d. il Consiglio Arbitrale accoglie l'istanza di ricusazione proposta nei confronti dell'arbitro;
 - e. il Consiglio Arbitrale, sentite le parti e il Tribunale Arbitrale, rimuove l'arbitro per la violazione dei doveri imposti dal Regolamento al Tribunale Arbitrale o per altro grave motivo;
 - f. l'arbitro muore ovvero non è più in grado di adempiere al proprio ufficio per infermità o per altro grave motivo.
2. La Segreteria Generale può sospendere il procedimento per ciascuna delle ipotesi previste dal comma 1. In ogni caso, revocata la sospensione, il termine residuo per il deposito del lodo, se inferiore, è esteso a 90 giorni.
3. Il nuovo arbitro è nominato dallo stesso soggetto che aveva nominato l'arbitro da sostituire. Se l'arbitro nominato in sostituzione deve a sua volta essere sostituito, il nuovo arbitro è nominato dal Consiglio Arbitrale.
4. Il Consiglio Arbitrale determina l'eventuale compenso spettante all'arbitro sostituito, tenuto conto dell'attività svolta e del motivo della sostituzione.
5. In caso di sostituzione dell'arbitro, il Tribunale Arbitrale nuovamente costituito può disporre la rinnovazione totale o parziale del procedimento svoltosi fino a quel momento.

IV – IL PROCEDIMENTO

ART. 21 – COSTITUZIONE DEL TRIBUNALE ARBITRALE

1. La Segreteria Generale trasmette agli arbitri gli atti introduttivi, con i documenti allegati, dopo che è stato versato il fondo iniziale.
2. Gli arbitri si costituiscono in Tribunale Arbitrale entro trenta giorni dalla data in cui hanno ricevuto gli atti e i documenti trasmessi dalla Segreteria Generale. Tale termine può essere prorogato dalla Segreteria Generale per giustificati motivi.
3. La costituzione del Tribunale Arbitrale avviene mediante redazione di un verbale datato e sottoscritto dagli arbitri, contenente modalità e termini relativi alla prosecuzione del procedimento.
4. In caso di sostituzione di arbitri dopo che il Tribunale Arbitrale si è costituito, la Segreteria Generale trasmette ai nuovi arbitri copia degli atti e dei documenti del procedimento. La nuova costituzione del Tribunale Arbitrale ha luogo ai sensi dei commi 2 e 3.

ART. 22 – POTERI DEL TRIBUNALE ARBITRALE

1. In qualunque momento del procedimento, il Tribunale Arbitrale può tentare di comporre la controversia tra le parti, anche invitando le stesse a svolgere il tentativo di conciliazione presso il Servizio di Conciliazione della Camera Arbitrale di Milano.
2. Il Tribunale Arbitrale può pronunciare tutti i provvedimenti cautelari, urgenti e provvisori, anche di contenuto anticipatorio, che non siano vietati da norme inderogabili applicabili al procedimento.
3. Il Tribunale Arbitrale investito di più procedimenti pendenti può disporre la riunione, se li ritiene connessi.
4. Se più controversie pendono nel medesimo procedimento, il Tribunale Arbitrale può disporre la separazione.
5. Se un terzo chiede di partecipare a un arbitrato pendente oppure se una parte di un arbitrato richiede la partecipazione di un terzo, il Tribunale Arbitrale, sentite tutte le parti, decide a riguardo tenuto conto di tutte le circostanze rilevanti.

ART. 23 – ORDINANZE DEL TRIBUNALE ARBITRALE

1. Salvo quanto previsto per il lodo, il Tribunale Arbitrale decide con ordinanza.
2. Le ordinanze sono pronunciate a maggioranza. Non è necessaria la conferenza personale degli arbitri.
3. Le ordinanze devono essere redatte per iscritto e possono essere sottoscritte dal solo presidente del Tribunale Arbitrale.

ART. 24 – UDIENZE

1. Le udienze sono fissate dal Tribunale Arbitrale, sentita la Segreteria Generale, e sono comunicate alle parti.
2. Le parti possono comparire alle udienze personalmente o a mezzo di rappresentanti con i necessari poteri ed essere assistite da difensori muniti di procura.
3. Le udienze del Tribunale Arbitrale sono accompagnate dalla redazione di un verbale.

ART. 25 - ISTRUZIONE PROBATORIA

1. Il Tribunale Arbitrale istruisce la causa con tutti i mezzi di prova ritenuti ammissibili e rilevanti, e assume le prove secondo le modalità che ritiene opportune.
2. Il Tribunale Arbitrale valuta liberamente tutte le prove, salvo quelle che hanno efficacia di prova legale secondo norme inderogabili applicabili al procedimento o al merito della controversia.
3. Il Tribunale Arbitrale può delegare l'assunzione delle prove ammesse a un proprio membro.

ART. 26 - CONSULENZA TECNICA

1. Il Tribunale Arbitrale può nominare, su istanza di parte o d'ufficio, uno o più consulenti tecnici o delegarne la nomina alla Camera Arbitrale.
2. Il consulente tecnico d'ufficio ha i doveri di indipendenza imposti dal Regolamento agli arbitri e ad esso si applica la disciplina della ricusazione prevista per gli arbitri.
3. Se sono nominati consulenti d'ufficio, le parti possono nominare dei propri consulenti tecnici.
4. Il consulente tecnico d'ufficio deve consentire alle parti e ai consulenti tecnici di parte eventualmente nominati di assistere alle operazioni peritali.

ART. 27 - DOMANDE NUOVE

Il Tribunale Arbitrale, sentite le parti, decide sull'ammissibilità di domande nuove, tenuto conto di ogni circostanza, incluso lo stato del procedimento.

ART. 28 - PRECISAZIONE DELLE CONCLUSIONI

1. Quando ritiene il procedimento maturo per la pronuncia del lodo definitivo, il Tribunale Arbitrale dichiara la chiusura dell'istruzione e invita le parti a precisare le conclusioni.
2. Il Tribunale Arbitrale può, inoltre, fissare un termine per il deposito di memorie conclusionali, memorie di replica e un'udienza di discussione finale.
3. Dopo la chiusura dell'istruzione, le parti non possono proporre nuove domande, compiere nuove allegazioni, produrre nuovi documenti o proporre nuove istanze istruttorie, salva diversa determinazione del Tribunale Arbitrale.
4. I commi precedenti si applicano anche nell'ipotesi in cui il Tribunale Arbitrale ritenga di pronunciare lodo parziale, limitatamente all'oggetto di tale lodo.

ART. 29 - TRANSAZIONE E RINUNCIA AGLI ATTI

Le parti o i loro difensori comunicano alla Segreteria Generale la rinuncia agli atti a seguito di transazione o di altro motivo, così esonerando il Tribunale Arbitrale dall'obbligo di pronunciare il lodo.

V - IL LODO ARBITRALE

ART. 30 - DELIBERAZIONE, FORMA E CONTENUTO DEL LODO

1. Il lodo è deliberato con la partecipazione di tutti i membri del Tribunale Arbitrale e assunto a maggioranza di voti. In tale ultimo caso, il lodo deve dare atto che è stato deliberato con la partecipazione di tutti gli arbitri, nonché dell'impedimento o del rifiuto di chi non sottoscrive.
2. Il lodo è redatto per iscritto e contiene:
 - a. l'indicazione degli arbitri, delle parti, dei loro difensori;
 - b. l'indicazione della convenzione arbitrale;
 - c. l'indicazione della sede dell'arbitrato;
 - d. l'indicazione delle conclusioni delle parti;
 - e. l'esposizione anche sommaria dei motivi della decisione;
 - f. il dispositivo;
 - g. la decisione sulla ripartizione dei costi del procedimento, con riferimento al provvedimento di liquidazione disposto dal Consiglio Arbitrale e sulle spese di difesa sostenute dalle parti.
3. Di ogni sottoscrizione deve essere indicata la data. Le sottoscrizioni possono avvenire in luoghi e tempi diversi.
4. La Segreteria Generale segnala agli arbitri, che richiedano l'esame di una bozza del lodo prima della sua sottoscrizione, l'eventuale mancanza dei requisiti formali richiesti da questo articolo.

ART. 31 - DEPOSITO E COMUNICAZIONE DEL LODO

1. Il Tribunale Arbitrale deposita il lodo presso la Segreteria Generale in tanti originali quante sono le parti più uno.
2. La Segreteria Generale trasmette ad ogni parte un originale del lodo entro dieci giorni dalla data del deposito.

ART. 32 - TERMINE PER IL DEPOSITO DEL LODO DEFINITIVO

1. Il Tribunale Arbitrale deve depositare presso la Segreteria Generale il lodo definitivo entro sei mesi dalla sua costituzione salvo diverso accordo delle parti nella convenzione arbitrale.
2. In ogni caso, il termine per il deposito del lodo può essere prorogato anche d'ufficio dal Consiglio Arbitrale o, quando vi sia il consenso delle parti circa la proroga, dalla Segreteria Generale.
3. Il termine è sospeso dalla Segreteria Generale, oltre che nei casi espressamente previsti dal Regolamento, in presenza di altro giustificato motivo.

ART. 33 - LODO PARZIALE E LODO NON DEFINITIVO

1. Il Tribunale Arbitrale può pronunciare uno o più lodi, anche parziali o non definitivi.
2. Il lodo di cui al comma precedente non modifica il termine di deposito del lodo definitivo, fatta salva la facoltà di richiedere proroga alla Camera Arbitrale.
3. Al lodo parziale e al lodo non definitivo si applicano le disposizioni del Regolamento sul lodo. Il lodo non definitivo non contiene la decisione sulle spese di procedimento e sulle spese di difesa.

ART. 34 - CORREZIONE DEL LODO

1. L'istanza di correzione deve essere depositata presso la Segreteria Generale entro 30 giorni dal ricevimento del lodo.
2. Il Tribunale Arbitrale, sentite le parti, decide con provvedimento entro 60 giorni dal ricevimento dell'istanza.
3. Il provvedimento del Tribunale Arbitrale, in caso di accoglimento, è parte integrante del lodo.
4. In ogni caso, nessun onere aggiuntivo verrà posto a carico delle parti, salva diversa determinazione ad opera della Camera Arbitrale.

VI - I COSTI DEL PROCEDIMENTO**ART. 35 - VALORE DELLA CONTROVERSIA**

1. Il valore della controversia, ai fini della definizione dei costi del procedimento, è dato dalla somma delle domande presentate da tutte le parti.
2. La Segreteria Generale determina il valore della controversia sulla base degli atti introduttivi e sulla base delle ulteriori indicazioni delle parti e del Tribunale Arbitrale. I criteri utilizzati per la determinazione del valore della controversia sono indicati nell'Allegato A del Regolamento, che è parte integrante del medesimo.
3. In ogni fase del procedimento la Segreteria Generale, qualora lo ritenga opportuno, può suddividere il valore della controversia in relazione alle domande di ciascuna parte e richiedere alle stesse gli importi correlati a tali domande.
4. In caso di suddivisione del valore della controversia, gli onorari della Camera Arbitrale e del Tribunale Arbitrale non potranno essere superiori al massimo delle Tariffe determinate in base al valore complessivo della controversia di cui al comma 1 del presente articolo.

ART. 36 - COSTI DEL PROCEDIMENTO

1. La liquidazione dei costi del procedimento è disposta dal Consiglio Arbitrale, prima del deposito del lodo.
2. Il provvedimento di liquidazione è comunicato alle parti e al Tribunale Arbitrale, che lo menziona nella decisione sui costi contenuta nel lodo. La liquidazione disposta dal Consiglio Arbitrale non pregiudica la decisione del Tribunale Arbitrale in ordine alla ripartizione dell'onere delle spese tra le parti.
3. Se il procedimento si conclude prima della costituzione del Tribunale Arbitrale, la liquidazione dei costi del procedimento è disposta dalla Segreteria Generale.
4. I costi del procedimento sono composti dalle seguenti voci:
 - a. onorari della Camera Arbitrale;
 - b. onorari del Tribunale Arbitrale;
 - c. onorari dei consulenti tecnici d'ufficio;
 - d. rimborsi spese della Camera Arbitrale, degli arbitri e dei consulenti tecnici d'ufficio.
5. Gli onorari della Camera Arbitrale per l'amministrazione del procedimento sono determinati in base al valore della controversia, secondo le Tariffe allegate al Regolamento. Possono essere determi-

nati onorari della Camera Arbitrale inferiori a quelli previsti nei casi di conclusione anticipata del procedimento. Le attività incluse e quelle escluse dagli onorari della Camera Arbitrale sono indicate nell'Allegato B del Regolamento, che è parte integrante del medesimo.

6. Gli onorari del Tribunale Arbitrale sono determinati in base al valore della controversia, secondo le Tariffe allegate al Regolamento. Nella determinazione degli onorari del Tribunale Arbitrale il Consiglio Arbitrale tiene conto dell'attività svolta, della complessità della controversia, della durata del procedimento e di ogni altra circostanza. In casi di conclusione anticipata del procedimento possono essere determinati onorari inferiori al minimo delle Tariffe. In casi straordinari possono altresì essere determinati onorari inferiori al minimo o superiori al massimo delle Tariffe.
7. Gli onorari dei consulenti tecnici d'ufficio sono determinati con equo apprezzamento, anche tenendo conto della tariffa professionale, della tariffa giudiziale e di ogni altra circostanza.
8. I rimborsi spese degli arbitri e dei consulenti tecnici d'ufficio devono essere comprovati dai relativi documenti di spesa. In difetto di loro esibizione, si considerano assorbiti dai relativi onorari.

ART. 37 – DEPOSITI ANTICIPATI E FINALI

1. Dopo lo scambio degli atti introduttivi, la Segreteria Generale richiede alle parti un fondo iniziale, fissando un termine per i relativi depositi.
2. La Segreteria Generale può richiedere alle parti successive integrazioni del fondo iniziale in relazione all'attività svolta ovvero in caso di variazione del valore della controversia, fissando un termine per i depositi.
3. La Segreteria Generale richiede il saldo dei costi del procedimento a seguito della liquidazione finale disposta dal Consiglio Arbitrale e prima del deposito del lodo, fissando un termine per i depositi.
4. Gli importi previsti dai commi 1, 2 e 3 sono richiesti a tutte le parti in eguale misura se la Segreteria Generale definisce un unico valore di controversia, calcolato sommando le domande di tutte le parti. La Segreteria Generale, qualora definisca valori di controversia diversi in ragione del valore delle domande formulate dalle parti, richiede gli importi previsti dai commi 1, 2 e 3 a ciascuna parte per l'intero in relazione alle rispettive domande.
5. Ai fini della richiesta dei depositi, la Segreteria Generale può considerare più parti come una sola, tenuto conto delle modalità di composizione del Tribunale Arbitrale o della omogeneità degli interessi delle parti.
6. Su istanza motivata di parte, la Segreteria Generale può ammettere che per gli importi di cui ai commi 1, 2 e 3 sia prestata garanzia bancaria o assicurativa, fissandone le condizioni.

ART. 38 – MANCATO DEPOSITO DEI FONDI

1. Se una parte non deposita l'importo richiesto, la Segreteria Generale può richiederlo all'altra parte e fissare un termine per il pagamento ovvero può, se non lo abbia già stabilito in precedenza, suddividere

il valore della controversia e richiedere a ciascuna parte un importo correlato al valore delle rispettive domande, fissando un termine per il deposito.

2. In ogni caso di mancato deposito entro il termine fissato, la Segreteria Generale può sospendere il procedimento, anche limitatamente alla domanda per la quale vi è inadempimento. La sospensione è revocata dalla Segreteria Generale, verificato l'adempimento.
3. Decorso un mese dalla comunicazione del provvedimento di sospensione previsto dal comma 2 senza che il deposito sia eseguito dalle parti, la Segreteria Generale può dichiarare l'estinzione del procedimento, anche limitatamente alla domanda per la quale vi è inadempimento, senza che con ciò venga meno l'efficacia della convenzione arbitrale.

VII – DISPOSIZIONI TRANSITORIE

ART. 39 – ENTRATA IN VIGORE

1. Il presente Regolamento entra in vigore il 1° gennaio 2010.
2. Se le parti non hanno diversamente convenuto, il nuovo Regolamento è applicato ai procedimenti instaurati dopo l'entrata in vigore del medesimo.

ALLEGATO "A"

CRITERI DI DETERMINAZIONE DEL VALORE DELLA CONTROVERSIA

1. Tutte le domande formulate dalle parti, volte ad una pronuncia dichiarativa, di condanna o costitutiva, concorrono a formare il valore della controversia.
2. Se la parte formula domande in via principale e in via subordinata, viene considerata, ai fini del valore della controversia, la sola domanda in via principale.
3. Se la quantificazione del credito oggetto della domanda o dell'eccezione di compensazione richiede la preliminare valutazione di più pretese prospettate dalla parte in via alternativa e non in via subordinata tra di loro, il valore della controversia è determinato dalla somma dei valori di tali pretese.
4. Se la parte chiede l'accertamento di un credito con conseguente pronuncia dichiarativa, di condanna o costitutiva in relazione ad una sola parte di esso, il valore della domanda è determinato dall'intero ammontare del credito oggetto di accertamento.
5. Il valore del credito eccepito in compensazione non viene calcolato se è inferiore o uguale al valore del credito azionato dalla controparte. Se è superiore, si calcola la sola eccedenza.
6. Se una parte, in sede di precisazione delle conclusioni, modifica il valore delle domande precedentemente formulate, si calcola il valore delle domande in relazione alle quali il Tribunale Arbitrale ha svolto le attività di accertamento.
7. Se il valore della controversia non è determinato né determinabile, la Camera Arbitrale lo stabilisce con equo apprezzamento.
8. La Camera Arbitrale può determinare il valore della controversia secondo parametri diversi da quelli previsti dai commi precedenti, se la loro applicazione appare manifestamente iniqua.

ALLEGATO "B"

ONORARI DELLA CAMERA ARBITRALE: ATTIVITÀ COMPRESE E ATTIVITÀ ESCLUSE

1. Sono comprese negli onorari della Camera Arbitrale indicati nelle Tariffe le seguenti attività:
 - a. gestione e amministrazione dei procedimenti come definito nel Preambolo del Regolamento, in relazione a ciascun organo della Camera Arbitrale;
 - b. ricevimento e trasmissione degli atti;
 - c. controllo di regolarità formale degli atti;
 - d. convocazione e ospitalità delle udienze nei propri locali;
 - e. presenza del personale alle udienze e verbalizzazione delle udienze di cui alla lett. d.
2. Sono escluse dagli onorari della Camera Arbitrale e costituiscono voci di pagamento specifico, qualora richieste, le seguenti attività o servizi:
 - a. fotocopie di atti e documenti depositati dalle parti in un numero di copie insufficiente, comprese le eventuali copie di atti e documenti effettuate dalla Segreteria per il consulente tecnico d'ufficio.
 - b. regolarizzazione dell'imposta di bollo sugli atti (apposizione marche);
 - c. registrazione delle udienze e trascrizione dei relativi nastri;
 - d. servizi di interpretariato;
 - e. videoconferenza;
 - f. spese di trasferta del personale della Segreteria Generale eventualmente presente alle udienze che si tengano fuori dai propri locali;
 - g. fotocopiatura di atti e documenti in caso di richiesta di ritiro del fascicolo.

CODICE DEONTOLOGICO DELL'ARBITRO

ART. 1 - ACCETTAZIONE DEL CODICE DEONTOLOGICO

1. Colui che accetta la nomina ad arbitro in un arbitrato amministrato dalla Camera Arbitrale di Milano, sia nominato dalla parte, dagli altri arbitri, dalla Camera Arbitrale o da altro soggetto, si impegna a svolgere l'incarico secondo il Regolamento della Camera Arbitrale e secondo il presente Codice Deontologico.
2. Il Codice Deontologico si applica anche al consulente tecnico d'ufficio nominato nei procedimenti arbitrali amministrati dalla Camera Arbitrale.

ART. 2 - ARBITRO NOMINATO DALLA PARTE

L'arbitro nominato dalla parte, che deve rispettare, in ogni fase del procedimento, tutti i doveri imposti dal presente Codice Deontologico, può sentire la parte o il suo difensore in occasione della nomina del presidente del tribunale arbitrale, qualora sia stato incaricato di provvedervi. Le indicazioni fornite dalla parte non sono vincolanti per l'arbitro.

ART. 3 - COMPETENZA

L'arbitro, quando accetta, deve essere certo di poter svolgere il proprio incarico con la competenza richiesta dalla sua funzione giudicante e dalla materia oggetto della controversia.

ART. 4 - DISPONIBILITÀ

L'arbitro, quando accetta, deve essere certo di poter dedicare all'arbitrato il tempo e l'attenzione necessari, al fine di svolgere e concludere l'incarico nel modo più sollecito possibile.

ART. 5 - IMPARZIALITÀ

L'arbitro, quando accetta, deve essere certo di poter svolgere il proprio incarico con la indispensabile imparzialità insita nella funzione giudicante che si appresta a svolgere nell'interesse di tutte le parti, salvaguardando il proprio ruolo da qualunque pressione esterna, diretta o indiretta.

ART. 6 - INDIPENDENZA

L'arbitro, quando accetta, deve oggettivamente essere in una situazione di assoluta indipendenza. Egli/ella deve rimanere indipendente in ogni fase del procedimento ed anche dopo il deposito del lodo, per il periodo di eventuale impugnazione dello stesso.

ART. 7 - DICHIARAZIONE DI IMPARZIALITÀ E INDIPENDENZA

1. Per garantire la sua imparzialità e indipendenza, l'arbitro, quando accetta, deve rilasciare la dichiarazione scritta prevista dal Regolamento della Camera Arbitrale.
2. Qualunque dubbio in merito alla opportunità di dichiarare o meno un fatto, una circostanza o un rapporto deve essere risolto a favore della dichiarazione.
3. Il successivo accertamento di fatti, circostanze o rapporti che avrebbero dovuto essere dichiarati può essere valutato dalla Camera

Arbitrale come causa di sostituzione dell'arbitro, anche d'ufficio, nel corso del procedimento e di non conferma in un nuovo procedimento.

ART. 8 – SVOLGIMENTO DEL PROCEDIMENTO

L'arbitro deve favorire un completo e rapido svolgimento del procedimento.

In particolare, deve stabilire i tempi e i modi delle udienze così da consentire la partecipazione delle parti su un piano di totale parità e di assoluto rispetto del principio del contraddittorio.

ART. 9 – COMUNICAZIONI UNILATERALI

L'arbitro deve evitare, in qualunque fase del procedimento, ogni comunicazione unilaterale con qualunque parte o i suoi difensori, senza darne immediata notizia alla Camera Arbitrale perché lo comunichi alle altre parti e agli altri arbitri.

ART. 10 – TRANSAZIONE

L'arbitro può sempre suggerire alle parti l'opportunità di una transazione o di una conciliazione della controversia ma non può influenzare la loro determinazione, facendo intendere di avere già raggiunto un giudizio sull'esito del procedimento.

ART. 11 – DELIBERAZIONE DEL LODO

L'arbitro deve evitare qualunque atteggiamento ostruzionistico o non collaborativo, garantendo una pronta partecipazione alla fase di deliberazione del lodo. Rimane impregiudicata la sua facoltà di non sottoscrivere il lodo, in caso di deliberazione presa a maggioranza del tribunale arbitrale.

ART. 12 – SPESE

1. L'arbitro non può accettare alcun accordo diretto o indiretto con le parti o i loro difensori in relazione all'onorario e alle spese.
2. L'onorario dell'arbitro è determinato esclusivamente dalla Camera Arbitrale secondo le Tariffe fissate dalla stessa, che si ritengono approvate dall'arbitro quando accetta l'incarico.
3. L'arbitro deve evitare spese superflue che possano far aumentare immotivatamente i costi della procedura.

ART. 13 – VIOLAZIONE DEL CODICE DEONTOLOGICO

L'arbitro che non rispetta le norme del presente Codice Deontologico è sostituito, anche d'ufficio, dalla Camera Arbitrale che, a seguito di tale violazione, può anche rifiutarne la conferma in successivi procedimenti.

www.camera-arbitrale.com

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CAMERA DI
COMMERCIO
MILANO



CAMERA
ARBITRALE
MILANO

Milan Chamber of Commerce - International Arbitration Rules, 2004

Milan Chamber of Commerce

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PREAMBLE - THE CHAMBER OF ARBITRATION

Tasks and bodies of the Chamber of Arbitration

- 23 1. The Chamber of National and International Arbitration of Milan,
an entity of the Chamber of Commerce of Milan, performs the fol-
lowing tasks:
- 24 a. it administers arbitral proceedings under these Rules ;
- 25 b. at the request of the parties, it appoints arbitrators in proceed-
ings not administered under these Rules;
- 26 c. it administers arbitral proceedings under the Arbitration Rules of
the United Nations Commission for International Trade Law (Unci-
tral);
- 27 d. at the request of the parties, it appoints arbitrators in accordance
with the Uncitral Rules.
- 28 2. The Chamber of Arbitration performs the tasks provided for in
these Rules through the Arbitral Council and the Secretariat.

The Arbitral Council

- 30 1. The Arbitral Council has general competence over all matters
relating to the administration of arbitral proceedings and issues all
orders relating thereto, without prejudice to the Secretariat's com-
petences under these Rules.
- 31 2. The Arbitral Council is composed of a President and six mem-
bers, one being the deputy president, appointed for four years by
the Board of the Chamber of Arbitration.
- 32 3. The Board of the Chamber of Arbitration may appoint a max-
imum of two foreign experts to the Arbitral Council, in addition to
the members in paragraph 2. The meetings of the Arbitral Council

21 are chaired by its President or, in his absence, by his deputy or, if
both are absent, by its oldest member.

- 22 4. The meetings of the Arbitral Council are valid where half of its 33
members plus one are present.
5. The meetings of the Arbitral Council may be held by video con- 34
ference.
6. The Arbitral Council deliberates by majority of the members 35
present. In case of deadlock, the vote of the meeting's chairman
shall prevail.
7. In urgent cases, the President of the Arbitral Council may take 36
measures relating to the administration of arbitral proceedings that
are within the competence of the Arbitral Council and inform the
Arbitral Council thereof at the next following meeting.

The Secretariat

- 37 1. The Secretariat performs the tasks indicated in these Rules and 38
is sues all related orders. The Secretariat further:
- a. acts as the Arbitral Council's secretariat, taking minutes of the 39
Council's meetings and signing the Council's orders;
- b. reports to the Arbitral Council on the progress of arbitral pro- 40
ceedings;
- c. forwards the orders of the Arbitral Council and its own orders 41
to the parties and to the Arbitral Tribunal, as well as to any other
addressee;
- d. creates and maintains the dossiers of the arbitral proceed- 42
ings;
- e. forwards notices at the request of the Arbitral Council and the 43
Arbitral Tribunal;

f. issues certified copies of acts and documents at the request of the parties, as well as declarations and certificates relating to the arbitral proceedings.

2. The Secretariat performs its tasks through the Secretary General, the deputy Secretary General or its thereto delegated officers.

I - GENERAL PROVISIONS

Art. 1 - Scope of application

1. These Rules shall apply where the arbitral clause or other agreement between the parties provides that they shall apply. A reference in the agreement to the Chamber of Arbitration of Milan or to the Chamber of Commerce of Milan shall be deemed to provide for the application of these Rules.

2. Further to paragraph 1, these Rules shall apply where:

- a. a party files a signed request for arbitration proposing arbitration under these Rules;
- b. the other party accepts this proposal by a signed statement within the time limit set by the Secretariat.

Art. 2 - Rules applicable to the proceedings

1. The arbitral proceedings shall be governed by these Rules, subordinately by the rules agreed upon by the parties, further subordinately by the rules set by the Arbitral Tribunal.

2. Mandatory provisions that are applicable to the arbitral proceedings shall always apply.

3. The principle of due process and equal treatment of the parties shall always be complied with.

Art. 3 - Rules applicable to the merits of the dispute

1. The Arbitral Tribunal shall decide on the merits of the dispute in accordance with the rules of law unless the parties expressly provided that the Tribunal decide ex aequo et bono.

2. The Arbitral Tribunal shall decide in accordance with the rules chosen by the parties in the arbitration agreement or subsequently until the Arbitral Tribunal is constituted.

3. In the absence of an agreement pursuant to paragraph 2, the Arbitral Tribunal shall choose the rules with which the subject matter of the dispute has its closest connection.

4. In any case the Arbitral Tribunal shall take into account trade usages.

Art. 4 - Seat of the arbitration

1. The parties shall determine the seat of the arbitration in their arbitration agreement.

2. In the absence of such determination, the seat of the arbitration shall be Milan.

3. Notwithstanding the provision in paragraph 2, the Arbitral Council may determine a different seat of the arbitration, either in Italy or abroad, taking into account the requests by the parties and any other circumstance.

4. The Arbitral Tribunal may decide that hearings or other procedural acts take place in a locati on other than the seat.

Art. 5 - Language of the arbitration

1. The language of the arbitration shall be agreed upon by the par-

ties in their arbitration agreement or subsequently until the Arbitral Tribunal is constituted.

2. In the absence of an agreement by the parties, the Arbitral Tribunal shall determine the language of the arbitration. The Secretariat shall indicate the language of acts precedent to that determination.

3. The Arbitral Tribunal may accept the submission of documents in a language other than the language of the arbitration and may order that they be translated into the language of the arbitration.

Art. 6 - Filing and sending of acts

1. The parties shall file acts and documents with the Secretariat as follows: one original for the Chamber of Arbitration and one for each party, plus as many copies as there are arbitrators. The Secretariat shall indicate the number of copies where the number of arbitrators has not yet been determined.

2. Unless otherwise provided by these Rules, the Secretariat shall send notices to the parties, arbitrators, expert witnesses and third parties by registered mail or by any other appropriate means allowing for a formal proof of delivery.

Art. 7 - Time limits

1. The expiry of a time limit set by these Rules or by the Arbitral Council, Secretariat or Arbitral Tribunal shall not cause the related right to lapse, unless so determined by these Rules or by the order setting the time limit.

2. The Arbitral Council, Secretariat and Arbitral Tribunal may extend a time limit they have set before it expires. Time limits that

entail lapse of right may be extended only for serious reasons or by agreement of all parties.

3. The initial day shall be excluded from the calculation of time limits. Where the date of expiry falls on a Saturday or a holiday, it shall be extended to the first subsequent working day.

Art. 8 - Confidentiality

1. The Chamber of Arbitration, the Arbitral Tribunal and the expert witnesses shall keep all inconstitution relating to the proceedings confidential.

2. The award may be published only with the prior written consent of the parties to the Chamber of Arbitration.

Art. 9 - Arbitration governed by Italian law

1. Where Italian law applies, the arbitration shall be "rituale " unless the parties determined it to be "irrituale " in their arbitration agreement.

2. Where the arbitration is based on an arbitral clause in the act of incorporation or founding or in the by-laws of a company and, in derogation of a provision in that clause, the Arbitral Council shall appoint all the members of the Arbitral Tribunal; it shall appoint a sole arbitrator where it deems it appropriate and the clause does not provide for a panel.

II - COMMENCEMENT OF THE PROCEEDINGS

Art. 10 - Request for arbitration

1. The claimant shall file a request for arbitration with the Secre-

tariat.

2. The request shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:

- a. the names and domiciles of the parties;
- b. a description of the dispute and claims and an indication of their economic value;
- c. the appointment of the arbitrator or all necessary indications as to the number of arbitrators and the manner of their selection;
- d. the evidence, if any, in support of the claim and all documents that the party deems appropriate to enclose;
- e. all indications, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or the ex aequo et bono decision, the seat and the language of the arbitration;
- f. the power of attorney to counsel, if already appointed;
- g. the arbitration agreement.

3. The Secretariat shall forward the request for arbitration to defendant within five working days of the filing. At the request of claimant, the Secretariat shall forward the request through a bailiff. Claimant may forward the request for arbitration directly to defendant, provided that the request is also filed with the Secretariat.

Art. 11 - Statement of defence

1. The defendant shall file its statement of defence with the Secretariat within thirty days of receiving the request from the Secretariat. The Secretariat may extend this time limit for justified reasons.

2. The statement shall be signed by the party or by its counsel with

power of attorney and shall contain or be accompanied by:

- a. the name and domicile of defendant;
- b. a (summary) description of its defence;
- c. the appointment of the arbitrator or all necessary indications as to the number of arbitrators and the manner of their selection;
- d. the evidence, if any, in support of the statement of defence and all documents that the party deems appropriate to enclose;
- e. all indications, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or the ex aequo et bono decision, the seat and the language of the arbitration;
- f. the power of attorney to counsel, if already appointed.

3. The Secretariat shall forward the statement of defence to claimant within five working days of the filing. At the request of defendant, the Secretariat shall forward the statement through a bailiff. Defendant may forward the statement of defence directly to claimant, provided that the statement is also filed with the Secretariat.

4. Where defendant does not file a statement of defence, the arbitration shall proceed in its absence.

Art. 12 - Counterclaim

1. Defendant may file counterclaims with its statement of defence, indicating their economic value.

2. In case of counterclaim by defendant, claimant may file a reply with the Secretariat within thirty days of receiving the statement of defence. The Secretariat may extend this time limit for justified reasons.

3. The Secretariat shall forward the reply of claimant to defendant ¹¹⁹⁰⁹ within five working days of the filing.

110 **Art. 13 - Admissibility of the arbitral proceedings**

111 1. Where a party objects to the application of these Rules before the Arbitral Tribunal is constituted, the Arbitral Council shall decide on the admissibility of the arbitration.

112 2. The decision of the Arbitral Council that the arbitration is admissible shall not be binding on the Arbitral Tribunal.

113 **III - THE ARBITRAL TRIBUNAL**

114 **Art. 14 - Number of arbitrators**

115 1. The Arbitral Tribunal shall consist of a sole arbitrator or a panel of an uneven number of arbitrators.

116 2. In the absence of an agreement by the parties as to the number of the arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator. The Arbitral Council may refer the dispute to a panel of three arbitrators if it deems it appropriate because of the complexity or economic value of the dispute.

117 3. Where the arbitration agreement provides for an arbitral panel but does not indicate the number of arbitrators, the Arbitral Tribunal shall consist of three arbitrators.

118 4. Where the arbitration agreement provides for an even number of arbitrators, the Arbitral Tribunal shall consist of that number of arbitrators plus one.

Art. 15 - Appointment of arbitrators

1. The arbitrators shall be appointed in accordance with the rules established by the parties in the arbitration agreement. 120

2. Unless otherwise agreed in the arbitration agreement, the sole arbitrator shall be appointed by the Arbitral Council. 121

3. Where the parties have agreed on the common appointment of the sole arbitrator without indicating a time limit therefor, this time limit shall be set by the Secretariat. If the parties fail to reach an agreement, the sole arbitrator shall be appointed by the Arbitral Council. 122

4. Unless otherwise agreed in the arbitration agreement, the arbitral panel shall be appointed in the following manner: 123

a. Each party shall appoint an arbitrator in the request for arbitration and the statement of defence, respectively; if a party fails to do so, the arbitrator shall be appointed by the Arbitral Council. 124

b. The President of the Arbitral Tribunal shall be appointed by the Arbitral Council. The parties may, however, provide that the President be appointed by common agreement of the two arbitrators appointed by the parties. If the two arbitrators fail to reach an agreement within the time limit indicated by the parties or set by the Secretariat where the parties have not indicated it, the President shall be appointed by the Arbitral Council. 125

5. Where the parties have different nationalities or are domiciled in different countries, the Arbitral Council shall appoint as sole arbitrator or President of the Arbitral Tribunal a person of a nationality other than that of the parties, unless otherwise agreed by the parties. 126

Art. 16 - Appointment of arbitrators in multi -party arbitration

128 Where the request for arbitration is filed by or against several parties, the Arbitral Council shall appoint all the members of the Arbitral Tribunal, notwithstanding a different provision in the arbitration agreement, if any; it shall appoint a sole arbitrator where it deems it appropriate and the arbitration agreement does not provide for a panel. However, where the parties form into two groups at the outset and each group appoints an arbitrator, as if the dispute were between two parties only, and accepts that the Arbitral Tribunal consist of three members, the Arbitral Council shall appoint only the President.

Art. 17 - Incompatibility

129 The following persons may not be appointed as arbitrators:

130 a. the members of the Board of the Chamber of Arbitration;

131 b. the members of the Arbitral Council of the Chamber of Arbitration;

132 c. the auditors of the Chamber of Arbitration;

133 d. the employees of the Chamber of Arbitration;

134 e. the professional partners and employees of the persons sub

135 a, b and c and all who have an ongoing cooperative professional relationship with those persons.

Art. 18 - Acceptance by arbitrators

136 The Secretariat shall give notice of their appointment to the arbitrators. Within ten days of receiving this notice, the arbitrators shall give notice of their acceptance to the Secretariat.

127

Art. 19 - Statement of independence and confirmation of arbitrators

138

1. When giving notice of their acceptance the arbitrators shall submit their statement of independence to the Secretariat. 139
2. The arbitrator shall indicate in the statement of independence: 140
 - a. any relationship with the parties or their counsel which may affect his impartiality and independence; 141
 - b. any personal or economic interest, either direct or indirect, in the subject matter of the dispute; 142
 - c. any prejudice or reservation as to the subject matter of the dispute as well as the time and duration of the above . 143
3. The Secretariat shall forward a copy of the statement of independence to the parties. Within ten days of receiving the statement, each party may file written comments with the Secretariat. 144
4. After expiry of the time limit in paragraph 3, the arbitrator shall be confirmed by the Secretariat if he has filed a statement of independence without considerable qualifications and the parties file no comments thereto. In any other case, the Arbitral Council shall decide on the confirmation. 145
5. Where necessary due to supervening facts or at the request of the Secretariat, the statement of independence shall be repeated in the course of the arbitration until its conclusion. 146

Art. 20 - Challenge of arbitrators

147

1. Each party may file a reasoned challenge against the arbitrators on any ground that casts a doubt on their independence or impartiality. 148

2. The challenge shall be filed with the Secretariat within ten days of receiving the statement of independence or of becoming aware of the ground for challenge.

3. The Secretariat shall forward the challenge to the arbitrators and the other parties and set a time limit for filing comments, if any.

4. The Arbitral Council shall decide on the challenge.

Art. 21 - Replacement of arbitrators

1. An arbitrator shall be replaced by another arbitrator where:

a. he does not accept his appointment or resigns after accepting it;

b. he is not confirmed;

c. the Arbitral Council accepts the challenge against the arbitrator;

d. the Arbitral Council removes the arbitrator for violation of the duties of the Arbitral Tribunal under these Rules or on other serious grounds;

e. he dies or is no longer able to perform his tasks due to infirmity or other serious grounds.

2. The Secretariat may suspend the proceedings in any of the cases in paragraph 1.

3. The new arbitrator shall be appointed by the same entity that appointed the arbitrator who is being replaced. If the replacing arbitrator must also be replaced, the new arbitrator shall be appointed by the Arbitral Council.

4. The Arbitral Council shall determine the fees, if any, due to

the arbitrator who has been replaced, taking into account the work done and the ground for replacement.

5. In case of replacement of the arbitrator, the new Arbitral Tribunal may decide that all or some of the acts in the proceedings be repeated.

Art. 22 - Lack of jurisdiction of the Arbitral Tribunal

An objection of lack of jurisdiction of the Arbitral Tribunal shall be raised in the first act or at the first hearing following the request to which the objection refers, under pain of expiry.

Art. 23 - Irregular appointment of the Arbitral Tribunal

Where the Arbitral Tribunal deems that its members have been appointed in violation of a mandatory provision applicable to the proceedings or these Rules, it shall issue a reasoned order that all acts be returned to the Chamber of Arbitration, thereby giving notice that all members of the Arbitral Tribunal have resigned.

IV - THE PROCEEDINGS

Art. 24 - Constitution of the Arbitral Tribunal

1. The Secretariat shall forward the request for arbitration and the statement of defence to the arbitrators, together with all annexed documents, when the advance payment is made.

2. The arbitrators shall constitute the Arbitral Tribunal within thirty days of receiving the acts and documents forwarded by the Secretariat. The Secretariat may extend this time limit for justified reasons.

3. The constitution of the Arbitral Tribunal shall be formalized in minutes dated and signed by the arbitrators, indicating the seat and language of the arbitration and establishing the modalities and time limits for further proceedings. 18171

172 4. Where arbitrators are replaced after the Arbitral Tribunal has been constituted, the Secretariat shall forward the acts and documents of the proceedings to the new arbitrators. The new Arbitral Tribunal shall be constituted pursuant to paragraphs 2, 3 and 4.

173 **Art. 25 - Powers of the Arbitral Tribunal**

174 1. At any moment in the proceedings, the Arbitral Tribunal may attempt conciliation between the parties.

175 2. The Arbitral Tribunal may issue all urgent and interim measures of protection, also of an anticipatory nature, that are not prohibited by mandatory provisions applicable to the proceedings.

176 3. Where multiple proceedings are pending before the Arbitral Tribunal, the Tribunal may order that they be consolidated, if it deems them to be objectively connected.

177 4. Where the same proceedings concerns several disputes, the Arbitral Tribunal may order that these disputes be separated.

178 5. The Arbitral Tribunal may take all measures that are deemed necessary to correct or supplement the parties' representation or legal assistance.

179 **Art. 26 - Orders of the Arbitral Tribunal**

180 1. The Arbitral Tribunal shall decide by order, the award excepted.

2. Orders shall be issued by majority vote. The arbitrators shall not necessarily meet in personal conference.

3. Orders shall be in writing and may be signed only by the President of the Arbitral Tribunal. 182

4. The orders of the Arbitral Tribunal may be revoked. 183

Art. 27 - Hearings 184

1. The date of the hearings shall be determined by the Arbitral Tribunal together with the Secretariat and communicated to the parties with adequate notice. 185

2. The parties may appear at the hearing either in person or through duly empowered representatives and be assisted by counsel with power of attorney. 186

3. If a party does not appear at the hearing without justified reason, the Arbitral Tribunal shall ascertain whether the party was duly summoned and may then proceed with the hearing. If it ascertains that the party was not duly summoned, the Arbitral Tribunal shall summon the party again. 187

4. Minutes shall be taken of the hearings of the Arbitral Tribunal. The Arbitral Tribunal may decide that the minutes be replaced, in whole or in part, by a recording. 188

Art. 28 - Evidence taking 189

1. The Arbitral Tribunal may hear the parties and gather all the evidence that is not excluded by mandatory provisions applicable to the proceedings or to the merits of the dispute, both on its own initiative and at the request of a party. 190

2. The Arbitral Tribunal shall freely evaluate all evidence, with the 191

exception of legal evidence under mandatory provisions applicable to the proceedings or to the merits of the dispute.

3. The Arbitral Tribunal may delegate the evidence taking to one of its members.

Art. 29 - Expert witnesses

1. The Arbitral Tribunal may appoint one or more expert witnesses to the arbitral body or delegate their appointment to the Chamber of Arbitration.

2. Expert witnesses shall be bound by the same duties as arbitrators under these Rules; the challenge provisions for arbitrators shall apply.

3. Expert witnesses shall allow the parties to be present, either directly or through their counsel, when they perform their task.

4. Where expert witnesses to the arbitral body are appointed, the parties may appoint their own expert witnesses. The expert witnesses' activities at which the party-appointed expert witnesses were present shall be deemed to have been perconstituted in the presence of the parties.

Art. 30 - New claims

1. The Arbitral Tribunal shall decide on the merits of new claims filed by the parties in the course of the proceedings where one of the following conditions is met:

a. the party against which the claim is filed declares that it accepts adversarial proceedings on that claim or does not object thereto before raising any defence on the merits;

b. the new claim is objectively connected with one of the claims in

the proceedings.

2. The Arbitral Tribunal shall always allow for a written reply to new claims.

Art. 31 - Conclusions

1. When it deems that the case is ripe for issuing a final award, the Arbitral Tribunal shall close the evidence -taking phase and ask all parties to file their conclusions.

2. The Arbitral Tribunal shall set a time limit for filing final statements, if it deems that such statements are necessary or if a party so requests. The Arbitral Tribunal may set further time limits for statements in reply and schedule a final hearing.

3. When asked by the Arbitral Tribunal to file their conclusions, the parties may not file new claims, plead new facts, submit new documents or request new evidence taking.

4. The above paragraphs shall also apply where the Arbitral Tribunal deems it appropriate to issue a partial award, with respect to the dispute that is the subject matter of that award.

Art. 32 - Settlement and withdrawal

The parties or their counsel shall inform the Secretariat that they withdraw their claims because of a settlement or on other grounds, thereby relieving the Arbitral Tribunal, if already constituted, of the obligation to render an award.

V - THE ARBITRAL AWARD

Art. 33 - Deliberation of the award

212 The award shall be deliberated by the Arbitral Tribunal by majority
vote. The arbitrators shall deliberate in personal conference only if
the rules applicable to the proceedings so require.

Art. 34 - Form and contents of the award

- 214 1. The award shall be in writing and shall indicate:
- 215 a. the parties and their counsel;
 - 216 b. the arbitration agreement;
 - 217 c. the “rituale ” or “irrituale ” nature of the award, where Italian law
applies to the proceedings;
 - 218 d. the seat of the arbitration;
 - 219 e. the claims filed by the parties;
 - 220 f. the reasons for the decision;
 - 221 g. the dispositive part (dictum);
 - 222 h. the decision on the costs of the proceedings, referring to the
assessment thereof by the Arbitral Council, and on the legal costs
of the parties;
 - 223 i. the date, place and manner of the deliberation.
- 224 2. The award shall be signed by all the members of the Arbitral
Tribunal or by a majority of them. In this latter case, the award
shall state that the arbitrators who did not sign could not or did not
wish to do so.
- 225 3. Each signature shall indicate its place and date. The arbitrators
may sign at different places and times.

- 210 4. The Secretariat shall indicate any non-compliance with the for- 226
mal requirements under this Article to the Arbitral Tribunal where
211 the Tribunal submits a draft award for examination before signing
it.

Art. 35 - Filing and notification of the award

1. The Arbitral Tribunal shall file the award with the Secretariat in 228
as many originals as there are parties plus one.
2. The Secretariat shall forward the original award to each party 229
within ten days of the filing.

Art. 36 - Time limit for filing the final award

1. The Arbitral Tribunal shall file the final award with the Secre- 231
tariat within six months of its being constituted, thereby closing the
proceedings.
2. The Arbitral Council or, when the parties so agree, the Secre- 232
tariat may extend the time limit in paragraph 1.
3. The time limit in paragraph 1 shall be suspended by the Sec- 233
retariat in the cases expressly provided for in these Rules and for
any other justified reason.

Art. 37 - Partial award and interim award

1. The Arbitral Tribunal may render a partial award when it settles 235
only one or some of the issues of the dispute.
2. The Arbitral Tribunal may render an interim award to settle one or 236
more preliminary, procedural or substantive issues or in any other
case allowed by the rules applicable to the proceedings.

3. In cases under paragraphs 1 and 2 the Arbitral Tribunal shall order the continuation of the proceedings.

4. A partial and interim award shall not affect the time limit for filing the final award, requests for extension to the Chamber of Arbitration excepted.

5. The provisions on the award in these Rules shall apply to partial and interim awards. An interim award shall not contain a decision on the costs of the proceedings and the legal costs.

Art. 38 - Correction of the award

1. The award may be corrected in the cases and within the time limits provided for in the rules applicable to the proceedings.

2. A request for correction shall be filed with the Secretariat, which shall forward it to the Arbitral Tribunal. The Arbitral Tribunal shall decide by order after hearing the parties within a month of receiving the request for correction.

VI - COSTS OF THE PROCEEDINGS

Art. 39 - Value of dispute

1. For determining the costs of the proceedings, the value of the dispute shall be the sum of the claims filed by all parties.

2. The Secretariat shall determine the value of the dispute on the basis of the request for arbitration and statement of defence and all further indications of the parties and the Arbitral Tribunal. The criteria for determining the value of the dispute are indicated in Annexe A to these Rules.

3. In any stage of the proceedings the Secretariat may divide the

value of the dispute in relation to the claims of each party and request to each party the payments relating to these claims.

Art. 40 - Costs of the proceedings

1. The Arbitral Council shall make a final determination of the costs of the proceedings before the award is filed.

2. The Arbitral Tribunal shall be constituted of the determination of the costs by the Arbitral Council and shall refer thereto in the decision on the costs in the award. The determination by the Arbitral Council shall not affect the decision of the Arbitral Tribunal as to the apportionment of the costs among the parties.

3. Where the proceedings end before the Arbitral Tribunal is constituted, the Secretariat shall finally determine the costs of the proceedings.

4. The costs of the proceedings shall include:

a. fees of the Chamber of Arbitration;

b. fees of the Arbitral Tribunal;

c. fees of the expert witnesses to the arbitral body;

d. reimbursement of expenses of the arbitrators;

e. reimbursement of expenses of the expert witnesses to the arbitral body.

5. The fees of the Chamber of Arbitration for administering the proceedings shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. Where the proceedings end before the award is rendered, lower fees may be determined. The activities included and excluded, respectively, in the fees of the Chamber of Arbitration are indicated in Annexe B to these Rules.

6. The fees of the Arbitral Tribunal shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. When determining the fees of the Arbitral Tribunal, the Arbitral Council shall take into account the work done, the complexity of the dispute, the rapidity of the proceedings and any other circumstance. Different fees may be established for each member of the Arbitral Tribunal. Lower fees than the minimum fees provided for in the Schedule may be determined where the proceedings end before the award is rendered; fees in excess of the Schedule may be determined in exceptional cases .

7. The fees of the expert witnesses to the arbitral body shall be determined in equity, taking into account the schedule of fees of their profession, the court schedule of fees and any other circumstance.

8. The reimbursement of the expenses of arbitrators and expert witnesses to the arbitral body shall be against documents proving such expenses. If such documents are lacking, the expenses shall be deemed to be included in the fees.

Art. 41 - Advance and final payments

1. When the request for arbitration and the statement of defence are filed, the Secretariat shall request the parties to make an advance payment and set a time limit for this payment.

2. The Secretariat may request further advance payments to the parties in relation to work done or changes in the value of the dispute, and set a time limit for these payments.

3. The Secretariat shall request payment of the balance of the costs following the final determination by the Arbitral Council before the award is filed, and shall set a time limit for these payments.

4. The payments in paragraphs 1, 2 and 3 shall be requested of all parties in equal parts where the Secretariat estimates one value of the dispute on the basis of all the claims filed by the parties, or shall be requested of the parties in different proportions on the basis of the value of their respective claims.

5. For requesting payments, the Secretariat may consider several parties as one, taking into account the manner in which the Arbitral Tribunal is constituted or the community of interests of the parties.

Art. 42 - Failure to pay

1. Where a party does not make a requested payment, the Secretariat may request the other party to make a substitute payment and set a time limit therefor, or may divide the value of the dispute, if it has not yet been estimated, request each party to make a payment based on the value of its claim and set a time limit therefor.

2. If any of the requested payments is not made within the time limit given therefor, the Secretariat may suspend the entire proceedings or only the proceedings on the request to which the payment refers. The Secretariat shall lift the suspension order when the payment is made.

3. Where the parties do not make the payment within two months of the notice of the order of suspension under paragraph 2, the Secretariat may declare the entire proceedings, or the proceedings on the request to which the payment refers, concluded.

VII - PROVISIONAL PROVISIONS

Art. 43 - Entry into force

1. These Rules shall be effective as of 1 January 2004.

2. The Arbitral Council may add to, amend and replace these Rules and establish the date on which the new provisions shall enter into force by a decision to be approved by the Board of the Chamber of Arbitration.

3. Unless otherwise provided, the new provisions introduced pursuant to paragraph 2 shall apply to proceedings commenced after the date on which the provisions have entered into force.

ANNEXE “A”

Criteria for determining the value of the dispute

1. The value of the dispute shall be the sum of all the claims filed by the parties that aim at obtaining a declarative order, an order to pay or perform or an order that establishes a new juridical situation.

2. Where a party files primary and subsidiary claims, only the primary claims shall be taken into account for determining the value of the dispute.

3. Where it is necessary to make a preliminary estimate of several alternative claims, rather than subordinate claims, filed by the parties in order to determine the subject matter of a claim or claim for set-off, the value of the dispute shall be determined on the basis of the sum of these claims.

4. Where a party seeks ascertainment of a debt while only seeking a declarative order, an order to pay or perform or an order that modifies the existing juridical situation with respect to a part thereof, the value of the claim shall be the total amount of the debt to be ascertained.

5. The value of a debt claimed as set-off shall not be calculated if

it is lower than or equal to the debt claimed by the other party. If it is higher, only the value in excess shall be calculated.

6. Where a party modifies the value of its claims when filing its conclusions, the value of the claims shall be calculated with respect to the claims that the Arbitral Tribunal has examined.

7. Where the value of the dispute is undetermined and undeterminable, the Chamber of Arbitration shall determine it in equity.

8. The Chamber of Arbitration may determine the value of the dispute according to criteria other than those provided for in the above paragraphs, where the application of the criteria in the above paragraphs is manifestly unjust.

ANNEXE “B”

Fees of the Chamber of Arbitration: included and excluded activities

1. The following activities shall be included in the fees of the Chamber of Arbitration indicated in the Schedule of Fees:

a. Managing and administering proceedings as defined in the Preamble to these Rules with respect to each body of the Chamber of Arbitration;

b. Receiving and forwarding acts;

c. Controlling the formal validity of acts,

d. Convening and hosting hearings on its premises;

e. Supplying its staff at hearings and taking minutes of hearings.

2. The following activities and services are excluded from the fees

of the Chamber of Arbitration and shall be paid for separately, if requested: 307

- 296 a. Photocopying acts and documents filed by the parties where the number of copies is insufficient;
- 297 b. Adding revenue stamp taxes to acts where needed;
- 298 c. Recording of hearings and transcription of tapes;
- 299 d. Interpretation services;
- 300 e. Videoconference.

301 CODE OF ETHICS OF ARBITRATORS

302 Art. 1 - Acceptance of the Code of Ethics

- 303 1. An arbitrator accepting a mandate in an arbitration administered by the Chamber of Arbitration of Milan shall act in accordance with the Rules of the Chamber of Arbitration and this Code of Ethics, independent of the party that appointed him.
- 304 2. This Code of Ethics shall apply by analogy to expert witnesses to the arbitral body appointed in the arbitral proceedings administered by the Chamber of Arbitration.

305 Art. 2 - Party -appointed arbitrator

306 A party-appointed arbitrator shall be bound by all the duties under this Code of Ethics throughout the entire course of the proceedings ; he may contact the party or its counsel regarding the appointment of the President of the Arbitral Tribunal if asked to appoint him. The indications given by the party shall not be binding on the arbitrator.

Art. 3 - Competence

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary competence with respect to his adjudicating function and the subject matter of the dispute. 308

Art. 4 - Availability 309

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to devote the necessary time and attention to the arbitration to perform and complete his task as expeditiously as possible. 310

Art. 5 - Impartiality 311

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary impartiality characterizing the adjudicating function he undertakes in the interest of all parties. 312

Art. 6 - Independence 313

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be objectively independent. He shall remain independent during the entire arbitral proceedings as well as after the award is filed, during the period in which annulment of the award can be sought. 314

Art. 7 - Statement of impartiality and independence 315

- 316 1. In order to guarantee his impartiality and independence, the ar-

bitrator shall supply the written statement provided for by the Rules of the Chamber of Arbitration when accepting his mandate

2. All doubts as to the opportunity to disclose a fact, circumstance or relationship shall be resolved in favour of disclosure.

3. Where facts, circumstances and relationships that should have been disclosed are subsequently discovered, the Chamber of Arbitration may deem that this fact is a ground for replacing the arbitrator during the proceedings or not confirming him in other arbitral proceedings.

Art. 8 - Development of the proceedings

The arbitrator shall promote a thorough and expeditious development of the proceedings. In particular, he shall decide on the date and manner of the hearings in such a way as to allow for the equal treatment of all parties and the full compliance with the due process of law.

Art. 9 - Unilateral contacts

In the entire course of the proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel. Where there is such a unilateral contact, the arbitrator shall immediately notify the Chamber of Arbitration so that the Chamber can inform the other parties and arbitrators.

Art. 10 - Settlement

The arbitrator may at all stages suggest the possibility of a settlement or conciliation of the dispute to the parties but may not influence their decision by indicating that he has already reached a decision on the outcome of the proceedings.

Art. 11 - Deliberation of the award

The arbitrator shall refrain from any obstructive or non-cooperative behaviour and promptly participate in the deliberation. He shall remain free to refuse to sign the award where the decision is taken by majority vote by the Arbitral Tribunal.

Art. 12 - Costs

1. The arbitrator shall not accept any direct or indirect arrangement on fees and expenses with any of the parties or their counsel.

2. The arbitrator shall be entitled to a fee and reimbursement of expenses as solely determined by the Chamber of Arbitration in accordance with its Schedule of Fees, which is deemed to be approved by the arbitrator when accepting his mandate.

3. The arbitrator shall avoid superfluous expenses that can increase the costs of the proceedings in an unjustified manner.

Art. 13 - Violation of the Code of Ethics

The arbitrator who does not comply with this Code of Ethics shall be replaced by the Chamber of Arbitration, which may also refuse to confirm him in subsequent proceedings because of this violation.

Schedule of Fees

Schedule of Fees in Euros

For the current table of fees check with the The Milan Chamber of National and International Arbitration www.camera-arbitrale.com.

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arbitral panel fee	nbsp;	dispute value	chamber fee	sole arbitrator fee
1.	up to 25.000	400	600 - 1.500	1.600 - 3.800
2.	25.001 - 50.000	800	1.500 - 2.500	3.800 - 6.000
3.	50.001 - 100.000	1.500	2.500 - 4.500	6.000 - 12.000
4.	100.001 - 250.000	3.000	4.500 - 10.000	12.000 - 25.000
5.	250.001 - 500.000	5.000	10.000 - 20.000	25.000 - 50.000
6.	500.001 - 1.000.000	8.000	20.000 - 30.000	50.000 - 75.000
7.	1.000.001 2.500.000	- 12.000	30.000 - 50.000	75.000 - 120.000
8.	2.500.001 5.000.000	- 18.000	50.000 - 80.000	120.000 - 180.000
9.	5.000.001 10.000.000	- 25.000	80.000 - 100.000	180.000 - 250.000
10.	10.000.001 25.000.000	- 35.000	100.000 - 130.000	250.000 - 320.000
11.	25.000.001 50.000.000	- 48.000	130.000 - 180.000	320.000 - 420.000
12.	50.000.001 100.000.000	- 70.000	180.000 - 230.000	420.000 - 550.000
13.	above 100.000.000	see [1]	see [2]	see [3]

[1] 0,1% of amount exceeding 100.000 maximum amount 120.000

[2] 230.000 + 0,05% of the amount exceeding 100.000.000

[3] 550.000 + 0,12% of the amount exceeding 100.000.000

This Schedule of Fees shall be effective as of 1 January 2004; it does not include VAT and any other legal and fiscal duties mandated by law.

The total amount of fees is indicated, to be apportioned among the parties.

Payments shall be made either by cheque made out to the Cham-

ber of National and International Arbitration of Milan (Camera Arbitrale Nazionale e Internazionale di Milano) or by bank transfer to account no. 000000385928, Banca Intesa BCI, Milan headquarters (sede centrale di Milano), ABI 03069 - CAB 9400 - CIN H.

Arbitral Council and Secretariat

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ARBITRAL COUNCIL

344

Members (from 1st March 2001 to 1st March 2005)

345

346

President	Edoardo Ricci	Professor of Civil Procedure Law, University of Milan. Lawyer in Milan
Vice-President	Giorgio Schiavoni	Lawyer in Milan
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Councillor	Marco Weigmann	Lawyer in Turin

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CODE OF ETHICAL CONDUCT FOR ARBITRATORS

January 2015

CODE OF ETHICAL CONDUCT FOR ARBITRATORS

PREAMBLE

The FORUM expects Arbitrators to observe fundamental standards of ethical conduct. Various aspects of Arbitrator conduct, including some matters covered by this Code, may be governed by agreements of the parties or applicable rules or law. This Code does not take the place of, or supersede, any such agreements, rules and laws, and does not establish any new or additional grounds for judicial review of arbitration awards. While this Code is intended to provide ethical guidelines, it is not part of the arbitration rules or the Code of Procedure of the FORUM or of any other organization.

This Code of Ethical Conduct applies to all FORUM proceedings in which disputes or claims are submitted to one or more Arbitrators.

The FORUM presumes that all Arbitrators are neutral, whether appointed by the parties directly or selected from a list provided by the FORUM, unless expressly provided in an agreement by the parties. The special ethical considerations of Party-appointed non-neutral Arbitrators are covered by Canon Eight.

Portions of this Code have been modeled after or taken from the Code of Ethics for Arbitrators in Commercial Disputes, prepared, approved and recommended by a Special Committee of the American Bar Association (www.americanbar.org)

CODE OF ETHICAL CONDUCT FOR ARBITRATORS

CANON ONE

An Arbitrator should uphold the integrity and fairness of the dispute resolution process.

- A. An Arbitrator should recognize a responsibility to the parties whose rights will be decided, to other participants in the proceeding, to the integrity and fairness of the process itself and to the public.
- B. An Arbitrator should perform duties diligently, conduct a proceeding as effectively and economically as practicable, and conclude a case as efficiently and promptly as the circumstances reasonably permit.

- C. Arbitrators should treat all parties equally and conduct themselves in a way that is fair to all parties. They should not be swayed by outside pressure, by public clamor, by fear of criticism or by self-interest.
- D. An Arbitrator should be patient with and courteous to the parties, their lawyers and the participants, and should encourage similar conduct by all participants in the proceedings.
- E. An Arbitrator should comply with applicable procedures and rules, and should neither exceed authority nor do less than is required to exercise authority completely.
- F. An Arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties by other participants or other abuses or disruption of the process.
- G. The ethical obligations of an Arbitrator begin upon appointment and continue throughout all stages of the proceeding.

CANON TWO

An Arbitrator should disclose any interest or relationship that affects impartiality or creates an unfavorable appearance of partiality or bias.

- A. An Arbitrator should avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest, that adversely affects impartiality or might reasonably create the unfavorable appearance of partiality or bias. For a reasonable period of time after a case, Arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances that might reasonably create the impression that they had been influenced by the anticipation or expectation of the relationship or interest.
- B. Persons who are asked to serve as Arbitrators should, before accepting, disclose:
 - (1) Any financial, personal or material interest in the outcome of the arbitration;
 - (2) Any existing or past material, financial, business, professional, family or social relationships that affect impartiality or might reasonably create an unfavorable appearance of partiality or bias;
 - (3) The nature and extent of any prior knowledge they may have of the dispute;
and
 - (4) Any additional matters, relationships, or interests they are obligated to disclose.
- C. Persons asked to serve as Arbitrators should disclose any such relationships they personally have with any Party, lawyer or individual whom they understand will be a witness. They should also disclose any such relationships involving immediate members of their families or their current employers, partners or business associates.
- D. Arbitrators should make a reasonable effort to inform themselves of any interests or relationships described above.
- E. The obligation to disclose the material interests or significant relationships described above is a continuing duty. An Arbitrator must disclose any such interests or relationships regardless of the stage in the proceedings in which they arise, or are recalled or discovered.
- F. Disclosure should be made to all parties and to any other Arbitrator.

- (1) If the Arbitrator would need to disclose confidential or privileged information in order to comply with this code, the Arbitrator must obtain permission from the holder of the confidence or privilege.
 - (2) If the Arbitrator cannot obtain permission, the Arbitrator should withdraw.
- G. Any doubt as to whether or not to disclose should be resolved in favor of disclosure.
- H. In the event the Parties, having knowledge of the Arbitrator's interests, relationships and prior knowledge, nevertheless desire that individual to serve as the Arbitrator, that individual may properly serve.
- I. In the event that all parties ask an Arbitrator to withdraw because of prejudice or bias, the Arbitrator should do so. In the event that fewer than all of the parties ask an Arbitrator to withdraw because of prejudice or bias, the Arbitrator should withdraw unless either of the following circumstances exists:
 - (1) Other applicable rules exist determining challenges; or
 - (2) The Arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, that the Arbitrator can act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense to another Party or would be contrary to the ends of justice.
- J. After accepting an appointment an Arbitrator should not withdraw unless compelled to by unexpected circumstances that would make it impossible or impracticable to continue.
 - (1) An Arbitrator may withdraw if parties fail or refuse to remit agreed upon compensation.
 - (2) If an Arbitrator withdraws before completing an assignment for any reason, the Arbitrator should take reasonable steps to protect the parties' interests, including returning evidentiary materials and protecting confidentiality.

CANON THREE

In communicating with the parties, an Arbitrator should avoid impropriety or the appearance of impropriety.

- A. An Arbitrator should not discuss a case with any Party in the absence of each other Party, except in any of the following circumstances:
 - (1) Discussions may be had with a Party concerning such matters as the identities of the Parties, counsel or witnesses and the general nature of the case, setting the time and place of proceedings or making other arrangements for the conduct of the proceedings or procedural questions. The Arbitrator should not make any final determination concerning the matter discussed before giving each absent Party an opportunity to respond.
 - (2) In response to inquiries from a Party or its counsel to determine suitability and availability for appointment, which may include receiving information about the general nature of the case, however, should not include a discussion of the merits.
 - (3) If a Party fails to be present at a proceeding after having been given due notice, the Arbitrator may discuss the case with any Party who is present.

- (4) Private discussions may take place if requested or consented to by all parties.
 - (5) Such discussions may take place as otherwise provided in applicable rules or in an agreement of the parties.
- B. Whenever an Arbitrator communicates in writing with one Party, the Arbitrator should at the same time send a copy of the communication to each other Party.

CANON FOUR

In order to accept an appointment as Arbitrator an Arbitrator should be competent and available to serve.

- A. An Arbitrator should meet the qualifications delineated in the Parties' agreement or where applicable, the FORUM Code of Procedure.
- B. An Arbitrator should undertake adequate preparation and diligence throughout the Arbitration.
- C. The Arbitrator should be available to conduct the Arbitration in a reasonable amount of time and should withdraw if unable to continue in a timely and competent manner.

CANON FIVE

An Arbitrator should be honest and trustworthy and maintain confidentiality.

- A. An Arbitrator is in a relationship of trust with the parties and should not, at any time, use confidential information acquired during the proceeding to gain personal advantage or advantage for others, or to adversely affect the interest of another.
- B. Unless otherwise agreed by the parties, or required by applicable rules or law, an Arbitrator shall keep confidential all matters relating to the proceedings and shall not disclose to anyone except the parties at any time confidential awards or settlements.

CANON SIX

An Arbitrator should make decisions in a just, independent, and deliberate manner.

- A. An Arbitrator should, after careful deliberation, decide all issues submitted for determination and no other issues.
- B. An Arbitrator should not delegate to any other person the duty to decide.
- C. In the event that all parties agree upon a settlement of the issues in dispute and ask an Arbitrator to embody that agreement in an award, an Arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of the agreement. Whenever an Arbitrator embodies a settlement in an award, the Arbitrator should state in the award that it is based on an agreement of the parties. An arbitrator may discuss settlement but should not exert pressure to settle and should not be present at settlement talks or act as a mediator unless agreed to by all of the Parties.

CANON SEVEN

An Arbitrator should be truthful and accurate in matters of advertising, marketing and compensation.

- A. Advertising and marketing of an Arbitrator should accurately reflect the Arbitrator's qualifications, experience, fees and availability.
- B. An arbitrator should uphold the dignity of the office in areas regarding compensation such that there is agreement to rates and charges prior to the engagement.
- C. Arbitrators should avoid bargaining with parties over the amount of payments, engaging in negotiations concerning payments or discussing payments in any way that would create an appearance of coercion or other impropriety. Matters concerning fees should be handled by the FORUM.

CANON EIGHT

Arbitrators appointed by one Party should comply with this Code except for the exemptions provided in for Canon Nine for designated non-neutral Arbitrators.

Arbitrators appointed by one party are presumed neutral and have the obligation to determine, and report to the Parties, the FORUM and the other Arbitrators if any agreement by the Parties' or applicable law would indicate that one or more of the Arbitrators would be designated as non-neutral.

CANON NINE

Arbitrators designated as non-neutral should adhere to this Code with the substitution where applicable, of these special ethical guidelines.

- A. A non-neutral Arbitrator is obligated to inform all Parties, other Arbitrators and the FORUM of his or her non-neutral status.
- B. A non-neutral Arbitrator is obligated to complete the FORUM's disclosure requirements but is not subject to removal based on the relationship or prior knowledge of the appointing Party.
- C. A non-neutral Arbitrator may engage in *ex parte* communication with the Party that appointed the Arbitrator until deliberations begin unless the Parties agree otherwise.

The FORUM

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SINGAPORE INTERNATIONAL ARBITRATION CENTRE

CODE OF ETHICS FOR AN ARBITRATOR ("Code of Ethics")

1 Appointment

- 1.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.
- 1.2 Should the prospective arbitrator be aware of any potential time constraints in the next 12 months in his ability to discharge his duties if he is appointed as an arbitrator, he shall, without breaching any existing confidentiality considerations and/or obligations, disclose details of such time constraints to the Registrar of SIAC in the attached Disclosure Sheet. SIAC reserves the right to refuse to appoint the prospective arbitrator should it take the view that the prospective arbitrator will not be able to discharge his duties due to such potential time constraints.
- 1.3 The prospective arbitrator confirms that he understands that the Registrar of SIAC will take into account any failure by the prospective arbitrator to discharge his duties to ensure the fair, expeditious, economical and final determination of the dispute when fixing the quantum of fees payable to the arbitrator.

2 Disclosure

- 2.1 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue throughout the arbitral proceedings with regard to new facts and circumstances.
- 2.2 A prospective arbitrator shall disclose to the Registrar and any party who approaches him for a possible appointment:
 - (a) any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
 - (b) the extent of any prior knowledge he may have of the dispute.

3 Bias

- 3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.
- 3.2 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's

judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

4 Communications

4.1 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

4.2 Save as may be permitted under the applicable arbitration rules, no arbitrator shall confer with any of the parties or their counsel until after the Registrar gives notice of the formation of the Tribunal to the parties.

4.3 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

5 Fees

5.1 In accepting an appointment, an arbitrator agrees to the remuneration as settled by the SIAC, and he shall make no unilateral arrangements with any of the parties or their counsel for any additional fees or expenses, except with the express agreement of the Registrar.

5.2 All matters relating to arbitrators' fees and expenses shall be dealt with in accordance with the *Practice Note for Administered Cases* (PN – 01/14, 2 January 2014).

6 Conduct

6.1 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

7 Confidentiality

7.1 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

7.2 This Code of Ethics is not intended to provide grounds for the setting aside of any award.

Disclosure Sheet (If applicable)

Disclosure pursuant to paragraph 1.2 of the Code of Ethics

Disclosure pursuant to paragraph 2 of the Code of Ethics

SINGAPORE INTERNATIONAL ARBITRATION CENTRE

CODE OF ETHICS FOR AN ARBITRATOR

1 Appointment

- 1.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.

2 Disclosure

- 2.1 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue throughout the arbitral proceedings with regard to new facts and circumstances.
- 2.2 A prospective arbitrator shall disclose to the Registrar and any party who approaches him for a possible appointment:
- (a) any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
 - (b) the extent of any prior knowledge he may have of the dispute.

3 Bias

- 3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.
- 3.2 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgement. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

4 Communications

- 4.1 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.
- 4.2 No arbitrator shall confer with any of the parties or their counsel until after the Registrar gives notice of the formation of the Tribunal to the parties.
- 4.3 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

5 Fees

- 5.1 In accepting an appointment, an arbitrator agrees to the remuneration as settled by the SIAC, and he shall make no unilateral arrangements with any of the parties or their counsel for any additional fees or expenses, except with the express agreement of the Registrar.
- 5.2 All matters relating to arbitrators' fees and expenses shall be dealt with in accordance with *the Practice Note for Administered Cases* (PN – 01/09, 1 April 2009).

6 Conduct

- 6.1 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

7 Confidentiality

- 7.1 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 7.2 This Code is not intended to provide grounds for the setting aside of any award.



Code of Judicial Conduct

Adopted on the 25th day of July, 2013

Preface

The desire of the CCJ to have, review and update its own Code of Judicial Conduct is in keeping with international standards for the maintenance of the highest ideals for judicial rectitude.

The preface to the Bangalore Principles for judicial conduct, widely accepted as the authoritative statement of the universal norms, states that a judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other Protections fail; it provides a bulwark to the public against any encroachments on rights and freedoms under the law. This is part of the commitment of the Caribbean Court of Justice as reflected in the Mission, Vision, and Values expressed at the commencement of the Strategic Plan for the Court.

The judges of the court have reflected collegially and in detail. We affirm the principles set out in this code which evidences our intention to spare no effort to ensure that the streams of justice remain pure and unpolluted.

The code is of value, to the judiciaries, lawyers and other practitioners but most importantly to the public so it can know the firm foundation we have laid for a judiciary of unimpeachable integrity.

Rt. Hon. Sir Dennis Byron
President
Caribbean Court of Justice

Introduction

The Universal Declaration of Human Rights recognises as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of rights and obligations and of any criminal charge.

The International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts and that in the determination of any criminal charge or of rights and obligations in a legal proceeding, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

As a consequence of the foregoing it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

In accordance with Appendix I of the Agreement Establishing the Caribbean Court of Justice, the Judges of the Court upon assumption of office, swear to uphold the values and principles of the Code of Conduct.

The values which this Code upholds are:

- 1. Propriety**
- 2. Independence**
- 3. Integrity**
- 4. Impartiality**
- 5. Equality**
- 6. Competence and Diligence**
- 7. Accountability**

Propriety

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

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| <p>1.1 A judge shall avoid impropriety, and the appearance of impropriety in all of the judge's activities.</p> <p>1.2 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.</p> <p>1.3 As a subject of constant public scrutiny, a judge freely accepts personal restrictions that might be viewed as burdensome by the average citizen.</p> <p>1.4 A judge in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court shall avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.</p> | <p>1.5 Save in exceptional circumstances or out of necessity, a judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.</p> <p>1.6 A judge shall avoid the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge.</p> <p>1.7 A judge shall refrain from conduct that, in the mind of a reasonable, fair-minded and informed person, might give rise to the appearance that the judge is engaged in political activity.</p> |
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- 1.8 A judge shall refrain from:
- 1.8.1 Membership of any political party;
 - 1.8.2 Raising funds for political parties;
 - 1.8.3 Attendance at political party events;
 - 1.8.4 Contributing to political parties or campaigns;
- 1.8.5 Taking part publicly in controversial discussions of a partisan political nature.
- 1.9 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 1.10 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 1.11 A judge shall not testify voluntarily as a character witness, except that a judge may testify as a witness in a criminal

proceeding if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances.

- 1.12 Subject to the proper performance of judicial duties, a judge may engage in activities such as:
- 1.12.1 writing, lecturing, teaching and participating in activities concerning the law, the legal system, the administration of justice and related matters;
 - 1.12.2 appearing at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters;
 - 1.12.3 serving as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters.
- 1.13 A judge may speak publicly or write on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise with the performance of judicial duties in accordance with this Code.

1.14 A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. Care should be taken in allowing his or her name to be associated with an appeal for funds, even for a charitable organisation, lest it be seen as inappropriate use of judicial prestige in support of the organisation or creating a sense of obligation in donors

1.15 A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties.

1.16 A judge may hold or manage personal or family investments save that a judge shall refrain from being engaged in financial or business dealings which may interfere with the proper performance of judicial duties or reflect adversely on the judge's impartiality.

1.17 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

1.18 A judge shall not practise law whilst the holder of judicial office.

1.19 A judge may accept appointment to a commission, committee or to a position that is concerned with the improvement of the law, the legal system, the administration of justice or related matters. A judge may represent a state or international entity on ceremonial occasions or in connection with historical, educational, cultural, sporting or other activities.

1.20 A judge may form or join associations of judges or participate in other organisations promoting the interests of judges such as professional education, training and the protection of judicial independence.

1.21 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

1.22 Subject to law and to any legal requirements of public disclosure, a judge may receive a small token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might

not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

- 1.23 A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:
- (a) such compensation and reimbursement shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activities; and
 - (b) reimbursement shall be limited to the actual cost of travel and accommodation reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family.
- 1.24 A judge shall make such financial disclosures and pay all such taxes as are required by law.
- 1.25 With the proliferation of social networking sites which have transformed electronic communications, a judge

must assess carefully social interactions with individuals or organizations to consider whether such communications will erode confidence in the judge's ability to maintain the dignity of his or her office. In light of this, a judge should:

- 1.25.1 maintain dignity in every comment, photograph and information shared on the social network;
 - 1.25.2 not foster social networking interactions which may convey the impression that any person is in a position to influence the judge in the discharge of his or her duties;
 - 1.25.3 not make comments on a social networking site about any matters pending before him or her or in any court and which may be construed as affecting the outcome or impairing the fairness of the hearing of any particular case.
- 1.26 In their interactions with Court staff judges should at all times display courtesy, understanding and respect, thereby contributing to a harmonious and productive environment.

Independence

Principle:

An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Code:

- 2.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 2.2 A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where such attempt arises outside the proper performance of judicial duties.
- 2.3 Judges of the Court collectively shall ensure that their conduct, official or private, does not undermine their institutional or individual independence or the public appearance of independence.
- 2.4 Although judges are solely responsible for the decisions that they take in the performance of their judicial duties, they may consult with their colleagues when points of difficulty arise on matters of conduct or observance of the Principles of this Code.
- 2.5 While Judges of the Court should not be unmindful of the profound effect which their decisions are likely to have not only on the parties before the Court, but also upon the wider public whose concerns may forcibly be expressed in the media or otherwise, they should not be affected by such publicity, whether favourable or unfavourable.
- 2.6 Judges of the Court accept their responsibility to promote public understanding of the work and decisions of the Court, but must show appropriate caution and restraint when explaining or commenting publicly upon decisions in individual cases.

Integrity

Principle:

Integrity is vital to the proper discharge of the judicial office.

Code:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not only be done but must also be seen to be done.

Impartiality

Principle:

Impartiality is indispensable to the proper discharge of the judicial office. It applies not only to the making of a decision itself but also to the process by which the decision is made.

Code:

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| <p>4.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.</p> <p>4.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.</p> <p>4.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing, ruling or adjudicating in a cause or matter.</p> <p>4.4 A judge shall not knowingly, while a proceeding is before, or could come before the judge, make any comment that might reasonably be viewed as likely to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any</p> | <p>comment in public or otherwise that might affect the fair trial of any person or issue.</p> <p>4.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially.</p> <p>4.6 A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception of a lack of impartiality of the judge including, but not limited to, instances where:</p> <p>4.6.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;</p> |
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4.6.2 the judge previously served as a lawyer or was a material witness in the matter in controversy;

4.6.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge who would otherwise be disqualified on the foregoing ground may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree in writing on the record that the judge may participate or continue to participate in the proceedings, the judge may do so.

4.9 Save for the foregoing, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

Equality

Principle:

Ensuring equality of treatment to all before the courts is an indispensable precept that governs the due discharge of the duties of judicial office.

Code:

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| <p>5.1 A judge shall strive to be aware of and to understand diversity in society and differences arising from various sources, including but not limited to race, colour, gender, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").</p> <p>5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on grounds stated in Article 5.1 or other irrelevant grounds.</p> <p>5.3 A judge shall carry out his or her duties with appropriate consideration for all persons, such as lawyers, parties, witnesses, Court staff or judicial colleagues, while upholding the paramountcy of adjudication according to law.</p> | <p>5.4 A judge shall not knowingly permit Court staff or others subject to the judge's influence, direction or control, to differentiate between persons concerned in a matter which is before the judge, on any irrelevant ground.</p> <p>5.5 A judge shall require lawyers in proceedings before the Court to refrain from manifesting by words or conduct, bias or prejudice based on irrelevant grounds. This requirement does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings.</p> <p>5.6 A judge shall not be a member of, nor associate with, any society or organisation which practises unjust discrimination on the basis of any irrelevant ground.</p> |
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Competence and Diligence

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Code:

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| 6.1 The judicial duties of the judge take precedence over all other activities. | 6.5 Judges of the Court have a collective responsibility to perform all judicial duties efficiently and fairly and this extends to the delivery of reserved decisions with reasonable promptness as far as is humanly possible. |
| 6.2 A judge shall devote his or her professional activity to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in court, including rulings and the making of decisions, but such other tasks that are related to the judicial function or the operations of the Court. | 6.6 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties. |
| 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties. | 6.7 A judge shall maintain order and decorum in all proceeding in which the judge is involved. He or she shall be patient, dignified and courteous in relation to lawyers, litigants, witnesses and others with whom the judge is called upon to deal in an official capacity. The judge shall require similar conduct of legal representatives, Court staff and others subject to the judge's influence, direction or control. |
| 6.4 A judge shall keep himself or herself informed about all relevant developments in the law both regionally and internationally and which may assist in the performance of judicial duties. | |

Accountability

Principle:

Compliance of judges with the Principles of this Code is essential to the effective achievement of its objectives.

Code:

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| <p>7.1 Institutions and procedures for the implementation of this Code shall provide a publicly credible means for considering and determining complaints against judges. This is to be pursued without prejudice or hindrance to the universally recognised and hallowed principle of judicial independence.</p> <p>7.2 By the very nature of their judicial office, judges are not, except in accordance with the law, accountable for their decisions to any organ or entity within the jurisdiction of the Court or elsewhere, but are accountable for their conduct to the Regional Judicial and Legal Services Commission.</p> | <p>7.3 The implementation of this Code shall take into account the legitimate needs of a judge by reason of the nature of the judicial office, to be afforded protection from vexatious or unsubstantiated accusations and due process of law in the resolution of complaints against the judge.</p> <p>7.4 The judiciary shall promote awareness of these Principles and the provisions of this Code.</p> |
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Definitions

In this Code, unless the context otherwise permits or requires the following meanings shall be attributed to the words used:

Court means the Caribbean Court of Justice.

Court staff includes all staff employed with the Court or otherwise performing duties for the Court.

Judge means a Judge of the Caribbean Court of Justice.

Judge's family includes a judge's wife, husband, son, daughter, son-in-law or daughter-in-law, partner, and any other close relative or person who is a companion or an employee of the judge and who lives in the judge's household.

Integrity means the quality of being honest and having strong moral personal principles.

Propriety means conformity with conventionally accepted standards of behaviour or morals or rules of behaviour conventionally considered to be correct.

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Adopted on the 25th day of July, 2013 — |

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Adopted on the 25th day of July, 2013 — |

<p style="text-align: center;">Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012 *</p>

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INTRODUCTORY PROVISIONS

Article 1 Definitions

1. In these Rules:

- (a) provisions of the Treaty on European Union are referred to by the number of the article concerned followed by 'TEU',
- (b) provisions of the Treaty on the Functioning of the European Union are referred to by the number of the article concerned followed by 'TFEU',
- (c) provisions of the Treaty establishing the European Atomic Energy Community are referred to by the number of the article concerned followed by 'TEAEC',
- (d) 'Statute' means the Protocol on the Statute of the Court of Justice of the European Union,
- (e) 'EEA Agreement' means the Agreement on the European Economic Area, ¹
- (f) 'Council Regulation No 1' means Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community. ²

2. For the purposes of these Rules:

- (a) 'institutions' means the institutions of the European Union referred to in Article 13(1) TEU and bodies, offices and agencies established by the Treaties, or by an act adopted in implementation thereof, which may be parties before the Court,
- (b) 'EFTA Surveillance Authority' means the surveillance authority referred to in the EEA Agreement,
- (c) 'interested persons referred to in Article 23 of the Statute' means all the parties, States, institutions, bodies, offices and agencies authorised, pursuant to that Article, to submit statements of case or observations in the context of a reference for a preliminary ruling.

Article 2 Purport of these Rules

These Rules implement and supplement, so far as necessary, the relevant provisions of the EU, FEU and EAEC Treaties, and the Statute.

¹ OJ L 1, 3.1.1994, p. 27.

² OJ, English Special Edition 1952-1958 (I), p. 59.

TITLE I

ORGANISATION OF THE COURT

Chapter 1

JUDGES AND ADVOCATES GENERAL

Article 3 Commencement of the term of office of Judges and Advocates General

The term of office of a Judge or Advocate General shall begin on the date fixed for that purpose in the instrument of appointment. In the absence of any provisions in that instrument regarding the date of commencement of the term of office, that term shall begin on the date of publication of the instrument in the *Official Journal of the European Union*.

Article 4 Taking of the oath

Before taking up his duties, a Judge or Advocate General shall, at the first public sitting of the Court which he attends after his appointment, take the following oath provided for in Article 2 of the Statute:

‘I swear that I will perform my duties impartially and conscientiously; I swear that I will preserve the secrecy of the deliberations of the Court.’

Article 5 Solemn undertaking

Immediately after taking the oath, a Judge or Advocate General shall sign a declaration by which he gives the solemn undertaking provided for in the third paragraph of Article 4 of the Statute.

Article 6 Depriving a Judge or Advocate General of his office

1. Where the Court is called upon, pursuant to Article 6 of the Statute, to decide whether a Judge or Advocate General no longer fulfils the requisite conditions or no longer meets the obligations arising from his office, the President shall invite the Judge or Advocate General concerned to make representations.

2. The Court shall give a decision in the absence of the Registrar.

Article 7 Order of seniority

1. The seniority of Judges and Advocates General shall be calculated without distinction according to the date on which they took up their duties.
2. Where there is equal seniority on that basis, the order of seniority shall be determined by age.
3. Judges and Advocates General whose terms of office are renewed shall retain their former seniority.

Chapter 2

PRESIDENCY OF THE COURT, CONSTITUTION OF THE CHAMBERS AND DESIGNATION OF THE FIRST ADVOCATE GENERAL

Article 8 Election of the President and of the Vice-President of the Court

1. The Judges shall, immediately after the partial replacement provided for in the second paragraph of Article 253 TFEU, elect one of their number as President of the Court for a term of three years.
2. If the office of the President falls vacant before the normal date of expiry of the term thereof, the Court shall elect a successor for the remainder of the term.
3. The elections provided for in this Article shall be by secret ballot. The Judge obtaining the votes of more than half the Judges of the Court shall be elected. If no Judge obtains that majority, further ballots shall be held until that majority is attained.
4. The Judges shall then elect one of their number as Vice-President of the Court for a term of three years, in accordance with the procedures laid down in the preceding paragraph. Paragraph 2 shall apply if the office of the Vice-President of the Court falls vacant before the normal date of expiry of the term thereof.
5. The names of the President and Vice-President elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

Article 9 Responsibilities of the President of the Court

1. The President shall represent the Court.
2. The President shall direct the judicial business of the Court. He shall preside at general meetings of the Members of the Court and at hearings before and deliberations of the full Court and the Grand Chamber.

3. The President shall ensure the proper functioning of the services of the Court.

Article 10 Responsibilities of the Vice-President of the Court

1. The Vice-President shall assist the President of the Court in the performance of his duties and shall take the President's place when the latter is prevented from acting.

2. He shall take the President's place, at his request, in performing the duties referred to in Article 9(1) and (3) of these Rules.

3. The Court shall, by decision, specify the conditions under which the Vice-President shall take the place of the President of the Court in the performance of his judicial duties. That decision shall be published in the *Official Journal of the European Union*.

Article 11 Constitution of Chambers

1. The Court shall set up Chambers of five and three Judges in accordance with Article 16 of the Statute and shall decide which Judges shall be attached to them.

2. The Court shall designate the Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 107 and Articles 193 and 194.

3. In respect of cases assigned to a formation of the Court in accordance with Article 60, the word 'Court' in these Rules shall mean that formation.

4. In respect of cases assigned to a Chamber of five or three Judges, the powers of the President of the Court shall be exercised by the President of the Chamber.

5. The composition of the Chambers and the designation of the Chambers responsible for cases of the kind referred to in Article 107 and Articles 193 and 194 shall be published in the *Official Journal of the European Union*.

Article 12 Election of Presidents of Chambers

1. The Judges shall, immediately after the election of the President and Vice-President of the Court, elect the Presidents of the Chambers of five Judges for a term of three years.

2. The Judges shall then elect the Presidents of the Chambers of three Judges for a term of one year.

3. The provisions of Article 8(2) and (3) shall apply.

4. The names of the Presidents of Chambers elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

*Article 13 Where the President and Vice-President of the Court
are prevented from acting*

When the President and the Vice-President of the Court are prevented from acting, the functions of President shall be exercised by one of the Presidents of the Chambers of five Judges or, failing that, by one of the Presidents of the Chambers of three Judges or, failing that, by one of the other Judges, according to the order of seniority laid down in Article 7.

Article 14 Designation of the First Advocate General

1. The Court shall, after hearing the Advocates General, designate a First Advocate General for a period of one year.
2. If the office of the First Advocate General falls vacant before the normal date of expiry of the term thereof, the Court shall designate a successor for the remainder of the term.
3. The name of the First Advocate General designated in accordance with this Article shall be published in the *Official Journal of the European Union*.

Chapter 3

ASSIGNMENT OF CASES TO JUDGE-RAPPORTEURS AND
ADVOCATES GENERAL

Article 15 Designation of the Judge-Rapporteur

1. As soon as possible after the document initiating proceedings has been lodged, the President of the Court shall designate a Judge to act as Rapporteur in the case.
2. For cases of the kind referred to in Article 107 and Articles 193 and 194, the Judge-Rapporteur shall be selected from among the Judges of the Chamber designated in accordance with Article 11(2), on a proposal from the President of that Chamber. If, pursuant to Article 109, the Chamber decides that the reference is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.
3. The President of the Court shall take the necessary steps if a Judge-Rapporteur is prevented from acting.

Article 16 Designation of the Advocate General

1. The First Advocate General shall assign each case to an Advocate General.

2. The First Advocate General shall take the necessary steps if an Advocate General is prevented from acting.

Chapter 4

ASSISTANT RAPPORTEURS

Article 17 Assistant Rapporteurs

1. Where the Court is of the opinion that the consideration of and preparatory inquiries in cases before it so require, it shall, pursuant to Article 13 of the Statute, propose the appointment of Assistant Rapporteurs.

2. Assistant Rapporteurs shall in particular:

- (a) assist the President of the Court in interim proceedings and
- (b) assist the Judge-Rapporteurs in their work.

3. In the performance of their duties the Assistant Rapporteurs shall be responsible to the President of the Court, the President of a Chamber or a Judge-Rapporteur, as the case may be.

4. Before taking up his duties, an Assistant Rapporteur shall take before the Court the oath set out in Article 4 of these Rules.

Chapter 5

REGISTRY

Article 18 Appointment of the Registrar

1. The Court shall appoint the Registrar.

2. When the post of Registrar is vacant, an advertisement shall be published in the *Official Journal of the European Union*. Interested persons shall be invited to submit their applications within a time-limit of not less than three weeks, accompanied by full details of their nationality, university degrees, knowledge of languages, present and past occupations, and experience, if any, in judicial and international fields.

3. The vote, in which the Judges and the Advocates General shall take part, shall take place in accordance with the procedure laid down in Article 8(3) of these Rules.

4. The Registrar shall be appointed for a term of six years. He may be reappointed. The Court may decide to renew the term of office of the

incumbent Registrar without availing itself of the procedure laid down in paragraph 2 of this Article.

5. The Registrar shall take the oath set out in Article 4 and sign the declaration provided for in Article 5.

6. The Registrar may be deprived of his office only if he no longer fulfils the requisite conditions or no longer meets the obligations arising from his office. The Court shall take its decision after giving the Registrar an opportunity to make representations.

7. If the office of Registrar falls vacant before the normal date of expiry of the term thereof, the Court shall appoint a new Registrar for a term of six years.

8. The name of the Registrar elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

Article 19 Deputy Registrar

The Court may, in accordance with the procedure laid down in respect of the Registrar, appoint a Deputy Registrar to assist the Registrar and to take his place if he is prevented from acting.

Article 20 Responsibilities of the Registrar

1. The Registrar shall be responsible, under the authority of the President of the Court, for the acceptance, transmission and custody of all documents and for effecting service as provided for by these Rules.

2. The Registrar shall assist the Members of the Court in all their official functions.

3. The Registrar shall have custody of the seals and shall be responsible for the records. He shall be in charge of the publications of the Court and, in particular, the European Court Reports.

4. The Registrar shall direct the services of the Court under the authority of the President of the Court. He shall be responsible for the management of the staff and the administration, and for the preparation and implementation of the budget.

Article 21 Keeping of the register

1. There shall be kept in the Registry, under the responsibility of the Registrar, a register in which all procedural documents and supporting items and documents lodged shall be entered in the order in which they are submitted.

2. When a document has been registered, the Registrar shall make a note to that effect on the original and, if a party so requests, on any copy submitted for the purpose.

3. Entries in the register and the notes provided for in the preceding paragraph shall be authentic.
4. A notice shall be published in the *Official Journal of the European Union* indicating the date of registration of an application initiating proceedings, the names of the parties, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments or, as the case may be, the date of lodging of a request for a preliminary ruling, the identity of the referring court or tribunal and the parties to the main proceedings, and the questions referred to the Court.

Article 22 Consultation of the register and of judgments and orders

1. Anyone may consult the register at the Registry and may obtain copies or extracts on payment of a charge on a scale fixed by the Court on a proposal from the Registrar.
2. The parties to a case may, on payment of the appropriate charge, obtain certified copies of procedural documents.
3. Anyone may, on payment of the appropriate charge, also obtain certified copies of judgments and orders.

Chapter 6

THE WORKING OF THE COURT

Article 23 Location of the sittings of the Court

The Court may choose to hold one or more specific sittings in a place other than that in which it has its seat.

Article 24 Calendar of the Court's judicial business

1. The judicial year shall begin on 7 October of each calendar year and end on 6 October of the following year.
2. The judicial vacations shall be determined by the Court.
3. In a case of urgency, the President may convene the Judges and the Advocates General during the judicial vacations.
4. The Court shall observe the official holidays of the place in which it has its seat.
5. The Court may, in proper circumstances, grant leave of absence to any Judge or Advocate General.

6. The dates of the judicial vacations and the list of official holidays shall be published annually in the *Official Journal of the European Union*.

Article 25 General meeting

Decisions concerning administrative issues or the action to be taken upon the proposals contained in the preliminary report referred to in Article 59 of these Rules shall be taken by the Court at the general meeting in which all the Judges and Advocates General shall take part and have a vote. The Registrar shall be present, unless the Court decides to the contrary.

Article 26 Drawing-up of minutes

Where the Court sits without the Registrar being present it shall, if necessary, instruct the most junior Judge for the purposes of Article 7 of these Rules to draw up minutes, which shall be signed by that Judge and by the President.

Chapter 7

FORMATIONS OF THE COURT

Section 1. Composition of the formations of the Court

Article 27 Composition of the Grand Chamber

1. The Grand Chamber shall, for each case, be composed of the President and the Vice-President of the Court, three Presidents of Chambers of five Judges, the Judge-Rapporteur and the number of Judges necessary to reach 15. The last-mentioned Judges and the three Presidents of Chambers of five Judges shall be designated from the lists referred to in paragraphs 3 and 4 of this Article, following the order laid down therein. The starting-point on each of those lists, in every case assigned to the Grand Chamber, shall be the name of the Judge immediately following the last Judge designated from the list concerned for the preceding case assigned to that formation of the Court.

2. After the election of the President and the Vice-President of the Court, and then of the Presidents of the Chambers of five Judges, a list of the Presidents of Chambers of five Judges and a list of the other Judges shall be drawn up for the purposes of determining the composition of the Grand Chamber.

3. The list of the Presidents of Chambers of five Judges shall be drawn up according to the order laid down in Article 7 of these Rules.

4. The list of the other Judges shall be drawn up according to the order laid down in Article 7 of these Rules, alternating with the reverse order: the first Judge on that list shall be the first according to the order laid down in that Article, the second Judge shall be the last according to that order, the third Judge shall be the second according to that order, the fourth Judge the penultimate according to that order, and so on.

5. The lists referred to in paragraphs 3 and 4 shall be published in the *Official Journal of the European Union*.

6. In cases which are assigned to the Grand Chamber between the beginning of a calendar year in which there is a partial replacement of Judges and the moment when that replacement has taken place, two substitute Judges may be designated to complete the formation of the Court for so long as the attainment of the quorum referred to in the third paragraph of Article 17 of the Statute is in doubt. Those substitute Judges shall be the two Judges appearing on the list referred to in paragraph 4 immediately after the last Judge designated for the composition of the Grand Chamber in the case.

7. The substitute Judges shall replace, in the order of the list referred to in paragraph 4, such Judges as are unable to take part in the determination of the case.

Article 28 Composition of the Chambers of five and of three Judges

1. The Chambers of five Judges and of three Judges shall, for each case, be composed of the President of the Chamber, the Judge-Rapporteur and the number of Judges required to attain the number of five and three Judges respectively. Those last-mentioned Judges shall be designated from the lists referred to in paragraphs 2 and 3, following the order laid down therein. The starting-point on those lists, in every case assigned to a Chamber, shall be the name of the Judge immediately following the last Judge designated from the list for the preceding case assigned to the Chamber concerned.

2. For the composition of the Chambers of five Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber concerned, with the exception of its President. The lists shall be drawn up in the same way as the list referred to in Article 27(4).

3. For the composition of the Chambers of three Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber concerned, with the exception of its President. The lists shall be drawn up according to the order laid down in Article 7.

4. The lists referred to in paragraphs 2 and 3 shall be published in the *Official Journal of the European Union*.

Article 29 Composition of Chambers where cases are related or referred back

1. Where the Court considers that a number of cases must be heard and determined together by one and the same formation of the Court, the composition of that formation shall be that fixed for the case in respect of which the preliminary report was examined first.
2. Where a Chamber to which a case has been assigned requests the Court, pursuant to Article 60(3) of these Rules, to assign the case to a formation composed of a greater number of Judges, that formation shall include the members of the Chamber which has referred the case back.

Article 30 Where a President of a Chamber is prevented from acting

1. When the President of a Chamber of five Judges is prevented from acting, the functions of President of the Chamber shall be exercised by a President of a Chamber of three Judges, where necessary according to the order laid down in Article 7 of these Rules, or, if that formation of the Court does not include a President of a Chamber of three Judges, by one of the other Judges according to the order laid down in Article 7.
2. When the President of a Chamber of three Judges is prevented from acting, the functions of President of the Chamber shall be exercised by a Judge of that formation of the Court according to the order laid down in Article 7.

Article 31 Where a member of the formation of the Court is prevented from acting

1. When a member of the Grand Chamber is prevented from acting, he shall be replaced by another Judge according to the order of the list referred to in Article 27(4).
2. When a member of a Chamber of five Judges is prevented from acting, he shall be replaced by another Judge of that Chamber, according to the order of the list referred to in Article 28(2). If it is not possible to replace the Judge prevented from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court who may designate another Judge to complete the Chamber.
3. When a member of a Chamber of three Judges is prevented from acting, he shall be replaced by another Judge of that Chamber, according to the order of the list referred to in Article 28(3). If it is not possible to replace the Judge prevented from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court who may designate another Judge to complete the Chamber.

Section 2. Deliberations

Article 32 Procedures concerning deliberations

1. The deliberations of the Court shall be and shall remain secret.
2. When a hearing has taken place, only those Judges who participated in that hearing and, where relevant, the Assistant Rapporteur responsible for the consideration of the case shall take part in the deliberations.
3. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.
4. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court.

Article 33 Number of Judges taking part in the deliberations

Where, by reason of a Judge being prevented from acting, there is an even number of Judges, the most junior Judge for the purposes of Article 7 of these Rules shall abstain from taking part in the deliberations unless he is the Judge-Rapporteur. In that case the Judge immediately senior to him shall abstain from taking part in the deliberations.

Article 34 Quorum of the Grand Chamber

1. If, for a case assigned to the Grand Chamber, it is not possible to attain the quorum referred to in the third paragraph of Article 17 of the Statute, the President of the Court shall designate one or more other Judges according to the order of the list referred to in Article 27(4) of these Rules.
2. If a hearing has taken place before that designation, the Court shall rehear oral argument from the parties and the Opinion of the Advocate General.

Article 35 Quorum of the Chambers of five and of three Judges

1. If, for a case assigned to a Chamber of five or of three Judges, it is not possible to attain the quorum referred to in the second paragraph of Article 17 of the Statute, the President of the Court shall designate one or more other Judges according to the order of the list referred to in Article 28(2) or (3), respectively, of these Rules. If it is not possible to replace the Judge prevented from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court forthwith who shall designate another Judge to complete the Chamber.
2. Article 34(2) shall apply, *mutatis mutandis*, to the Chambers of five and of three Judges.

Chapter 8

LANGUAGES

Article 36 Language of a case

The language of a case shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish or Swedish.

Article 37 Determination of the language of a case

1. In direct actions, the language of a case shall be chosen by the applicant, except that:

- (a) where the defendant is a Member State, the language of the case shall be the official language of that State; where that State has more than one official language, the applicant may choose between them;
- (b) at the joint request of the parties, the use of another of the languages mentioned in Article 36 for all or part of the proceedings may be authorised;
- (c) at the request of one of the parties, and after the opposite party and the Advocate General have been heard, the use of another of the languages mentioned in Article 36 may be authorised as the language of the case for all or part of the proceedings by way of derogation from subparagraphs (a) and (b); such a request may not be submitted by one of the institutions of the European Union.

2. Without prejudice to the provisions of paragraph 1(b) and (c), and of Article 38(4) and (5) of these Rules,

- (a) in appeals against decisions of the General Court as referred to in Articles 56 and 57 of the Statute, the language of the case shall be the language of the decision of the General Court against which the appeal is brought;
- (b) where, in accordance with the second paragraph of Article 62 of the Statute, the Court decides to review a decision of the General Court, the language of the case shall be the language of the decision of the General Court which is the subject of review;
- (c) in the case of challenges concerning the costs to be recovered, applications to set aside judgments by default, third-party proceedings and applications for interpretation or revision of a judgment or for the Court to remedy a failure to adjudicate, the language of the case shall be the language of the decision to which those applications or challenges relate.

3. In preliminary ruling proceedings, the language of the case shall be the language of the referring court or tribunal. At the duly substantiated request of one of the parties to the main proceedings, and after the other party to the

main proceedings and the Advocate General have been heard, the use of another of the languages mentioned in Article 36 may be authorised for the oral part of the procedure. Where granted, such authorisation shall apply in respect of all the interested persons referred to in Article 23 of the Statute.

4. Requests as above may be decided on by the President; the latter may, and where he wishes to accede to a request without the agreement of all the parties must, refer the request to the Court.

Article 38 Use of the language of the case

1. The language of the case shall in particular be used in the written and oral pleadings of the parties, including the items and documents produced or annexed to them, and also in the minutes and decisions of the Court.

2. Any item or document produced or annexed that is expressed in another language must be accompanied by a translation into the language of the case.

3. However, in the case of substantial items or lengthy documents, translations may be confined to extracts. At any time the Court may, of its own motion or at the request of one of the parties, call for a complete or fuller translation.

4. Notwithstanding the foregoing provisions, a Member State shall be entitled to use its official language when taking part in preliminary ruling proceedings, when intervening in a case before the Court or when bringing a matter before the Court pursuant to Article 259 TFEU. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

5. The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, may be authorised to use one of the languages mentioned in Article 36, other than the language of the case, when they take part in preliminary ruling proceedings or intervene in a case before the Court. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

6. Non-Member States taking part in preliminary ruling proceedings pursuant to the fourth paragraph of Article 23 of the Statute may be authorised to use one of the languages mentioned in Article 36 other than the language of the case. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

7. Where a witness or expert states that he is unable adequately to express himself in one of the languages referred to in Article 36, the Court may authorise him to give his evidence in another language. The Registrar shall arrange for translation into the language of the case.

8. The President and the Vice-President of the Court and also the Presidents of Chambers in conducting oral proceedings, Judges and Advocates General in putting questions and Advocates General in delivering their Opinions

may use one of the languages referred to in Article 36 other than the language of the case. The Registrar shall arrange for translation into the language of the case.

Article 39 Responsibility of the Registrar concerning language arrangements

The Registrar shall, at the request of any Judge, of the Advocate General or of a party, arrange for anything said or written in the course of the proceedings before the Court to be translated into the languages chosen from those referred to in Article 36.

Article 40 Languages of the publications of the Court

Publications of the Court shall be issued in the languages referred to in Article 1 of Council Regulation No 1.

Article 41 Authentic texts

The texts of documents drawn up in the language of the case or, where applicable, in another language authorised pursuant to Articles 37 or 38 of these Rules shall be authentic.

Article 42 Language service of the Court

The Court shall set up a language service staffed by experts with adequate legal training and a thorough knowledge of several official languages of the European Union.

TITLE II COMMON PROCEDURAL PROVISIONS

Chapter 1

RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAWYERS

Article 43 Privileges, immunities and facilities

1. Agents, advisers and lawyers who appear before the Court or before any judicial authority to which the Court has addressed letters rogatory shall enjoy immunity in respect of words spoken or written by them concerning the case or the parties.

2. Agents, advisers and lawyers shall also enjoy the following privileges and facilities:

- (a) any papers and documents relating to the proceedings shall be exempt from both search and seizure. In the event of a dispute, the customs officials or police may seal those papers and documents; they shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned;
- (b) agents, advisers and lawyers shall be entitled to travel in the course of duty without hindrance.

Article 44 Status of the parties' representatives

1. In order to qualify for the privileges, immunities and facilities specified in Article 43, persons entitled to them shall furnish proof of their status as follows:

- (a) agents shall produce an official document issued by the party for whom they act, who shall immediately serve a copy thereof on the Registrar;
- (b) lawyers shall produce a certificate that they are authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement, and, where the party which they represent is a legal person governed by private law, an authority to act issued by that person;
- (c) advisers shall produce an authority to act issued by the party whom they are assisting.

2. The Registrar of the Court shall issue them with a certificate, as required. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the duration of the proceedings.

Article 45 Waiver of immunity

1. The privileges, immunities and facilities specified in Article 43 of these Rules are granted exclusively in the interests of the proper conduct of proceedings.

2. The Court may waive immunity where it considers that the proper conduct of proceedings will not be hindered thereby.

Article 46 Exclusion from the proceedings

1. If the Court considers that the conduct of an agent, adviser or lawyer before the Court is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such agent, adviser or lawyer is using his rights for purposes other than those for which they were granted, it shall inform the person concerned. If the Court informs

the competent authorities to whom the person concerned is answerable, a copy of the letter sent to those authorities shall be forwarded to the person concerned.

2. On the same grounds, the Court may at any time, having heard the person concerned and the Advocate General, decide to exclude an agent, adviser or lawyer from the proceedings by reasoned order. That order shall have immediate effect.

3. Where an agent, adviser or lawyer is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the President in order to allow the party concerned to appoint another agent, adviser or lawyer.

4. Decisions taken under this Article may be rescinded.

Article 47 University teachers and parties to the main proceedings

1. The provisions of this Chapter shall apply to university teachers who have a right of audience before the Court in accordance with Article 19 of the Statute.

2. They shall also apply, in the context of references for a preliminary ruling, to the parties to the main proceedings where, in accordance with the national rules of procedure applicable, those parties are permitted to bring or defend court proceedings without being represented by a lawyer, and to persons authorised under those rules to represent them.

Chapter 2

SERVICE

Article 48 Methods of service

1. Where these Rules require that a document be served on a person, the Registrar shall ensure that service is effected at that person's address for service either by the dispatch of a copy of the document by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with Article 57(2) of these Rules.

2. Where the addressee has agreed that service is to be effected on him by telefax or any other technical means of communication, any procedural document, including a judgment or order of the Court, may be served by the transmission of a copy of the document by such means.

3. Where, for technical reasons or on account of the nature or length of the document, such transmission is impossible or impracticable, the document

shall be served, if the addressee has not specified an address for service, at his address in accordance with the procedures laid down in paragraph 1 of this Article. The addressee shall be so informed by telefax or any other technical means of communication. Service shall then be deemed to have been effected on the addressee by registered post on the 10th day following the lodging of the registered letter at the post office of the place in which the Court has its seat, unless it is shown by the acknowledgement of receipt that the letter was received on a different date or the addressee informs the Registrar, within three weeks of being informed by telefax or any other technical means of communication, that the document to be served has not reached him.

4. The Court may, by decision, determine the criteria for a procedural document to be served by electronic means. That decision shall be published in the *Official Journal of the European Union*.

Chapter 3

TIME-LIMITS

Article 49 Calculation of time-limits

1. Any procedural time-limit prescribed by the Treaties, the Statute or these Rules shall be calculated as follows:

- (a) where a time-limit expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the time-limit in question;
- (b) a time-limit expressed in weeks, months or years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the time-limit is to be calculated occurred or took place. If, in a time-limit expressed in months or years, the day on which it should expire does not occur in the last month, the time-limit shall end with the expiry of the last day of that month;
- (c) where a time-limit is expressed in months and days, it shall first be calculated in whole months, then in days;
- (d) time-limits shall include Saturdays, Sundays and the official holidays referred to in Article 24(6) of these Rules;
- (e) time-limits shall not be suspended during the judicial vacations.

2. If the time-limit would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first subsequent working day.

*Article 50 Proceedings against a measure adopted by an
institution*

Where the time-limit allowed for initiating proceedings against a measure adopted by an institution runs from the publication of that measure, that time-limit shall be calculated, for the purposes of Article 49(1)(a), from the end of the 14th day after publication of the measure in the *Official Journal of the European Union*.

Article 51 Extension on account of distance

The procedural time-limits shall be extended on account of distance by a single period of 10 days.

Article 52 Setting and extension of time-limits

1. Any time-limit prescribed by the Court pursuant to these Rules may be extended.
2. The President and the Presidents of Chambers may delegate to the Registrar power of signature for the purposes of setting certain time-limits which, pursuant to these Rules, it falls to them to prescribe, or of extending such time-limits.

Chapter 4

DIFFERENT PROCEDURES FOR DEALING WITH CASES

Article 53 Procedures for dealing with cases

1. Without prejudice to the special provisions laid down in the Statute or in these Rules, the procedure before the Court shall consist of a written part and an oral part.
2. Where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.
3. The President may in special circumstances decide that a case be given priority over others.
4. A case may be dealt with under an expedited procedure in accordance with the conditions provided by these Rules.
5. A reference for a preliminary ruling may be dealt with under an urgent procedure in accordance with the conditions provided by these Rules.

Article 54 Joinder

1. Two or more cases of the same type concerning the same subject-matter may at any time be joined, on account of the connection between them, for the purposes of the written or oral part of the procedure or of the judgment which closes the proceedings.
2. A decision on whether cases should be joined shall be taken by the President after hearing the Judge-Rapporteur and the Advocate General, if the cases concerned have already been assigned, and, save in the case of references for a preliminary ruling, after also hearing the parties. The President may refer the decision on this matter to the Court.
3. Joined cases may be disjoined, in accordance with the provisions of paragraph 2.

Article 55 Stay of proceedings

1. The proceedings may be stayed:
 - (a) in the circumstances specified in the third paragraph of Article 54 of the Statute, by order of the Court, made after hearing the Advocate General;
 - (b) in all other cases, by decision of the President adopted after hearing the Judge-Rapporteur and the Advocate General and, save in the case of references for a preliminary ruling, the parties.
2. The proceedings may be resumed by order or decision, following the same procedure.
3. The orders or decisions referred to in paragraphs 1 and 2 shall be served on the parties or interested persons referred to in Article 23 of the Statute.
4. The stay of proceedings shall take effect on the date indicated in the order or decision of stay or, in the absence of such indication, on the date of that order or decision.
5. While proceedings are stayed time shall cease to run for the parties or interested persons referred to in Article 23 of the Statute for the purposes of procedural time-limits.
6. Where the order or decision of stay does not fix the length of stay, it shall end on the date indicated in the order or decision of resumption or, in the absence of such indication, on the date of the order or decision of resumption.
7. From the date of resumption of proceedings following a stay, the suspended procedural time-limits shall be replaced by new time-limits and time shall begin to run from the date of that resumption.

Article 56 Deferment of the determination of a case

After hearing the Judge-Rapporteur, the Advocate General and the parties, the President may in special circumstances, either of his own motion or at the request of one of the parties, defer a case to be dealt with at a later date.

Chapter 5

WRITTEN PART OF THE PROCEDURE

Article 57 Lodging of procedural documents

1. The original of every procedural document must bear the handwritten signature of the party's agent or lawyer or, in the case of observations submitted in the context of preliminary ruling proceedings, that of the party to the main proceedings or his representative, if the national rules of procedure applicable to those main proceedings so permit.
2. The original, accompanied by all annexes referred to therein, shall be submitted together with five copies for the Court and, in the case of proceedings other than preliminary ruling proceedings, a copy for every other party to the proceedings. Copies shall be certified by the party lodging them.
3. The institutions shall in addition produce, within time-limits laid down by the Court, translations of any procedural document into the other languages provided for by Article 1 of Council Regulation No 1. The preceding paragraph of this Article shall apply.
4. To every procedural document there shall be annexed a file containing the items and documents relied on in support of it, together with a schedule listing them.
5. Where in view of the length of an item or document only extracts from it are annexed to the procedural document, the whole item or document or a full copy of it shall be lodged at the Registry.
6. All procedural documents shall bear a date. In the calculation of procedural time-limits, only the date and time of lodgment of the original at the Registry shall be taken into account.
7. Without prejudice to the provisions of paragraphs 1 to 6, the date on and time at which a copy of the signed original of a procedural document, including the schedule of items and documents referred to in paragraph 4, is received at the Registry by telefax or any other technical means of communication available to the Court shall be deemed to be the date and time of lodgment for the purposes of compliance with the procedural time-limits, provided that the signed original of the procedural document, accompanied by the annexes and copies referred to in paragraph 2, is lodged at the Registry no later than 10 days thereafter.

8. Without prejudice to paragraphs 3 to 6, the Court may, by decision, determine the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document. That decision shall be published in the *Official Journal of the European Union*.

Article 58 Length of procedural documents

Without prejudice to any special provisions laid down in these Rules, the Court may, by decision, set the maximum length of written pleadings or observations lodged before it. That decision shall be published in the *Official Journal of the European Union*.

Chapter 6

THE PRELIMINARY REPORT AND ASSIGNMENT OF CASES TO
FORMATIONS OF THE COURT

Article 59 Preliminary report

1. When the written part of the procedure is closed, the President shall fix a date on which the Judge-Rapporteur is to present a preliminary report to the general meeting of the Court.
2. The preliminary report shall contain proposals as to whether particular measures of organisation of procedure, measures of inquiry or, if appropriate, requests to the referring court or tribunal for clarification should be undertaken, and as to the formation to which the case should be assigned. It shall also contain the Judge-Rapporteur's proposals, if any, as to whether to dispense with a hearing and as to whether to dispense with an Opinion of the Advocate General pursuant to the fifth paragraph of Article 20 of the Statute.
3. The Court shall decide, after hearing the Advocate General, what action to take on the proposals of the Judge-Rapporteur.

Article 60 Assignment of cases to formations of the Court

1. The Court shall assign to the Chambers of five and of three Judges any case brought before it in so far as the difficulty or importance of the case or particular circumstances are not such as to require that it should be assigned to the Grand Chamber, unless a Member State or an institution of the European Union participating in the proceedings has requested that the case be assigned to the Grand Chamber, pursuant to the third paragraph of Article 16 of the Statute.
2. The Court shall sit as a full Court where cases are brought before it pursuant to the provisions referred to in the fourth paragraph of Article 16 of

the Statute. It may assign a case to the full Court where, in accordance with the fifth paragraph of Article 16 of the Statute, it considers that the case is of exceptional importance.

3. The formation to which a case has been assigned may, at any stage of the proceedings, request the Court to assign the case to a formation composed of a greater number of Judges.

4. Where the oral part of the procedure is opened without an inquiry, the President of the formation determining the case shall fix the opening date.

Chapter 7

MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY

Section 1. Measures of organisation of procedure

Article 61 Measures of organisation prescribed by the Court

1. In addition to the measures which may be prescribed in accordance with Article 24 of the Statute, the Court may invite the parties or the interested persons referred to in Article 23 of the Statute to answer certain questions in writing, within the time-limit laid down by the Court, or at the hearing. The written replies shall be communicated to the other parties or the interested persons referred to in Article 23 of the Statute.

2. Where a hearing is organised, the Court shall, in so far as possible, invite the participants in that hearing to concentrate in their oral pleadings on one or more specified issues.

Article 62 Measures of organisation prescribed by the Judge-Rapporteur or the Advocate General

1. The Judge-Rapporteur or the Advocate General may request the parties or the interested persons referred to in Article 23 of the Statute to submit within a specified time-limit all such information relating to the facts, and all such documents or other particulars, as they may consider relevant. The replies and documents provided shall be communicated to the other parties or the interested persons referred to in Article 23 of the Statute.

2. The Judge-Rapporteur or the Advocate General may also send to the parties or the interested persons referred to in Article 23 of the Statute questions to be answered at the hearing.

Section 2. Measures of inquiry

Article 63 Decision on measures of inquiry

1. The Court shall decide in its general meeting whether a measure of inquiry is necessary.
2. Where the case has already been assigned to a formation of the Court, the decision shall be taken by that formation.

Article 64 Determination of measures of inquiry

1. The Court, after hearing the Advocate General, shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved.
2. Without prejudice to Articles 24 and 25 of the Statute, the following measures of inquiry may be adopted:
 - (a) the personal appearance of the parties;
 - (b) a request for information and production of documents;
 - (c) oral testimony;
 - (d) the commissioning of an expert's report;
 - (e) an inspection of the place or thing in question.
3. Evidence may be submitted in rebuttal and previous evidence may be amplified.

Article 65 Participation in measures of inquiry

1. Where the formation of the Court does not undertake the inquiry itself, it shall entrust the task of so doing to the Judge-Rapporteur.
2. The Advocate General shall take part in the measures of inquiry.
3. The parties shall be entitled to attend the measures of inquiry.

Article 66 Oral testimony

1. The Court may, either of its own motion or at the request of one of the parties, and after hearing the Advocate General, order that certain facts be proved by witnesses.
2. A request by a party for the examination of a witness shall state precisely about what facts and for what reasons the witness should be examined.
3. The Court shall rule by reasoned order on the request referred to in the preceding paragraph. If the request is granted, the order shall set out the facts to be established and state which witnesses are to be heard in respect of each of those facts.

4. Witnesses shall be summoned by the Court, where appropriate after lodgment of the security provided for in Article 73(1) of these Rules.

Article 67 Examination of witnesses

1. After the identity of the witness has been established, the President shall inform him that he will be required to vouch the truth of his evidence in the manner laid down in these Rules.

2. The witness shall give his evidence to the Court, the parties having been given notice to attend. After the witness has given his evidence the President may, at the request of one of the parties or of his own motion, put questions to him.

3. The other Judges and the Advocate General may do likewise.

4. Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.

Article 68 Witnesses' oath

1. After giving his evidence, the witness shall take the following oath:

‘I swear that I have spoken the truth, the whole truth and nothing but the truth.’

2. The Court may, after hearing the parties, exempt a witness from taking the oath.

Article 69 Pecuniary penalties

1. Witnesses who have been duly summoned shall obey the summons and attend for examination.

2. If, without good reason, a witness who has been duly summoned fails to appear before the Court, the Court may impose upon him a pecuniary penalty not exceeding EUR 5 000 and may order that a further summons be served on the witness at his own expense.

3. The same penalty may be imposed upon a witness who, without good reason, refuses to give evidence or to take the oath.

Article 70 Expert's report

1. The Court may order that an expert's report be obtained. The order appointing the expert shall define his task and set a time-limit within which he is to submit his report.

2. After the expert has submitted his report and that report has been served on the parties, the Court may order that the expert be examined, the parties having been given notice to attend. At the request of one of the parties or of his own motion, the President may put questions to the expert.

3. The other Judges and the Advocate General may do likewise.
4. Subject to the control of the President, questions may be put to the expert by the representatives of the parties.

Article 71 Expert's oath

1. After making his report, the expert shall take the following oath:
'I swear that I have conscientiously and impartially carried out my task.'
2. The Court may, after hearing the parties, exempt the expert from taking the oath.

Article 72 Objection to a witness or expert

1. If one of the parties objects to a witness or an expert on the ground that he is not a competent or proper person to act as a witness or expert or for any other reason, or if a witness or expert refuses to give evidence or to take the oath, the matter shall be resolved by the Court.
2. An objection to a witness or an expert shall be raised within two weeks after service of the order summoning the witness or appointing the expert; the statement of objection must set out the grounds of objection and indicate the nature of any evidence offered.

Article 73 Witnesses' and experts' costs

1. Where the Court orders the examination of witnesses or an expert's report, it may request the parties or one of them to lodge security for the witnesses' costs or the costs of the expert's report.
2. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses. The cashier of the Court may make an advance payment towards these expenses.
3. Witnesses shall be entitled to compensation for loss of earnings, and experts to fees for their services. The cashier of the Court shall pay witnesses and experts these sums after they have carried out their respective duties or tasks.

Article 74 Minutes of inquiry hearings

1. The Registrar shall draw up minutes of every inquiry hearing. The minutes shall be signed by the President and by the Registrar. They shall constitute an official record.
2. In the case of the examination of witnesses or experts, the minutes shall be signed by the President or by the Judge-Rapporteur responsible for conducting the examination of the witness or expert, and by the Registrar.

Before the minutes are thus signed, the witness or expert must be given an opportunity to check the content of the minutes and to sign them.

3. The minutes shall be served on the parties.

Article 75 Opening of the oral part of the procedure after the inquiry

1. Unless the Court decides to prescribe a time-limit within which the parties may submit written observations, the President shall fix the date for the opening of the oral part of the procedure after the measures of inquiry have been completed.

2. Where a time-limit has been prescribed for the submission of written observations, the President shall fix the date for the opening of the oral part of the procedure after that time-limit has expired.

Chapter 8

ORAL PART OF THE PROCEDURE

Article 76 Hearing

1. Any reasoned requests for a hearing shall be submitted within three weeks after service on the parties or the interested persons referred to in Article 23 of the Statute of notification of the close of the written part of the procedure. That time-limit may be extended by the President.

2. On a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court may decide not to hold a hearing if it considers, on reading the written pleadings or observations lodged during the written part of the procedure, that it has sufficient information to give a ruling.

3. The preceding paragraph shall not apply where a request for a hearing, stating reasons, has been submitted by an interested person referred to in Article 23 of the Statute who did not participate in the written part of the procedure.

Article 77 Joint hearing

If the similarities between two or more cases of the same type so permit, the Court may decide to organise a joint hearing of those cases.

Article 78 Conduct of oral proceedings

Oral proceedings shall be opened and directed by the President, who shall be responsible for the proper conduct of the hearing.

Article 79 Cases heard in camera

1. For serious reasons related, in particular, to the security of the Member States or to the protection of minors, the Court may decide to hear a case *in camera*.
2. The oral proceedings in cases heard *in camera* shall not be published.

Article 80 Questions

The members of the formation of the Court and the Advocate General may in the course of the hearing put questions to the agents, advisers or lawyers of the parties and, in the circumstances referred to in Article 47(2) of these Rules, to the parties to the main proceedings or to their representatives.

Article 81 Close of the hearing

After the parties or the interested persons referred to in Article 23 of the Statute have presented oral argument, the President shall declare the hearing closed.

Article 82 Delivery of the Opinion of the Advocate General

1. Where a hearing takes place, the Opinion of the Advocate General shall be delivered after the close of that hearing.
2. The President shall declare the oral part of the procedure closed after the Advocate General has delivered his Opinion.

Article 83 Opening or reopening of the oral part of the procedure

The Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute.

Article 84 Minutes of hearings

1. The Registrar shall draw up minutes of every hearing. The minutes shall be signed by the President and by the Registrar. They shall constitute an official record.

2. The parties and interested persons referred to in Article 23 of the Statute may inspect the minutes at the Registry and obtain copies.

Article 85 Recording of the hearing

The President may, on a duly substantiated request, authorise a party or an interested person referred to in Article 23 of the Statute who has participated in the written or oral part of the proceedings to listen, on the Court's premises, to the soundtrack of the hearing in the language used by the speaker during that hearing.

Chapter 9

JUDGMENTS AND ORDERS

Article 86 Date of delivery of a judgment

The parties or interested persons referred to in Article 23 of the Statute shall be informed of the date of delivery of a judgment.

Article 87 Content of a judgment

A judgment shall contain:

- (a) a statement that it is the judgment of the Court,
- (b) an indication as to the formation of the Court,
- (c) the date of delivery,
- (d) the names of the President and of the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur,
- (e) the name of the Advocate General,
- (f) the name of the Registrar,
- (g) a description of the parties or of the interested persons referred to in Article 23 of the Statute who participated in the proceedings,
- (h) the names of their representatives,
- (i) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,
- (j) where applicable, the date of the hearing,
- (k) a statement that the Advocate General has been heard and, where applicable, the date of his Opinion,
- (l) a summary of the facts,
- (m) the grounds for the decision,

- (n) the operative part of the judgment, including, where appropriate, the decision as to costs.

Article 88 Delivery and service of the judgment

1. The judgment shall be delivered in open court.
2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the judgment shall be served on the parties and, where applicable, the referring court or tribunal, the interested persons referred to in Article 23 of the Statute and the General Court.

Article 89 Content of an order

1. An order shall contain:
 - (a) a statement that it is the order of the Court,
 - (b) an indication as to the formation of the Court,
 - (c) the date of its adoption,
 - (d) an indication as to the legal basis of the order,
 - (e) the names of the President and, where applicable, the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur,
 - (f) the name of the Advocate General,
 - (g) the name of the Registrar,
 - (h) a description of the parties or of the parties to the main proceedings,
 - (i) the names of their representatives,
 - (j) a statement that the Advocate General has been heard,
 - (k) the operative part of the order, including, where appropriate, the decision as to costs.
2. Where, in accordance with these Rules, an order must be reasoned, it shall in addition contain:
 - (a) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,
 - (b) a summary of the facts,
 - (c) the grounds for the decision.

Article 90 Signature and service of the order

The original of the order, signed by the President and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the order shall be

served on the parties and, where applicable, the referring court or tribunal, the interested persons referred to in Article 23 of the Statute and the General Court.

Article 91 Binding nature of judgments and orders

1. A judgment shall be binding from the date of its delivery.
2. An order shall be binding from the date of its service.

Article 92 Publication in the Official Journal of the European Union

A notice containing the date and the operative part of the judgment or order of the Court which closes the proceedings shall be published in the *Official Journal of the European Union*.

TITLE III

REFERENCES FOR A PRELIMINARY RULING

Chapter 1

GENERAL PROVISIONS

Article 93 Scope

The procedure shall be governed by the provisions of this Title:

- (a) in the cases covered by Article 23 of the Statute,
- (b) as regards references for interpretation which may be provided for by agreements to which the European Union or the Member States are parties.

Article 94 Content of the request for a preliminary ruling

In addition to the text of the questions referred to the Court for a preliminary ruling, the request for a preliminary ruling shall contain:

- (a) a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based;
- (b) the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law;
- (c) a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between

those provisions and the national legislation applicable to the main proceedings.

Article 95 Anonymity

1. Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.
2. At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of its own motion, the Court may also, if it considers it necessary, render anonymous one or more persons or entities concerned by the case.

Article 96 Participation in preliminary ruling proceedings

1. Pursuant to Article 23 of the Statute, the following shall be authorised to submit observations to the Court:
 - (a) the parties to the main proceedings,
 - (b) the Member States,
 - (c) the European Commission,
 - (d) the institution which adopted the act the validity or interpretation of which is in dispute,
 - (e) the States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, where a question concerning one of the fields of application of that Agreement is referred to the Court for a preliminary ruling,
 - (f) non-Member States which are parties to an agreement relating to a specific subject-matter, concluded with the Council, where the agreement so provides and where a court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling a question falling within the scope of that agreement.
2. Non-participation in the written part of the procedure does not preclude participation in the oral part of the procedure.

Article 97 Parties to the main proceedings

1. The parties to the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.
2. Where the referring court or tribunal informs the Court that a new party has been admitted to the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he finds it at the time when the Court was so informed. That party shall receive a copy of every procedural document already served on the interested persons referred to in Article 23 of the Statute.

3. As regards the representation and attendance of the parties to the main proceedings, the Court shall take account of the rules of procedure in force before the court or tribunal which made the reference. In the event of any doubt as to whether a person may under national law represent a party to the main proceedings, the Court may obtain information from the referring court or tribunal on the rules of procedure applicable.

*Article 98 Translation and service of the request for a
preliminary ruling*

1. The requests for a preliminary ruling referred to in this Title shall be served on the Member States in the original version, accompanied by a translation into the official language of the State to which they are being addressed. Where appropriate, on account of the length of the request, such translation shall be replaced by the translation into the official language of the State to which it is addressed of a summary of that request, which will serve as a basis for the position to be adopted by that State. The summary shall include the full text of the question or questions referred for a preliminary ruling. That summary shall contain, in particular, in so far as that information appears in the request for a preliminary ruling, the subject-matter of the main proceedings, the essential arguments of the parties to those proceedings, a succinct presentation of the reasons for the reference for a preliminary ruling and the case-law and the provisions of national law and European Union law relied on.

2. In the cases covered by the third paragraph of Article 23 of the Statute, the requests for a preliminary ruling shall be served on the States, other than the Member States, which are parties to the EEA Agreement and also on the EFTA Surveillance Authority in the original version, accompanied by a translation of the request, or where appropriate of a summary, into one of the languages referred to in Article 36, to be chosen by the addressee.

3. Where a non-Member State has the right to take part in preliminary ruling proceedings pursuant to the fourth paragraph of Article 23 of the Statute, the original version of the request for a preliminary ruling shall be served on it accompanied by a translation of the request, or where appropriate of a summary, into one of the languages referred to in Article 36, to be chosen by the non-Member State concerned.

Article 99 Reply by reasoned order

Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

Article 100 Circumstances in which the Court remains seised

1. The Court shall remain seised of a request for a preliminary ruling for as long as it is not withdrawn by the court or tribunal which made that request to the Court. The withdrawal of a request may be taken into account until notice of the date of delivery of the judgment has been served on the interested persons referred to in Article 23 of the Statute.
2. However, the Court may at any time declare that the conditions of its jurisdiction are no longer fulfilled.

Article 101 Request for clarification

1. Without prejudice to the measures of organisation of procedure and measures of inquiry provided for in these Rules, the Court may, after hearing the Advocate General, request clarification from the referring court or tribunal within a time-limit prescribed by the Court.
2. The reply of the referring court or tribunal to that request shall be served on the interested persons referred to in Article 23 of the Statute.

Article 102 Costs of the preliminary ruling proceedings

It shall be for the referring court or tribunal to decide as to the costs of the preliminary ruling proceedings.

Article 103 Rectification of judgments and orders

1. Clerical mistakes, errors in calculation and obvious inaccuracies affecting judgments or orders may be rectified by the Court, of its own motion or at the request of an interested person referred to in Article 23 of the Statute made within two weeks after delivery of the judgment or service of the order.
2. The Court shall take its decision after hearing the Advocate General.
3. The original of the rectification order shall be annexed to the original of the rectified decision. A note of this order shall be made in the margin of the original of the rectified decision.

Article 104 Interpretation of preliminary rulings

1. Article 158 of these Rules relating to the interpretation of judgments and orders shall not apply to decisions given in reply to a request for a preliminary ruling.
2. It shall be for the national courts or tribunals to assess whether they consider that sufficient guidance is given by a preliminary ruling, or whether it appears to them that a further reference to the Court is required.

Chapter 2

EXPEDITED PRELIMINARY RULING PROCEDURE

Article 105 Expedited procedure

1. At the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules.
2. In that event, the President shall immediately fix the date for the hearing, which shall be communicated to the interested persons referred to in Article 23 of the Statute when the request for a preliminary ruling is served.
3. The interested persons referred to in the preceding paragraph may lodge statements of case or written observations within a time-limit prescribed by the President, which shall not be less than 15 days. The President may request those interested persons to restrict the matters addressed in their statement of case or written observations to the essential points of law raised by the request for a preliminary ruling.
4. The statements of case or written observations, if any, shall be communicated to all the interested persons referred to in Article 23 of the Statute prior to the hearing.
5. The Court shall rule after hearing the Advocate General.

Article 106 Transmission of procedural documents

1. The procedural documents referred to in the preceding Article shall be deemed to have been lodged on the transmission to the Registry, by telefax or any other technical means of communication available to the Court, of a copy of the signed original and the items and documents relied on in support of it, together with the schedule referred to in Article 57(4). The original of the document and the annexes referred to above shall be sent to the Registry immediately.
2. Where the preceding Article requires that a document be served on or communicated to a person, such service or communication may be effected by transmission of a copy of the document by telefax or any other technical means of communication available to the Court and the addressee.

Chapter 3

URGENT PRELIMINARY RULING PROCEDURE

Article 107 Scope of the urgent preliminary ruling procedure

1. A reference for a preliminary ruling which raises one or more questions in the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union may, at the request of the referring court or tribunal or, exceptionally, of the Court's own motion, be dealt with under an urgent procedure derogating from the provisions of these Rules.
2. The referring court or tribunal shall set out the matters of fact and law which establish the urgency and justify the application of that exceptional procedure and shall, in so far as possible, indicate the answer that it proposes to the questions referred.
3. If the referring court or tribunal has not submitted a request for the urgent procedure to be applied, the President of the Court may, if the application of that procedure appears, *prima facie*, to be required, ask the Chamber referred to in Article 108 to consider whether it is necessary to deal with the reference under that procedure.

Article 108 Decision as to urgency

1. The decision to deal with a reference for a preliminary ruling under the urgent procedure shall be taken by the designated Chamber, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General. The composition of that Chamber shall be determined in accordance with Article 28(2) on the day on which the case is assigned to the Judge-Rapporteur if the application of the urgent procedure is requested by the referring court or tribunal, or, if the application of that procedure is considered at the request of the President of the Court, on the day on which that request is made.
2. If the case is connected with a pending case assigned to a Judge-Rapporteur who is not a member of the designated Chamber, that Chamber may propose to the President of the Court that the case be assigned to that Judge-Rapporteur. Where the case is reassigned to that Judge-Rapporteur, the Chamber of five Judges which includes him shall carry out the duties of the designated Chamber in respect of that case. Article 29(1) shall apply.

Article 109 Written part of the urgent procedure

1. A request for a preliminary ruling shall, where the referring court or tribunal has requested the application of the urgent procedure or where the President has requested the designated Chamber to consider whether it is necessary to deal with the reference under that procedure, be served forthwith by the Registrar on the parties to the main proceedings, on the Member State from which the reference is made, on the European

Commission and on the institution which adopted the act the validity or interpretation of which is in dispute.

2. The decision as to whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be served immediately on the referring court or tribunal and on the parties, Member State and institutions referred to in the preceding paragraph. The decision to deal with the reference under the urgent procedure shall prescribe the time-limit within which those parties or entities may lodge statements of case or written observations. The decision may specify the matters of law to which such statements of case or written observations must relate and may specify the maximum length of those documents.

3. Where a request for a preliminary ruling refers to an administrative procedure or judicial proceedings conducted in a Member State other than that from which the reference is made, the Court may invite that first Member State to provide all relevant information in writing or at the hearing.

4. As soon as the service referred to in paragraph 1 above has been effected, the request for a preliminary ruling shall also be communicated to the interested persons referred to in Article 23 of the Statute, other than the persons served, and the decision whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be communicated to those interested persons as soon as the service referred to in paragraph 2 has been effected.

5. The interested persons referred to in Article 23 of the Statute shall be informed as soon as possible of the likely date of the hearing.

6. Where the reference is not to be dealt with under the urgent procedure, the proceedings shall continue in accordance with the provisions of Article 23 of the Statute and the applicable provisions of these Rules.

*Article 110 Service and information following the close of the
written part of the procedure*

1. Where a reference for a preliminary ruling is to be dealt with under the urgent procedure, the request for a preliminary ruling and the statements of case or written observations which have been lodged shall be served on the interested persons referred to in Article 23 of the Statute other than the parties and entities referred to in Article 109(1). The request for a preliminary ruling shall be accompanied by a translation, where appropriate of a summary, in accordance with Article 98.

2. The statements of case or written observations which have been lodged shall also be served on the parties and other interested persons referred to in Article 109(1).

3. The date of the hearing shall be communicated to the interested persons referred to in Article 23 of the Statute at the same time as the documents referred to in the preceding paragraphs are served.

Article 111 Omission of the written part of the procedure

The designated Chamber may, in cases of extreme urgency, decide to omit the written part of the procedure referred to in Article 109(2).

Article 112 Decision on the substance

The designated Chamber shall rule after hearing the Advocate General.

Article 113 Formation of the Court

1. The designated Chamber may decide to sit in a formation of three Judges. In that event, it shall be composed of the President of the designated Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(2) on the date on which the composition of the designated Chamber is determined in accordance with Article 108(1).

2. The designated Chamber may also request the Court to assign the case to a formation composed of a greater number of Judges. The urgent procedure shall continue before the new formation of the Court, where necessary after the reopening of the oral part of the procedure.

Article 114 Transmission of procedural documents

Procedural documents shall be transmitted in accordance with Article 106.

Chapter 4

LEGAL AID

Article 115 Application for legal aid

1. A party to the main proceedings who is wholly or in part unable to meet the costs of the proceedings before the Court may at any time apply for legal aid.

2. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.

3. If the applicant has already obtained legal aid before the referring court or tribunal, he shall produce the decision of that court or tribunal and specify what is covered by the sums already granted.

Article 116 Decision on the application for legal aid

1. As soon as the application for legal aid has been lodged it shall be assigned by the President to the Judge-Rapporteur responsible for the case in the context of which the application has been made.
2. The decision to grant legal aid, in full or in part, or to refuse it shall be taken, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, by the Chamber of three Judges to which the Judge-Rapporteur is assigned. The formation of the Court shall, in that event, be composed of the President of that Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(3) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur.
3. If the Judge-Rapporteur is not a member of a Chamber of three Judges, the decision shall be taken, under the same conditions, by the Chamber of five Judges to which he is assigned. In addition to the Judge-Rapporteur, the formation of the Court shall be composed of four Judges designated from the list referred to in Article 28(2) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur.
4. The formation of the Court shall give its decision by way of order. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

Article 117 Sums to be advanced as legal aid

Where legal aid is granted, the cashier of the Court shall be responsible, where applicable within the limits set by the formation of the Court, for costs involved in the assistance and representation of the applicant before the Court. At the request of the applicant or his representative, an advance on those costs may be paid.

Article 118 Withdrawal of legal aid

The formation of the Court which gave a decision on the application for legal aid may at any time, either of its own motion or on request, withdraw that legal aid if the circumstances which led to its being granted alter during the proceedings.

TITLE IV

DIRECT ACTIONS

Chapter 1

REPRESENTATION OF THE PARTIES

Article 119 Obligation to be represented

1. A party may be represented only by his agent or lawyer.
2. Agents and lawyers must lodge at the Registry an official document or an authority to act issued by the party whom they represent.
3. The lawyer acting for a party must also lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement.
4. If those documents are not lodged, the Registrar shall prescribe a reasonable time-limit within which the party concerned is to produce them. If the applicant fails to produce the required documents within the time-limit prescribed, the Court shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with that procedural requirement renders the application or written pleading formally inadmissible.

Chapter 2

WRITTEN PART OF THE PROCEDURE

Article 120 Content of the application

An application of the kind referred to in Article 21 of the Statute shall state:

- (a) the name and address of the applicant;
- (b) the name of the party against whom the application is made;
- (c) the subject-matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law;
- (d) the form of order sought by the applicant;
- (e) where appropriate, any evidence produced or offered.

Article 121 Information relating to service

1. For the purpose of the proceedings, the application shall state an address for service. It shall indicate the name of the person who is authorised and has expressed willingness to accept service.
2. In addition to, or instead of, specifying an address for service as referred to in paragraph 1, the application may state that the lawyer or agent agrees that service is to be effected on him by telefax or any other technical means of communication.
3. If the application does not comply with the requirements referred to in paragraphs 1 or 2, all service on the party concerned for the purpose of the proceedings shall be effected, for so long as the defect has not been cured, by registered letter addressed to the agent or lawyer of that party. By way of derogation from Article 48, service shall then be deemed to be duly effected by the lodging of the registered letter at the post office of the place in which the Court has its seat.

Article 122 Annexes to the application

1. The application shall be accompanied, where appropriate, by the documents specified in the second paragraph of Article 21 of the Statute.
2. An application submitted under Article 273 TFEU shall be accompanied by a copy of the special agreement concluded between the Member States concerned.
3. If an application does not comply with the requirements set out in paragraphs 1 or 2 of this Article, the Registrar shall prescribe a reasonable time-limit within which the applicant is to produce the abovementioned documents. If the applicant fails to put the application in order, the Court shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with these conditions renders the application formally inadmissible.

Article 123 Service of the application

The application shall be served on the defendant. In cases where Article 119(4) or Article 122(3) applies, service shall be effected as soon as the application has been put in order or the Court has declared it admissible notwithstanding the failure to observe the requirements set out in those two Articles.

Article 124 Content of the defence

1. Within two months after service on him of the application, the defendant shall lodge a defence, stating:
 - (a) the name and address of the defendant;
 - (b) the pleas in law and arguments relied on;

- (c) the form of order sought by the defendant;
 - (d) where appropriate, any evidence produced or offered.
2. Article 121 shall apply to the defence.
3. The time-limit laid down in paragraph 1 may exceptionally be extended by the President at the duly reasoned request of the defendant.

Article 125 Transmission of documents

Where the European Parliament, the Council or the European Commission is not a party to a case, the Court shall send to them copies of the application and of the defence, without the annexes thereto, to enable them to assess whether the inapplicability of one of their acts is being invoked under Article 277 TFEU.

Article 126 Reply and rejoinder

1. The application initiating proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the defendant.
2. The President shall prescribe the time-limits within which those procedural documents are to be produced. He may specify the matters to which the reply or the rejoinder should relate.

Chapter 3

PLEAS IN LAW AND EVIDENCE

Article 127 New pleas in law

1. No new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.
2. Without prejudice to the decision to be taken on the admissibility of the plea in law, the President may, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, prescribe a time-limit within which the other party may respond to that plea.

Article 128 Evidence produced or offered

1. In reply or rejoinder a party may produce or offer further evidence in support of his arguments. The party must give reasons for the delay in submitting such evidence.
2. The parties may, exceptionally, produce or offer further evidence after the close of the written part of the procedure. They must give reasons for the delay in submitting such evidence. The President may, on a proposal from

the Judge-Rapporteur and after hearing the Advocate General, prescribe a time-limit within which the other party may comment on such evidence.

Chapter 4

INTERVENTION

Article 129 Object and effects of the intervention

1. The intervention shall be limited to supporting, in whole or in part, the form of order sought by one of the parties. It shall not confer the same procedural rights as those conferred on the parties and, in particular, shall not give rise to any right to request that a hearing be held.
2. The intervention shall be ancillary to the main proceedings. It shall become devoid of purpose if the case is removed from the register of the Court as a result of a party's discontinuance or withdrawal from the proceedings or of an agreement between the parties, or where the application is declared inadmissible.
3. The intervener must accept the case as he finds it at the time of his intervention.
4. Consideration may be given to an application to intervene which is made after the expiry of the time-limit prescribed in Article 130 but before the decision to open the oral part of the procedure provided for in Article 60(4). In that event, if the President allows the intervention, the intervener may submit his observations during the hearing, if it takes place.

Article 130 Application to intervene

1. An application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 21(4).
2. The application to intervene shall contain:
 - (a) a description of the case;
 - (b) a description of the main parties;
 - (c) the name and address of the intervener;
 - (d) the form of order sought, in support of which the intervener is applying for leave to intervene;
 - (e) a statement of the circumstances establishing the right to intervene, where the application is submitted pursuant to the second or third paragraph of Article 40 of the Statute.
3. The intervener shall be represented in accordance with Article 19 of the Statute.
4. Articles 119, 121 and 122 of these Rules shall apply.

Article 131 Decision on applications to intervene

1. The application to intervene shall be served on the parties in order to obtain any written or oral observations they may wish to make on that application.
2. Where the application is submitted pursuant to the first or third paragraph of Article 40 of the Statute, the intervention shall be allowed by decision of the President and the intervener shall receive a copy of every procedural document served on the parties, provided that those parties have not, within 10 days after the service referred to in paragraph 1 has been effected, put forward observations on the application to intervene or identified secret or confidential items or documents which, if communicated to the intervener, the parties claim would be prejudicial to them.
3. In any other case, the President shall decide on the application to intervene by order or shall refer the application to the Court.
4. If the application to intervene is granted, the intervener shall receive a copy of every procedural document served on the parties, save, where applicable, for the secret or confidential items or documents excluded from such communication pursuant to paragraph 3.

Article 132 Submission of statements

1. The intervener may submit a statement in intervention within one month after communication of the procedural documents referred to in the preceding Article. That time-limit may be extended by the President at the duly reasoned request of the intervener.
2. The statement in intervention shall contain:
 - (a) the form of order sought by the intervener in support, in whole or in part, of the form of order sought by one of the parties;
 - (b) the pleas in law and arguments relied on by the intervener;
 - (c) where appropriate, any evidence produced or offered.
3. After the statement in intervention has been lodged, the President shall, where necessary, prescribe a time-limit within which the parties may reply to that statement.

Chapter 5

EXPEDITED PROCEDURE

Article 133 Decision relating to the expedited procedure

1. At the request of the applicant or the defendant, the President of the Court may, where the nature of the case requires that it be dealt with within a short

time, after hearing the other party, the Judge-Rapporteur and the Advocate General, decide that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules.

2. The request for a case to be determined pursuant to an expedited procedure must be made by a separate document submitted at the same time as the application initiating proceedings or the defence, as the case may be, is lodged.

3. Exceptionally the President may also take such a decision of his own motion, after hearing the parties, the Judge-Rapporteur and the Advocate General.

Article 134 Written part of the procedure

1. Under the expedited procedure, the application initiating proceedings and the defence may be supplemented by a reply and a rejoinder only if the President, after hearing the Judge-Rapporteur and the Advocate General, considers this to be necessary.

2. An intervener may submit a statement in intervention only if the President, after hearing the Judge-Rapporteur and the Advocate General, considers this to be necessary.

Article 135 Oral part of the procedure

1. Once the defence has been submitted or, if the decision to determine the case pursuant to an expedited procedure is not made until after that pleading has been lodged, once that decision has been taken, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties. He may postpone the date of the hearing where it is necessary to undertake measures of inquiry or where measures of organisation of procedure so require.

2. Without prejudice to Articles 127 and 128, a party may supplement his arguments and produce or offer evidence during the oral part of the procedure. The party must, however, give reasons for the delay in producing such further arguments or evidence.

Article 136 Decision on the substance

The Court shall give its ruling after hearing the Advocate General.

Chapter 6

COSTS

Article 137 Decision as to costs

A decision as to costs shall be given in the judgment or order which closes the proceedings.

Article 138 General rules as to allocation of costs

1. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.
2. Where there is more than one unsuccessful party the Court shall decide how the costs are to be shared.
3. Where each party succeeds on some and fails on other heads, the parties shall bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

Article 139 Unreasonable or vexatious costs

The Court may order a party, even if successful, to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.

Article 140 Costs of interveners

1. The Member States and institutions which have intervened in the proceedings shall bear their own costs.
2. The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, shall similarly bear their own costs if they have intervened in the proceedings.
3. The Court may order an intervener other than those referred to in the preceding paragraphs to bear his own costs.

Article 141 Costs in the event of discontinuance or withdrawal

1. A party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the other party's observations on the discontinuance.
2. However, at the request of the party who discontinues or withdraws from proceedings, the costs shall be borne by the other party if this appears justified by the conduct of that party.

3. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement.
4. If costs are not claimed, the parties shall bear their own costs.

Article 142 Costs where a case does not proceed to judgment

Where a case does not proceed to judgment the costs shall be in the discretion of the Court.

Article 143 Costs of proceedings

Proceedings before the Court shall be free of charge, except that:

- (a) where a party has caused the Court to incur avoidable costs the Court may, after hearing the Advocate General, order that party to refund them;
- (b) where copying or translation work is carried out at the request of a party, the cost shall, in so far as the Registrar considers it excessive, be paid for by that party on the Registry's scale of charges referred to in Article 22.

Article 144 Recoverable costs

Without prejudice to the preceding Article, the following shall be regarded as recoverable costs:

- (a) sums payable to witnesses and experts under Article 73 of these Rules;
- (b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.

Article 145 Dispute concerning the costs to be recovered

1. If there is a dispute concerning the costs to be recovered, the Chamber of three Judges to which the Judge-Rapporteur who dealt with the case is assigned shall, on application by the party concerned and after hearing the opposite party and the Advocate General, make an order. In that event, the formation of the Court shall be composed of the President of that Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(3) on the date on which the dispute is brought before that Chamber by the Judge-Rapporteur.

2. If the Judge-Rapporteur is not a member of a Chamber of three Judges, the decision shall be taken, under the same conditions, by the Chamber of five Judges to which he is assigned. In addition to the Judge-Rapporteur, the formation of the Court shall be composed of four Judges designated from

the list referred to in Article 28(2) on the date on which the dispute is brought before that Chamber by the Judge-Rapporteur.

3. The parties may, for the purposes of enforcement, apply for an authenticated copy of the order.

Article 146 Procedure for payment

1. Sums due from the cashier of the Court and from its debtors shall be paid in euro.

2. Where costs to be recovered have been incurred in a currency other than the euro or where the steps in respect of which payment is due were taken in a country of which the euro is not the currency, the conversion shall be effected at the European Central Bank's official rates of exchange on the day of payment.

Chapter 7

AMICABLE SETTLEMENT, DISCONTINUANCE, CASES THAT DO NOT PROCEED TO JUDGMENT AND PRELIMINARY ISSUES

Article 147 Amicable settlement

1. If, before the Court has given its decision, the parties reach a settlement of their dispute and inform the Court of the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 141, having regard to any proposals made by the parties on the matter.

2. This provision shall not apply to proceedings under Articles 263 TFEU and 265 TFEU.

Article 148 Discontinuance

If the applicant informs the Court in writing or at the hearing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 141.

Article 149 Cases that do not proceed to judgment

If the Court declares that the action has become devoid of purpose and that there is no longer any need to adjudicate on it, the Court may at any time of its own motion, on a proposal from the Judge-Rapporteur and after hearing the parties and the Advocate General, decide to rule by reasoned order. It shall give a decision as to costs.

Article 150 Absolute bar to proceeding with a case

On a proposal from the Judge-Rapporteur, the Court may at any time of its own motion, after hearing the parties and the Advocate General, decide to rule by reasoned order on whether there exists any absolute bar to proceeding with a case.

Article 151 Preliminary objections and issues

1. A party applying to the Court for a decision on a preliminary objection or issue not going to the substance of the case shall submit the application by a separate document.
2. The application must state the pleas of law and arguments relied on and the form of order sought by the applicant; any supporting items and documents must be annexed to it.
3. As soon as the application has been submitted, the President shall prescribe a time-limit within which the opposite party may submit in writing his pleas in law and the form of order which he seeks.
4. Unless the Court decides otherwise, the remainder of the proceedings on the application shall be oral.
5. The Court shall, after hearing the Advocate General, decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case.
6. If the Court refuses the application or reserves its decision, the President shall prescribe new time-limits for the further steps in the proceedings.

Chapter 8

JUDGMENTS BY DEFAULT

Article 152 Judgments by default

1. If a defendant on whom an application initiating proceedings has been duly served fails to respond to the application in the proper form and within the time-limit prescribed, the applicant may apply to the Court for judgment by default.
2. The application for judgment by default shall be served on the defendant. The Court may decide to open the oral part of the procedure on the application.
3. Before giving judgment by default the Court shall, after hearing the Advocate General, consider whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with,

and whether the applicant's claims appear well founded. The Court may adopt measures of organisation of procedure or order measures of inquiry.

4. A judgment by default shall be enforceable. The Court may, however, grant a stay of execution until the Court has given its decision on any application under Article 156 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances; this security shall be released if no such application is made or if the application fails.

Chapter 9

REQUESTS AND APPLICATIONS RELATING TO JUDGMENTS AND ORDERS

Article 153 Competent formation of the Court

1. With the exception of applications referred to in Article 159, the requests and applications referred to in this Chapter shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates, and shall be assigned to the formation of the Court which gave a decision in that case.

2. If the Judge-Rapporteur is prevented from acting, the President of the Court shall assign the request or application referred to in this Chapter to a Judge who was a member of the formation of the Court which gave a decision in the case to which that request or application relates.

3. If the quorum referred to in Article 17 of the Statute can no longer be attained, the Court shall, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, assign the request or application to a new formation of the Court.

Article 154 Rectification

1. Without prejudice to the provisions relating to the interpretation of judgments and orders, clerical mistakes, errors in calculation and obvious inaccuracies may be rectified by the Court, of its own motion or at the request of a party made within two weeks after delivery of the judgment or service of the order.

2. Where the request for rectification concerns the operative part or one of the grounds constituting the necessary support for the operative part, the parties, whom the Registrar shall duly inform, may submit written observations within a time-limit prescribed by the President.

3. The Court shall take its decision after hearing the Advocate General.

4. The original of the rectification order shall be annexed to the original of the rectified decision. A note of this order shall be made in the margin of the original of the rectified decision.

Article 155 Failure to adjudicate

1. If the Court has failed to adjudicate on a specific head of claim or on costs, any party wishing to rely on that may, within a month after service of the decision, apply to the Court to supplement its decision.
2. The application shall be served on the opposite party and the President shall prescribe a time-limit within which that party may submit written observations.
3. After these observations have been submitted, the Court shall, after hearing the Advocate General, decide both on the admissibility and on the substance of the application.

Article 156 Application to set aside

1. Application may be made pursuant to Article 41 of the Statute to set aside a judgment delivered by default.
2. The application to set aside the judgment must be made within one month from the date of service of the judgment and must be submitted in the form prescribed by Articles 120 to 122 of these Rules.
3. After the application has been served, the President shall prescribe a time-limit within which the other party may submit his written observations.
4. The proceedings shall be conducted in accordance with Articles 59 to 92 of these Rules.
5. The Court shall decide by way of a judgment which may not be set aside.
6. The original of this judgment shall be annexed to the original of the judgment by default. A note of the judgment on the application to set aside shall be made in the margin of the original of the judgment by default.

Article 157 Third-party proceedings

1. Articles 120 to 122 of these Rules shall apply to an application initiating third-party proceedings made pursuant to Article 42 of the Statute. In addition such an application shall:
 - (a) specify the judgment or order contested;
 - (b) state how the contested decision is prejudicial to the rights of the third party;
 - (c) indicate the reasons for which the third party was unable to take part in the original case.
2. The application must be made against all the parties to the original case.
3. The application must be submitted within two months of publication of the decision in the *Official Journal of the European Union*.

4. The Court may, on application by the third party, order a stay of execution of the contested decision. The provisions of Chapter 10 of this Title shall apply.
5. The contested decision shall be varied on the points on which the submissions of the third party are upheld.
6. The original of the judgment in the third-party proceedings shall be annexed to the original of the contested decision. A note of the judgment in the third-party proceedings shall be made in the margin of the original of the contested decision.

Article 158 Interpretation

1. In accordance with Article 43 of the Statute, if the meaning or scope of a judgment or order is in doubt, the Court shall construe it on application by any party or any institution of the European Union establishing an interest therein.
2. An application for interpretation must be made within two years after the date of delivery of the judgment or service of the order.
3. An application for interpretation shall be made in accordance with Articles 120 to 122 of these Rules. In addition it shall specify:
 - (a) the decision in question;
 - (b) the passages of which interpretation is sought.
4. The application must be made against all the parties to the case in which the decision of which interpretation is sought was given.
5. The Court shall give its decision after having given the parties an opportunity to submit their observations and after hearing the Advocate General.
6. The original of the interpreting decision shall be annexed to the original of the decision interpreted. A note of the interpreting decision shall be made in the margin of the original of the decision interpreted.

Article 159 Revision

1. In accordance with Article 44 of the Statute, an application for revision of a decision of the Court may be made only on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was delivered or the order served, was unknown to the Court and to the party claiming the revision.
2. Without prejudice to the time-limit of 10 years prescribed in the third paragraph of Article 44 of the Statute, an application for revision shall be made within three months of the date on which the facts on which the application is founded came to the applicant's knowledge.
3. Articles 120 to 122 of these Rules shall apply to an application for revision. In addition such an application shall:

- (a) specify the judgment or order contested;
 - (b) indicate the points on which the decision is contested;
 - (c) set out the facts on which the application is founded;
 - (d) indicate the nature of the evidence to show that there are facts justifying revision, and that the time-limits laid down in paragraph 2 have been observed.
4. The application for revision must be made against all parties to the case in which the contested decision was given.
5. Without prejudice to its decision on the substance, the Court shall, after hearing the Advocate General, give in the form of an order its decision on the admissibility of the application, having regard to the written observations of the parties.
6. If the Court declares the application admissible, it shall proceed to consider the substance of the application and shall give its decision in the form of a judgment in accordance with these Rules.
7. The original of the revising judgment shall be annexed to the original of the decision revised. A note of the revising judgment shall be made in the margin of the original of the decision revised.

Chapter 10

SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

Article 160 Application for suspension or for interim measures

1. An application to suspend the operation of any measure adopted by an institution, made pursuant to Article 278 TFEU or Article 157 TEAEC, shall be admissible only if the applicant has challenged that measure in an action before the Court.
2. An application for the adoption of one of the other interim measures referred to in Article 279 TFEU shall be admissible only if it is made by a party to a case before the Court and relates to that case.
3. An application of a kind referred to in the preceding paragraphs shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for.
4. The application shall be made by a separate document and in accordance with the provisions of Articles 120 to 122 of these Rules.
5. The application shall be served on the opposite party, and the President shall prescribe a short time-limit within which that party may submit written or oral observations.
6. The President may order a preparatory inquiry.

7. The President may grant the application even before the observations of the opposite party have been submitted. This decision may be varied or cancelled even without any application being made by any party.

Article 161 Decision on the application

1. The President shall either decide on the application himself or refer it immediately to the Court.
2. If the President is prevented from acting, Articles 10 and 13 of these Rules shall apply.
3. Where the application is referred to it, the Court shall give a decision immediately, after hearing the Advocate General.

Article 162 Order for suspension of operation or for interim measures

1. The decision on the application shall take the form of a reasoned order, from which no appeal shall lie. The order shall be served on the parties forthwith.
2. The execution of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.
3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse when the judgment which closes the proceedings is delivered.
4. The order shall have only an interim effect, and shall be without prejudice to the decision of the Court on the substance of the case.

Article 163 Change in circumstances

On application by a party, the order may at any time be varied or cancelled on account of a change in circumstances.

Article 164 New application

Rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts.

Article 165 Applications pursuant to Articles 280 TFEU and 299 TFEU and Article 164 TEAEC

1. The provisions of this Chapter shall apply to applications to suspend the enforcement of a decision of the Court or of any measure adopted by the Council, the European Commission or the European Central Bank,

submitted pursuant to Articles 280 TFEU and 299 TFEU or Article 164 TEAEC.

2. The order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse.

Article 166 Application pursuant to Article 81 TEAEC

1. An application of a kind referred to in the third and fourth paragraphs of Article 81 TEAEC shall contain:

- (a) the names and addresses of the persons or undertakings to be inspected;
- (b) an indication of what is to be inspected and of the purpose of the inspection.

2. The President shall give his decision in the form of an order. Article 162 of these Rules shall apply.

3. If the President is prevented from acting, Articles 10 and 13 of these Rules shall apply.

TITLE V

APPEALS AGAINST DECISIONS OF THE GENERAL COURT

Chapter 1

FORM AND CONTENT OF THE APPEAL, AND FORM OF ORDER SOUGHT

Article 167 Lodging of the appeal

1. An appeal shall be brought by lodging an application at the Registry of the Court of Justice or of the General Court.

2. The Registry of the General Court shall forthwith transmit to the Registry of the Court of Justice the file in the case at first instance and, where necessary, the appeal.

Article 168 Content of the appeal

1. An appeal shall contain:

- (a) the name and address of the appellant;
- (b) a reference to the decision of the General Court appealed against;

- (c) the names of the other parties to the relevant case before the General Court;
- (d) the pleas in law and legal arguments relied on, and a summary of those pleas in law;
- (e) the form of order sought by the appellant.

2. Articles 119, 121 and 122(1) of these Rules shall apply to appeals.

3. The appeal shall state the date on which the decision appealed against was served on the appellant.

4. If an appeal does not comply with paragraphs 1 to 3 of this Article, the Registrar shall prescribe a reasonable time-limit within which the appellant is to put the appeal in order. If the appellant fails to put the appeal in order within the time-limit prescribed, the Court of Justice shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with that formal requirement renders the appeal formally inadmissible.

*Article 169 Form of order sought, pleas in law and arguments of
the appeal*

1. An appeal shall seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision.

2. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested.

*Article 170 Form of order sought in the event that the appeal is
allowed*

1. An appeal shall seek, in the event that it is declared well founded, the same form of order, in whole or in part, as that sought at first instance and shall not seek a different form of order. The subject-matter of the proceedings before the General Court may not be changed in the appeal.

2. Where the appellant requests that the case be referred back to the General Court if the decision appealed against is set aside, he shall set out the reasons why the state of the proceedings does not permit a decision by the Court of Justice.

Chapter 2

RESPONSES, REPLIES AND REJOINDERS

Article 171 Service of the appeal

1. The appeal shall be served on the other parties to the relevant case before the General Court.

2. In a case where Article 168(4) of these Rules applies, service shall be effected as soon as the appeal has been put in order or the Court of Justice has declared it admissible notwithstanding the failure to observe the formal requirements laid down by that Article.

Article 172 Parties authorised to lodge a response

Any party to the relevant case before the General Court having an interest in the appeal being allowed or dismissed may submit a response within two months after service on him of the appeal. The time-limit for submitting a response shall not be extended.

Article 173 Content of the response

1. A response shall contain:

- (a) the name and address of the party submitting it;
- (b) the date on which the appeal was served on him;
- (c) the pleas in law and legal arguments relied on;
- (d) the form of order sought.

2. Articles 119 and 121 of these Rules shall apply to responses.

Article 174 Form of order sought in the response

A response shall seek to have the appeal allowed or dismissed, in whole or in part.

Article 175 Reply and rejoinder

1. The appeal and the response may be supplemented by a reply and a rejoinder only where the President, on a duly reasoned application submitted by the appellant within seven days of service of the response, considers it necessary, after hearing the Judge-Rapporteur and the Advocate General, in particular to enable the appellant to present his views on a plea of inadmissibility or on new matters relied on in the response.

2. The President shall fix the date by which the reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

Chapter 3

FORM AND CONTENT OF THE CROSS-APPEAL, AND FORM OF ORDER SOUGHT

Article 176 Cross-appeal

1. The parties referred to in Article 172 of these Rules may submit a cross-appeal within the same time-limit as that prescribed for the submission of a response.
2. A cross-appeal must be introduced by a document separate from the response.

Article 177 Content of the cross-appeal

1. A cross-appeal shall contain:
 - (a) the name and address of the party bringing the cross-appeal;
 - (b) the date on which the appeal was served on him;
 - (c) the pleas in law and legal arguments relied on;
 - (d) the form of order sought.
2. Articles 119, 121 and 122(1) and (3) of these Rules shall apply to cross-appeals.

Article 178 Form of order sought, pleas in law and arguments of the cross-appeal

1. A cross-appeal shall seek to have set aside, in whole or in part, the decision of the General Court.
2. It may also seek to have set aside an express or implied decision relating to the admissibility of the action before the General Court.
3. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested. The pleas in law and arguments must be separate from those relied on in the response.

Chapter 4

PLEADINGS CONSEQUENT ON THE CROSS-APPEAL

Article 179 Response to the cross-appeal

Where a cross-appeal is brought, the applicant at first instance or any other party to the relevant case before the General Court having an interest in the cross-appeal being allowed or dismissed may submit a response, which must

be limited to the pleas in law relied on in that cross-appeal, within two months after its being served on him. That time-limit shall not be extended.

Article 180 Reply and rejoinder on a cross-appeal

1. The cross-appeal and the response thereto may be supplemented by a reply and a rejoinder only where the President, on a duly reasoned application submitted by the party who brought the cross-appeal within seven days of service of the response to the cross-appeal, considers it necessary, after hearing the Judge-Rapporteur and the Advocate General, in particular to enable that party to present his views on a plea of inadmissibility or on new matters relied on in the response to the cross-appeal.

2. The President shall fix the date by which that reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

Chapter 5

APPEALS DETERMINED BY ORDER

*Article 181 Manifestly inadmissible or manifestly unfounded
 appeal or cross-appeal*

Where the appeal or cross-appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal or cross-appeal in whole or in part.

Article 182 Manifestly well-founded appeal or cross-appeal

Where the Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the appeal or cross-appeal and considers the appeal or cross-appeal to be manifestly well founded, it may, acting on a proposal from the Judge-Rapporteur and after hearing the parties and the Advocate General, decide by reasoned order in which reference is made to the relevant case-law to declare the appeal or cross-appeal manifestly well founded.

Chapter 6

EFFECT ON A CROSS-APPEAL OF THE REMOVAL OF THE APPEAL FROM THE REGISTER

Article 183 Effect on a cross-appeal of the discontinuance or manifest inadmissibility of the appeal

A cross-appeal shall be deemed to be devoid of purpose:

- (a) if the appellant discontinues his appeal;
- (b) if the appeal is declared manifestly inadmissible for non-compliance with the time-limit for lodging an appeal;
- (c) if the appeal is declared manifestly inadmissible on the sole ground that it is not directed against a final decision of the General Court or against a decision disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility within the meaning of the first paragraph of Article 56 of the Statute.

Chapter 7

COSTS AND LEGAL AID IN APPEALS

Article 184 Costs in appeals

1. Subject to the following provisions, Articles 137 to 146 of these Rules shall apply, *mutatis mutandis*, to the procedure before the Court of Justice on an appeal against a decision of the General Court.
2. Where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court shall make a decision as to the costs.
3. When an appeal brought by a Member State or an institution of the European Union which did not intervene in the proceedings before the General Court is well founded, the Court of Justice may order that the parties share the costs or that the successful appellant pay the costs which the appeal has caused an unsuccessful party to incur.
4. Where the appeal has not been brought by an intervener at first instance, he may not be ordered to pay costs in the appeal proceedings unless he participated in the written or oral part of the proceedings before the Court of Justice. Where an intervener at first instance takes part in the proceedings, the Court may decide that he shall bear his own costs.

Article 185 Legal aid

1. A party who is wholly or in part unable to meet the costs of the proceedings may at any time apply for legal aid.

2. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.

Article 186 Prior application for legal aid

1. If the application is made prior to the appeal which the applicant for legal aid intends to commence, it shall briefly state the subject of the appeal.
2. The application for legal aid need not be made through a lawyer.
3. The introduction of an application for legal aid shall, with regard to the person who made that application, suspend the time-limit prescribed for the bringing of the appeal until the date of service of the order making a decision on that application.
4. The President shall assign the application for legal aid, as soon as it is lodged, to a Judge-Rapporteur who shall put forward, promptly, a proposal as to the action to be taken on it.

Article 187 Decision on the application for legal aid

1. The decision to grant legal aid, in whole or in part, or to refuse it shall be taken, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, by the Chamber of three Judges to which the Judge-Rapporteur is assigned. In that event, the formation of the Court shall be composed of the President of that Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(3) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur. It shall consider, if appropriate, whether the appeal is manifestly unfounded.
2. If the Judge-Rapporteur is not a member of a Chamber of three Judges, the decision shall be taken, under the same conditions, by the Chamber of five Judges to which he is assigned. In addition to the Judge-Rapporteur, the formation of the Court shall be composed of four Judges designated from the list referred to in Article 28(2) on the date on which the application for legal aid is brought before that Chamber by the Judge-Rapporteur.
3. The formation of the Court shall give its decision by way of order. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

Article 188 Sums to be advanced as legal aid

1. Where legal aid is granted, the cashier of the Court shall be responsible, where applicable within the limits set by the formation of the Court, for costs involved in the assistance and representation of the applicant before the Court. At the request of the applicant or his representative, an advance on those costs may be paid.

2. In its decision as to costs the Court may order the payment to the cashier of the Court of sums advanced as legal aid.
3. The Registrar shall take steps to obtain the recovery of these sums from the party ordered to pay them.

Article 189 Withdrawal of legal aid

The formation of the Court which gave a decision on the application for legal aid may at any time, either of its own motion or on request, withdraw that legal aid if the circumstances which led to its being granted alter during the proceedings.

Chapter 8

OTHER PROVISIONS APPLICABLE TO APPEALS

Article 190 Other provisions applicable to appeals

1. Articles 127, 129 to 136, 147 to 150, 153 to 155 and 157 to 166 of these Rules shall apply to the procedure before the Court of Justice on an appeal against decisions of the General Court.
2. By way of derogation from Article 130(1), an application to intervene shall, however, be made within one month of the publication of the notice referred to in Article 21(4).
3. Article 95 shall apply, *mutatis mutandis*, to the procedure before the Court of Justice on an appeal against decisions of the General Court.

*Article 190a Treatment of information or material produced before the
General Court in accordance with Article 105 of its Rules of Procedure*

1. Where an appeal is brought against a decision of the General Court adopted in proceedings in which information or material has been produced by a main party in accordance with Article 105 of the Rules of Procedure of the General Court and has not been communicated to the other main party, the Registry of the General Court shall make that information or material available to the Court of Justice, on the conditions laid down in the decision referred to in paragraph 11 of that Article.
2. The information or material referred to in paragraph 1 shall not be communicated to the parties to the proceedings before the Court of Justice.
3. The Court of Justice shall ensure that the confidential matters contained in the information or material referred to in paragraph 1 are not disclosed in the decision which closes the proceedings or in any Opinion of the Advocate General.
4. The information or material referred to in paragraph 1 shall be returned to

the party that produced it before the General Court as soon as the decision closing the proceedings before the Court of Justice has been served, save where the case is referred back to the General Court. In the latter case, the information or material concerned shall again be made available to the General Court, on the conditions laid down in the decision referred to in paragraph 5.

5. The Court of Justice shall adopt, by decision, the security rules for protecting the information or material referred to in paragraph 1. That decision shall be published in the *Official Journal of the European Union*.

TITLE VI

REVIEW OF DECISIONS OF THE GENERAL COURT

Article 191 Reviewing Chamber

A Chamber of five Judges shall be designated for a period of one year for the purpose of deciding, in accordance with Articles 193 and 194 of these Rules, whether a decision of the General Court is to be reviewed in accordance with Article 62 of the Statute.

Article 192 Information and communication of decisions which may be reviewed

1. As soon as the date for the delivery or signature of a decision to be given under Article 256(2) or (3) TFEU is fixed, the Registry of the General Court shall inform the Registry of the Court of Justice.
2. The decision shall be communicated to the Registry of the Court of Justice immediately upon its delivery or signature, as shall the file in the case, which shall be made available forthwith to the First Advocate General.

Article 193 Review of decisions given on appeal

1. The proposal of the First Advocate General to review a decision of the General Court given under Article 256(2) TFEU shall be forwarded to the President of the Court of Justice and to the President of the reviewing Chamber. Notice of that transmission shall be given to the Registrar at the same time.
2. As soon as he is informed of the existence of a proposal, the Registrar shall communicate the file in the case before the General Court to the members of the reviewing Chamber.
3. As soon as the proposal to review has been received, the President of the Court shall designate the Judge-Rapporteur from among the Judges of the

reviewing Chamber on a proposal from the President of that Chamber. The composition of the formation of the Court shall be determined in accordance with Article 28(2) of these Rules on the day on which the case is assigned to the Judge-Rapporteur.

4. That Chamber, acting on a proposal from the Judge-Rapporteur, shall decide whether the decision of the General Court is to be reviewed. The decision to review the decision of the General Court shall indicate only the questions which are to be reviewed.

5. The General Court, the parties to the proceedings before it and the other interested persons referred to in the second paragraph of Article 62a of the Statute shall forthwith be informed by the Registrar of the decision of the Court of Justice to review the decision of the General Court.

6. Notice of the date of the decision to review the decision of the General Court and of the questions which are to be reviewed shall be published in the *Official Journal of the European Union*.

Article 194 Review of preliminary rulings

1. The proposal of the First Advocate General to review a decision of the General Court given under Article 256(3) TFEU shall be forwarded to the President of the Court of Justice and to the President of the reviewing Chamber. Notice of that transmission shall be given to the Registrar at the same time.

2. As soon as he is informed of the existence of a proposal, the Registrar shall communicate the file in the case before the General Court to the members of the reviewing Chamber.

3. The Registrar shall also inform the General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in the second paragraph of Article 62a of the Statute of the existence of a proposal to review.

4. As soon as the proposal to review has been received, the President of the Court shall designate the Judge-Rapporteur from among the Judges of the reviewing Chamber on a proposal from the President of that Chamber. The composition of the formation of the Court shall be determined in accordance with Article 28(2) of these Rules on the day on which the case is assigned to the Judge-Rapporteur.

5. That Chamber, acting on a proposal from the Judge-Rapporteur, shall decide whether the decision of the General Court is to be reviewed. The decision to review the decision of the General Court shall indicate only the questions which are to be reviewed.

6. The General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in the second paragraph of Article 62a of the Statute shall forthwith be informed by the Registrar of the decision of the Court of Justice as to whether or not the decision of the General Court is to be reviewed.

7. Notice of the date of the decision to review the decision of the General Court and of the questions which are to be reviewed shall be published in the *Official Journal of the European Union*.

*Article 195 Judgment on the substance of the case after a
decision to review*

1. The decision to review a decision of the General Court shall be served on the parties and other interested persons referred to in the second paragraph of Article 62a of the Statute. The decision served on the Member States, and the States, other than the Member States, which are parties to the EEA Agreement, as well as the EFTA Surveillance Authority, shall be accompanied by a translation of the decision of the Court of Justice in accordance with the provisions of Article 98 of these Rules. The decision of the Court of Justice shall also be communicated to the General Court and, if applicable, to the referring court or tribunal.

2. Within one month of the date of service referred to in paragraph 1, the parties and other interested persons on whom the decision of the Court of Justice has been served may lodge statements or written observations on the questions which are subject to review.

3. As soon as a decision to review a decision of the General Court has been taken, the First Advocate General shall assign the review to an Advocate General.

4. The reviewing Chamber shall rule on the substance of the case, after hearing the Advocate General.

5. It may, however, request the Court of Justice to assign the case to a formation of the Court composed of a greater number of Judges.

6. Where the decision of the General Court which is subject to review was given under Article 256(2) TFEU, the Court of Justice shall make a decision as to costs.

TITLE VII

OPINIONS

Article 196 Written part of the procedure

1. In accordance with Article 218(11) TFEU, a request for an Opinion may be made by a Member State, by the European Parliament, by the Council or by the European Commission.

2. A request for an Opinion may relate both to whether the envisaged agreement is compatible with the provisions of the Treaties and to whether

the European Union or any institution of the European Union has the power to enter into that agreement.

3. It shall be served on the Member States and on the institutions referred to in paragraph 1, and the President shall prescribe a time-limit within which they may submit written observations.

Article 197 Designation of the Judge-Rapporteur and of the Advocate General

As soon as the request for an Opinion has been submitted, the President shall designate a Judge-Rapporteur and the First Advocate General shall assign the case to an Advocate General.

Article 198 Hearing

The Court may decide that the procedure before it shall also include a hearing.

Article 199 Time-limit for delivering the Opinion

The Court shall deliver its Opinion as soon as possible, after hearing the Advocate General.

Article 200 Delivery of the Opinion

The Opinion, signed by the President, the Judges who took part in the deliberations and the Registrar, shall be delivered in open court. It shall be served on all the Member States and on the institutions referred to in Article 196(1).

TITLE VIII

PARTICULAR FORMS OF PROCEDURE

Article 201 Appeals against decisions of the arbitration committee

1. An application initiating an appeal under the second paragraph of Article 18 TEAEC shall state:

- (a) the name and permanent address of the applicant;
- (b) the description of the signatory;

- (c) a reference to the arbitration committee's decision against which the appeal is made;
- (d) the names of the respondents;
- (e) a summary of the facts;
- (f) the grounds on which the appeal is based and arguments relied on, and a brief statement of those grounds;
- (g) the form of order sought by the applicant.

2. Articles 119 and 121 of these Rules shall apply to the application.

3. A certified copy of the contested decision shall be annexed to the application.

4. As soon as the application has been lodged, the Registrar of the Court shall request the arbitration committee registry to transmit to the Court the file in the case.

5. Articles 123 and 124 of these Rules shall apply to this procedure. The Court may decide that the procedure before it shall also include a hearing.

6. The Court shall give its decision in the form of a judgment. Where the Court sets aside the decision of the arbitration committee it may refer the case back to the committee.

Article 202 Procedure under Article 103 TEAEC

1. Four certified copies shall be lodged of an application under the third paragraph of Article 103 TEAEC. The application shall be accompanied by the draft of the agreement or contract concerned, by the observations of the European Commission addressed to the State concerned and by all other supporting documents.

2. The application and annexes thereto shall be served on the European Commission, which shall have a time-limit of 10 days from such service to submit its written observations. This time-limit may be extended by the President after the State concerned has been heard.

3. Following the lodging of such observations, which shall be served on the State concerned, the Court shall give its decision promptly, after hearing the Advocate General and, if they so request, the State concerned and the European Commission.

Article 203 Procedures under Articles 104 TEAEC and 105 TEAEC

Applications under the third paragraph of Article 104 TEAEC and the second paragraph of Article 105 TEAEC shall be governed by the provisions of Titles II and IV of these Rules. Such applications shall also be served on the State to which the respondent person or undertaking belongs.

Article 204 Procedure provided for by Article 111(3) of the EEA Agreement

1. In the case governed by Article 111(3) of the EEA Agreement, the matter shall be brought before the Court by a request submitted by the Contracting Parties which are parties to the dispute. The request shall be served on the other Contracting Parties, on the European Commission, on the EFTA Surveillance Authority and, where appropriate, on the other interested persons on whom a request for a preliminary ruling raising the same question of interpretation of European Union legislation would be served.
2. The President shall prescribe a time-limit within which the Contracting Parties and the other interested persons on whom the request has been served may submit written observations.
3. The request shall be made in one of the languages referred to in Article 36 of these Rules. Article 38 shall apply. The provisions of Article 98 shall apply *mutatis mutandis*.
4. As soon as the request referred to in paragraph 1 of this Article has been submitted, the President shall designate a Judge-Rapporteur. The First Advocate General shall, immediately afterwards, assign the request to an Advocate General.
5. The Court shall, after hearing the Advocate General, give a reasoned decision on the request.
6. The decision of the Court, signed by the President, the Judges who took part in the deliberations and the Registrar, shall be served on the Contracting Parties and on the other interested persons referred to in paragraphs 1 and 2.

Article 205 Settlement of the disputes referred to in Article 35 TEU in the version in force before the entry into force of the Treaty of Lisbon

1. In the case of disputes between Member States as referred to in Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties, the matter shall be brought before the Court by an application by a party to the dispute. The application shall be served on the other Member States and on the European Commission.
2. In the case of disputes between Member States and the European Commission as referred to in Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties, the matter shall be brought before the Court by an application by a party to the dispute. The application shall be served on the other Member States, the Council and the European Commission if it was submitted by a Member State. The application shall be served on the Member States and on the Council if it was submitted by the European Commission.

3. The President shall prescribe a time-limit within which the institutions and the Member States on which the application has been served may submit written observations.
4. As soon as the application referred to in paragraphs 1 and 2 has been submitted, the President shall designate a Judge-Rapporteur. The First Advocate General shall, immediately afterwards, assign the application to an Advocate General.
5. The Court may decide that the procedure before it shall also include a hearing.
6. The Court shall, after the Advocate General has delivered his Opinion, give its ruling on the dispute by way of judgment.
7. The same procedure as that laid down in the preceding paragraphs shall apply where an agreement concluded between the Member States confers jurisdiction on the Court to rule on a dispute between Member States or between Member States and an institution.

Article 206 Requests under Article 269 TFEU

1. Four certified copies shall be submitted of a request under Article 269 TFEU. The request shall be accompanied by any relevant document and, in particular, any observations and recommendations made pursuant to Article 7 TEU.
2. The request and annexes thereto shall be served on the European Council or on the Council, as appropriate, each of which shall have a time-limit of 10 days from such service to submit its written observations. This time-limit shall not be extended.
3. The request and annexes thereto shall also be communicated to the Member States other than the State in question, to the European Parliament and to the European Commission.
4. Following the lodging of the observations referred to in paragraph 2, which shall be served on the Member State concerned and on the States and institutions referred to in paragraph 3, the Court shall give its decision within a time-limit of one month from the lodging of the request and after hearing the Advocate General. At the request of the Member State concerned, the European Council or the Council, or of its own motion, the Court may decide that the procedure before it shall also include a hearing, which all the States and institutions referred to in this Article shall be given notice to attend.

FINAL PROVISIONS

Article 207 Supplementary rules

Subject to the provisions of Article 253 TFEU and after consultation with the Governments concerned, the Court shall adopt supplementary rules concerning its practice in relation to:

- (a) letters rogatory;
- (b) applications for legal aid;
- (c) reports by the Court of perjury by witnesses or experts, delivered pursuant to Article 30 of the Statute.

Article 208 Implementing rules

The Court may, by a separate act, adopt practice rules for the implementation of these Rules.

Article 209 Repeal

These Rules replace the Rules of Procedure of the Court of Justice of the European Communities adopted on 19 June 1991, as last amended on 24 May 2011 (*Official Journal of the European Union*, L 162 of 22 June 2011, p. 17).

Article 210 Publication and entry into force of these Rules

These Rules, which are authentic in the languages referred to in Article 36 of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the first day of the second month following their publication.

Article 247

(ex Article 216 TEC)

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, compulsorily retire him.

Article 248

(ex Article 217(2) TEC)

Without prejudice to Article 18(4) of the Treaty on European Union, the responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President, in accordance with Article 17(6) of that Treaty. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

Article 249

(ex Articles 218(2) and 212 TEC)

1. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate. It shall ensure that these Rules are published.
2. The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Union.

Article 250

(ex Article 219 TEC)

The Commission shall act by a majority of its Members.

Its Rules of Procedure shall determine the quorum.

*SECTION 5**THE COURT OF JUSTICE OF THE EUROPEAN UNION**Article 251*

(ex Article 221 TEC)

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice of the European Union.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

Article 252

(ex Article 222 TEC)

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement.

Article 253

(ex Article 223 TEC)

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council.

Article 254

(ex Article 224 TEC)

The number of Judges of the General Court shall be determined by the Statute of the Court of Justice of the European Union. The Statute may provide for the General Court to be assisted by Advocates-General.

The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the General Court from among their number for a term of three years. He may be re-elected.

The General Court shall appoint its Registrar and lay down the rules governing his service.

The General Court shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

Unless the Statute of the Court of Justice of the European Union provides otherwise, the provisions of the Treaties relating to the Court of Justice shall apply to the General Court.

Article 255

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254.

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

Article 256

(ex Article 225 TEC)

1. The General Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 263, 265, 268, 270 and 272, with the exception of those assigned to a specialised court set up under Article 257 and those reserved in the Statute for the Court of Justice. The Statute may provide for the General Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the General Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The General Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the specialised courts.

Decisions given by the General Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

3. The General Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by the Statute.

Where the General Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the General Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

Article 257

(ex Article 225a TEC)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

The regulation establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.

Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the regulation establishing the specialised court, a right of appeal also on matters of fact, before the General Court.

The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

Unless the regulation establishing the specialised court provides otherwise, the provisions of the Treaties relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the specialised courts. Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.

Article 258

(ex Article 226 TEC)

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

Article 259

(ex Article 227 TEC)

A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Treaties, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.

Article 260

(ex Article 228 TEC)

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 259.

3. When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

Article 261

(ex Article 229 TEC)

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of the Treaties, may give the Court of Justice of the European Union unlimited jurisdiction with regard to the penalties provided for in such regulations.

Article 262

(ex Article 229a TEC)

Without prejudice to the other provisions of the Treaties, the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice of the European Union in disputes relating to the application of acts adopted on the basis of the Treaties which create European intellectual property rights. These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.

Article 263

(ex Article 230 TEC)

The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects *vis-à-vis* third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 264

(ex Article 231 TEC)

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

Article 265

(ex Article 232 TEC)

Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

Article 266

(ex Article 233 TEC)

The institution whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 340.

Article 267

(ex Article 234 TEC)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Article 268

(ex Article 235 TEC)

The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340.

Article 269

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 of the Treaty on European Union solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

Article 270

(ex Article 236 TEC)

The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

Article 271

(ex Article 237 TEC)

The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 258;
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 263;
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 263, and solely on the grounds of non-compliance with the procedure provided for in Article 19(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under the Treaties and the Statute of the ESCB and of the ECB. In this connection the powers of the Governing Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 258. If the Court finds that a national central bank has failed to fulfil an obligation under the Treaties, that bank shall be required to take the necessary measures to comply with the judgment of the Court.

Article 272

(ex Article 238 TEC)

The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

Article 273

(ex Article 239 TEC)

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties.

Article 274

(ex Article 240 TEC)

Save where jurisdiction is conferred on the Court of Justice of the European Union by the Treaties, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 275

The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.

Article 276

In exercising its powers regarding the provisions of Chapters 4 and 5 of Title V of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 277

(ex Article 241 TEC)

Notwithstanding the expiry of the period laid down in Article 263, sixth paragraph, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in Article 263, second paragraph, in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

Article 278

(ex Article 242 TEC)

Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 279

(ex Article 243 TEC)

The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.

Article 280

(ex Article 244 TEC)

The judgments of the Court of Justice of the European Union shall be enforceable under the conditions laid down in Article 299.

Article 281

(ex Article 245 TEC)

The Statute of the Court of Justice of the European Union shall be laid down in a separate Protocol.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.

SECTION 6

THE EUROPEAN CENTRAL BANK

Article 282

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.

2. The ESCB shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.

3. The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.

4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with Articles 127 to 133, with Article 138, and with the conditions laid down in the Statute of the ESCB and of the ECB. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.

5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

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IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
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COURT OF JUSTICE OF THE EUROPEAN UNION

Code of Conduct for Members and former Members of the Court of Justice of the European Union

(2016/C 483/01)

THE COURT OF JUSTICE OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Articles 253, 254, 257 and 339 thereof;

Having regard to Articles 2, 4, 6, 8, 18 and 47 of the Statute of the Court of Justice of the European Union, to Articles 4 to 6 of the Rules of Procedure of the Court of Justice and to Articles 5 to 7 of the Rules of Procedure of the General Court;

Whereas it is appropriate to establish a Code of Conduct which defines the obligations arising under the provisions of the Statute and of the Rules of Procedure which are applicable to Members and former Members of the Court of Justice of the European Union;

Hereby adopts the present Code of Conduct:

*Article 1***Scope**

This Code of Conduct shall apply to Members and former Members of the Courts or Tribunals that constitute or have constituted the Court of Justice of the European Union.

*Article 2***Principles**

1. Members shall devote themselves fully to the performance of their duties.
2. Members shall perform their duties with complete independence, integrity, dignity and impartiality and with loyalty and discretion, in compliance with the rules set out in this Code of Conduct.

*Article 3***Independence, integrity and dignity**

1. Members shall perform their duties with complete independence and integrity, without taking account of any personal or national interest. They shall neither seek nor follow any instructions from the institutions, bodies, offices or agencies of the Union, the governments of the Member States or any private or public entities.

2. Members shall not accept gifts of any kind which might call into question their independence.
3. Members shall respect the dignity of their office.
4. Members shall not act or express themselves, through whatever medium, in a manner which adversely affects the public perception of their independence, their integrity or the dignity of their office.

Article 4

Impartiality

1. Members shall avoid any situation which may give rise to a conflict of personal interest or which may reasonably be perceived as such. They shall not be involved in dealing with a case in which they have any personal interest.
2. Members shall not act or express themselves, through whatever medium, in a manner which adversely affects the public perception of their impartiality.

Article 5

Notification and declaration as to personal interests

1. Members shall notify the President of the Court or Tribunal of which they are a Member if they are to hear a case in which they have an interest that might give rise to a conflict of interest.
2. On taking up their duties, Members shall submit a declaration of their financial interests, within the meaning of paragraph 3, to the President of the Court or Tribunal of which they are a Member.
3. The declaration shall identify every entity in which the Member has a direct financial interest which, because of its scale, might reasonably be perceived as being capable of giving rise to a conflict of interest if the Member were to hear a case involving that entity. In this declaration, the Member shall identify each entity in which he or she has such a financial interest, which may be in the form of a specific financial holding in its capital, in particular, shares, or any other form of financial interest, for example, bonds or investment certificates. This paragraph does not apply to entities in which the Member owns holdings managed on a discretionary basis by a third party.
4. In the event of changes in the list of entities identified in the declaration within the meaning of paragraph 3, a new declaration shall be submitted at the earliest opportunity and, at the latest, within 2 months after the change in question.
5. The declaration referred to in paragraph 3 shall be submitted using the form set out in the Annex to this Code of Conduct.
6. The objective of the notifications and declarations under paragraphs 1 to 3 is to allow the President of the Court or Tribunal concerned to ascertain whether a Member has a personal interest in the outcome of the dispute in a given case.

Article 6

Loyalty

1. Members shall comply with their duty of loyalty towards the Institution.
2. Members shall make use of the services of officials and other servants of the Institution, in particular those allocated to their Chambers, in a respectful manner.
3. Members shall manage the material resources of the Institution in a responsible manner.
4. Members shall refrain from making any statement outside the Institution which may harm its reputation.

*Article 7***Discretion**

1. Members shall preserve the secrecy of the deliberations.
2. Members shall comply with their duty to exercise discretion in dealing with judicial and administrative matters.
3. Members shall act and express themselves with the restraint that their office requires.

*Article 8***External activities**

1. Members shall undertake to comply in all circumstances with their obligation to be available so as to devote themselves fully to the performance of their duties.
2. Members may engage in external activities only if they are compatible with their duties arising under Articles 2 to 4, 6 and 7 of this Code of Conduct. Without prejudice to the derogation provided for in the second paragraph of Article 4 of the Statute of the Court of Justice of the European Union, engaging in any professional activity other than that resulting from the performance of their duties shall be incompatible with the duties set out in this Code of Conduct.
3. Members may be authorised to engage in external activities that are closely related to the performance of their duties. In that context:
 - they may be authorised to represent the Institution or the Court or Tribunal of which they are a Member at ceremonies and official events,
 - they may be authorised to participate in activities of European interest that relate, inter alia, to the dissemination of EU law and to dialogue with national and international courts or tribunals. In this respect, Members may be authorised to participate in teaching activities, conferences, seminars or symposia.

Only participation in teaching activities may give rise to remuneration in accordance with the rules of the teaching establishment concerned.

The Members' activities authorised by the Court or Tribunal of which they are a Member shall be published on the Institution's website after the activity has taken place.

4. In addition, Members may be authorised to assume unremunerated duties in foundations or similar bodies in the legal, cultural, artistic, social, sporting or charitable fields and in teaching or research establishments. In that connection, they shall undertake not to engage in any managerial or administrative activities which might compromise their independence or their availability or which might give rise to a conflict of interest. The expression 'foundations or similar bodies' means not-for-profit establishments or associations which carry out activities in the general interest in the fields referred to.

5. Members who wish to take part in an activity covered by paragraphs 3 and 4 shall request prior authorisation from the Court or Tribunal of which they are a Member, by using a specific form.

6. Publications and the resulting copyright royalties shall be allowed without prior authorisation.

*Article 9***Duties of the Members after ceasing to hold office**

1. After ceasing to hold office, Members shall continue to be bound by their duty of integrity, of dignity, of loyalty and of discretion.

2. Members undertake that after ceasing to hold office, they will not become involved
 - in any manner whatsoever in cases which were pending before the Court or Tribunal of which they were a Member when they ceased to hold office,
 - in any manner whatsoever in cases directly and clearly connected with cases, including concluded cases, which they have dealt with as Judge or Advocate General, and
 - for a period of 3 years from the date of their ceasing to hold office, as representatives of parties, in either written or oral pleadings, in cases before the Courts or Tribunals that constitute the Court of Justice of the European Union.
3. In cases other than those referred to in the three indents of paragraph 2, former Members may be involved as agent, counsel, adviser or expert or provide a legal opinion or serve as an arbitrator, provided that they comply with the duties arising under paragraph 1.
4. If in doubt as to the application of this article, a former Member may contact the President of the Court of Justice, who shall take a decision after obtaining the opinion of the Committee provided for in Article 10.

Article 10

Application of the Code

1. The President of the Court of Justice, assisted by a Consultative Committee, shall be responsible for ensuring the proper application of this Code of Conduct.

The Consultative Committee shall be composed of the three Members of the Court of Justice who have been longest in office and the Vice-President of the Court of Justice if he or she is not one of those Members.

Should a Member or a former Member of the General Court be the person concerned, the President, the Vice-President and another Member of the General Court shall take part in the deliberations of the Committee.

The Committee shall be assisted by the Registrar of the Court of Justice.

2. Without prejudice to the provisions of the Statute of the Court of Justice of the European Union, the Committee may, in an individual case, give its opinion to the Member or the former Member concerned after hearing him or her.

Article 11

Entry into force

1. This Code of Conduct shall repeal and replace the previous Code of Conduct (OJ C 223, 2007, p. 1). It shall enter into force on 1 January 2017.
2. The declaration of financial interests of the Members in office on the date of entry into force of this Code of Conduct shall be submitted to the President of the Court or Tribunal of which those Members are a Member no later than 1 month after that date.

ANNEX

DECLARATION OF FINANCIAL INTERESTS

(in accordance with Article 5 of the Code of Conduct)

SURNAME:

FIRST NAME:

I have a financial interest, within the meaning of Article 5 of the Code of Conduct ⁽¹⁾, in the following entities:

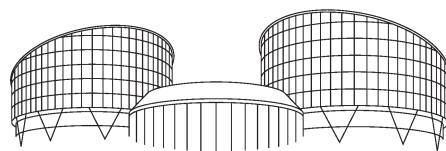
I hereby declare that the above information is true and correct.

Date:

Signature:

⁽¹⁾ Please specify, in alphabetical order, the entities in which you have a direct financial interest within the meaning of Article 5(3) of the Code of Conduct.





EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Rules of Court

14 November 2016

Registry of the Court

Strasbourg

Note by the Registry

This new edition of the Rules of Court incorporates amendments made by the Plenary Court on 14 November 2016.

The new edition entered into force on 14 November 2016.

Any additional texts and updates will be made public on the Court's website (www.echr.coe.int).

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The European Court of Human Rights,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto,

Makes the present Rules:

Rule 1¹ – Definitions

For the purposes of these Rules unless the context otherwise requires:

(a) the term “Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

(b) the expression “plenary Court” means the European Court of Human Rights sitting in plenary session;

(c) the expression “Grand Chamber” means the Grand Chamber of seventeen judges constituted in pursuance of Article 26 § 1 of the Convention;

(d) the term “Section” means a Chamber set up by the plenary Court for a fixed period in pursuance of Article 25 (b) of the Convention and the expression “President of the Section” means the judge elected by the plenary Court in pursuance of Article 25 (c) of the Convention as President of such a Section;

(e) the term “Chamber” means any Chamber of seven judges constituted in pursuance of Article 26 § 1 of the Convention and the expression “President of the Chamber” means the judge presiding over such a “Chamber”;

(f) the term “Committee” means a Committee of three judges set up in pursuance of Article 26 § 1 of the Convention and the expression “President of the Committee” means the judge presiding over such a “Committee”;

(g) the expression “single-judge formation” means a single judge sitting in accordance with Article 26 § 1 of the Convention;

(h) the term “Court” means either the plenary Court, the Grand Chamber, a Section, a Chamber, a Committee, a single judge or the panel of five judges referred to in Article 43 § 2 of the Convention;

(i) the expression “*ad hoc* judge” means any person chosen in pursuance of Article 26 § 4 of the Convention and in accordance with Rule 29 to sit as a member of the Grand Chamber or as a member of a Chamber;

(j) the terms “judge” and “judges” mean the judges elected by the Parliamentary Assembly of the Council of Europe or *ad hoc* judges;

(k) the expression “Judge Rapporteur” means a judge appointed to carry out the tasks provided for in Rules 48 and 49;

(l) the term “non-judicial rapporteur” means a member of the Registry charged with assisting the single-judge formations provided for in Article 24 § 2 of the Convention;

(m) the term “delegate” means a judge who has been appointed to a delegation by the Chamber and the expression “head of the delegation” means the delegate appointed by the Chamber to lead its delegation;

1. As amended by the Court on 7 July 2003 and 13 November 2006.

(n) the term “delegation” means a body composed of delegates, Registry members and any other person appointed by the Chamber to assist the delegation;

(o) the term “Registrar” denotes the Registrar of the Court or the Registrar of a Section according to the context;

(p) the terms “party” and “parties” mean

- the applicant or respondent Contracting Parties;
- the applicant (the person, non-governmental organisation or group of individuals) that lodged a complaint under Article 34 of the Convention;

(q) the expression “third party” means any Contracting Party or any person concerned or the Council of Europe Commissioner for Human Rights who, as provided for in Article 36 §§ 1, 2 and 3 of the Convention, has exercised the right to submit written comments and take part in a hearing, or has been invited to do so;

(r) the terms “hearing” and “hearings” mean oral proceedings held on the admissibility and/or merits of an application or in connection with a request for revision or an advisory opinion, a request for interpretation by a party or by the Committee of Ministers, or a question whether there has been a failure to fulfil an obligation which may be referred to the Court by virtue of Article 46 § 4 of the Convention;

(s) the expression “Committee of Ministers” means the Committee of Ministers of the Council of Europe;

(t) the terms “former Court” and “Commission” mean respectively the European Court and European Commission of Human Rights set up under former Article 19 of the Convention.

Title I – Organisation and Working of the Court

Chapter I – Judges

Rule 2¹ – Calculation of term of office

1. Where the seat is vacant on the date of the judge's election, or where the election takes place less than three months before the seat becomes vacant, the term of office shall begin as from the date of taking up office which shall be no later than three months after the date of election.
2. Where the judge's election takes place more than three months before the seat becomes vacant, the term of office shall begin on the date on which the seat becomes vacant.
3. In accordance with Article 23 § 3 of the Convention, an elected judge shall hold office until a successor has taken the oath or made the declaration provided for in Rule 3.

Rule 3 – Oath or solemn declaration

1. Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration:

“I swear” – or “I solemnly declare” – “that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations.”

2. This act shall be recorded in minutes.

Rule 4² – Incompatible activities

1. In accordance with Article 21 § 3 of the Convention, the judges shall not during their term of office engage in any political or administrative activity or any professional activity which is incompatible with their independence or impartiality or with the demands of a full-time office. Each judge shall declare to the President of the Court any additional activity. In the event of a disagreement between the President and the judge concerned, any question arising shall be decided by the plenary Court.
2. A former judge shall not represent a party or third party in any capacity in proceedings before the Court relating to an application lodged before the date on which he or she ceased to hold office. As regards applications lodged subsequently, a former judge may not represent a party or third party in any capacity in proceedings before the Court until a period of two years from the date on which he or she ceased to hold office has elapsed.

Rule 5³ – Precedence

1. Elected judges shall take precedence after the President and Vice-Presidents of the Court and the Presidents of the Sections, according to the date of their taking up office in accordance with Rule 2 §§ 1 and 2.
2. Vice-Presidents of the Court elected to office on the same date shall take precedence according to the length of time they have served as judges. If the length of time they have served as judges is

1. As amended by the Court on 13 November 2006 and 2 April 2012.

2. As amended by the Court on 29 March 2010.

3. As amended by the Court on 14 May 2007.

the same, they shall take precedence according to age. The same rule shall apply to Presidents of Sections.

3. Judges who have served the same length of time shall take precedence according to age.
4. *Ad hoc* judges shall take precedence after the elected judges according to age.

Rule 6 – Resignation

Resignation of a judge shall be notified to the President of the Court, who shall transmit it to the Secretary General of the Council of Europe. Subject to the provisions of Rules 24 § 4 *in fine* and 26 § 3, resignation shall constitute vacation of office.

Rule 7 – Dismissal from office

No judge may be dismissed from his or her office unless the other judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that he or she has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.

Chapter II¹ – Presidency of the Court and the role of the Bureau

Rule 8² – Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections

1. The plenary Court shall elect its President and two Vice-Presidents for a period of three years as well as the Presidents of the Sections for a period of two years, provided that such periods shall not exceed the duration of their terms of office as judges.
2. Each Section shall likewise elect a Vice-President for a period of two years, provided that such period shall not exceed the duration of his or her term of office as judge.
3. A judge elected in accordance with paragraphs 1 or 2 above may be re-elected but only once to the same level of office.
4. The Presidents and Vice-Presidents shall continue to hold office until the election of their successors.
5. The elections referred to in paragraph 1 of this Rule shall be by secret ballot. Only the elected judges who are present shall take part. If no candidate receives an absolute majority of the votes cast, an additional round or rounds shall take place until one candidate has achieved an absolute majority. After each round, any candidate receiving fewer than five votes shall be eliminated; and if more than two candidates have received five votes or more, the one who has received the least number of votes shall also be eliminated. If there is more than one candidate in this position, only the candidate who is lowest in the order of precedence in accordance with Rule 5 shall be eliminated. In the event of a tie between two candidates in the final round, preference shall be given to the judge having precedence in accordance with Rule 5.
6. The rules set out in the preceding paragraph shall apply to the elections referred to in paragraph 2 of this Rule. However, where more than one round of voting is required until one candidate has achieved an absolute majority, only the candidate who has received the least number of votes shall be eliminated after each round.

Rule 9 – Functions of the President of the Court

1. The President of the Court shall direct the work and administration of the Court. The President shall represent the Court and, in particular, be responsible for its relations with the authorities of the Council of Europe.
2. The President shall preside at plenary meetings of the Court, meetings of the Grand Chamber and meetings of the panel of five judges.
3. The President shall not take part in the consideration of cases being heard by Chambers except where he or she is the judge elected in respect of a Contracting Party concerned.

Rule 9A³ – Role of the Bureau

1. (a) The Court shall have a Bureau, composed of the President of the Court, the Vice-Presidents of the Court and the Section Presidents. Where a Vice-President or a Section President is unable to attend a Bureau meeting, he or she shall be replaced by the Section Vice-President or, failing that, by

1. As amended by the Court on 7 July 2003.

2. As amended by the Court on 7 November 2005, 20 February 2012, 14 January 2013, 14 April 2014, 1 June 2015 and 19 September 2016.

3. Inserted by the Court on 7 July 2003.

the next most senior member of the Section according to the order of precedence established in Rule 5.

(b) The Bureau may request the attendance of any other member of the Court or any other person whose presence it considers necessary.

2. The Bureau shall be assisted by the Registrar and the Deputy Registrars.

3. The Bureau's task shall be to assist the President in carrying out his or her function in directing the work and administration of the Court. To this end the President may submit to the Bureau any administrative or extra-judicial matter which falls within his or her competence.

4. The Bureau shall also facilitate coordination between the Court's Sections.

5. The President may consult the Bureau before issuing practice directions under Rule 32 and before approving general instructions drawn up by the Registrar under Rule 17 § 4.

6. The Bureau may report on any matter to the Plenary. It may also make proposals to the Plenary.

7. A record shall be kept of the Bureau's meetings and distributed to the Judges in both the Court's official languages. The secretary to the Bureau shall be designated by the Registrar in agreement with the President.

Rule 10 – Functions of the Vice-Presidents of the Court

The Vice-Presidents of the Court shall assist the President of the Court. They shall take the place of the President if the latter is unable to carry out his or her duties or the office of President is vacant, or at the request of the President. They shall also act as Presidents of Sections.

Rule 11 – Replacement of the President and the Vice-Presidents of the Court

If the President and the Vice-Presidents of the Court are at the same time unable to carry out their duties or if their offices are at the same time vacant, the office of President of the Court shall be assumed by a President of a Section or, if none is available, by another elected judge, in accordance with the order of precedence provided for in Rule 5.

Rule 12¹ – Presidency of Sections and Chambers

The Presidents of the Sections shall preside at the sittings of the Section and Chambers of which they are members and shall direct the Sections' work. The Vice-Presidents of the Sections shall take their place if they are unable to carry out their duties or if the office of President of the Section concerned is vacant, or at the request of the President of the Section. Failing that, the judges of the Section and the Chambers shall take their place, in the order of precedence provided for in Rule 5.

Rule 13² – Inability to preside

Judges of the Court may not preside in cases in which the Contracting Party of which they are nationals or in respect of which they were elected is a party, or in cases where they sit as a judge appointed by virtue of Rule 29 § 1 (a) or Rule 30 § 1.

1. As amended by the Court on 17 June and 8 July 2002.

2. As amended by the Court on 4 July 2005.

Rule 14 – Balanced representation of the sexes

In relation to the making of appointments governed by this and the following chapter of the present Rules, the Court shall pursue a policy aimed at securing a balanced representation of the sexes.

Chapter III – The Registry

Rule 15¹ – Election of the Registrar

1. The plenary Court shall elect its Registrar. The candidates shall be of high moral character and must possess the legal, managerial and linguistic knowledge and experience necessary to carry out the functions attaching to the post.
2. The Registrar shall be elected for a term of five years and may be re-elected. The Registrar may not be dismissed from office, unless the judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that the person concerned has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.
3. The elections referred to in this Rule shall be by secret ballot; only the elected judges who are present shall take part. If no candidate receives an absolute majority of the votes cast, an additional round or rounds of voting shall take place until one candidate has achieved an absolute majority. After each round, any candidate receiving fewer than five votes shall be eliminated; and if more than two candidates have received five votes or more, the one who has received the least number of votes shall also be eliminated. In the event of a tie in an additional round of voting, preference shall be given, firstly, to the female candidate, if any, and, secondly, to the older candidate.
4. Before taking up office, the Registrar shall take the following oath or make the following solemn declaration before the plenary Court or, if need be, before the President of the Court:

“I swear” – or “I solemnly declare” – “that I will exercise loyally, discreetly and conscientiously the functions conferred upon me as Registrar of the European Court of Human Rights.”

This act shall be recorded in minutes.

Rule 16² – Election of the Deputy Registrars

1. The plenary Court shall also elect one or more Deputy Registrars on the conditions and in the manner and for the term prescribed in the preceding Rule. The procedure for dismissal from office provided for in respect of the Registrar shall likewise apply. The Court shall first consult the Registrar in both these matters.
2. Before taking up office, a Deputy Registrar shall take an oath or make a solemn declaration before the plenary Court or, if need be, before the President of the Court, in terms similar to those prescribed in respect of the Registrar. This act shall be recorded in minutes.

Rule 17 – Functions of the Registrar

1. The Registrar shall assist the Court in the performance of its functions and shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court.
2. The Registrar shall have the custody of the archives of the Court and shall be the channel for all communications and notifications made by, or addressed to, the Court in connection with the cases brought or to be brought before it.
3. The Registrar shall, subject to the duty of discretion attaching to this office, reply to requests for information concerning the work of the Court, in particular to enquiries from the press.

1. As amended by the Court on 14 April 2014.

2. As amended by the Court on 14 April 2014.

4. General instructions drawn up by the Registrar, and approved by the President of the Court, shall regulate the working of the Registry.

Rule 18¹ – Organisation of the Registry

1. The Registry shall consist of Section Registries equal to the number of Sections set up by the Court and of the departments necessary to provide the legal and administrative services required by the Court.
2. The Section Registrar shall assist the Section in the performance of its functions and may be assisted by a Deputy Section Registrar.
3. The officials of the Registry shall be appointed by the Registrar under the authority of the President of the Court. The appointment of the Registrar and Deputy Registrars shall be governed by Rules 15 and 16 above.

Rule 18A² – Non-judicial rapporteurs

1. When sitting in a single-judge formation, the Court shall be assisted by non-judicial rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.
2. The non-judicial rapporteurs shall be appointed by the President of the Court on a proposal by the Registrar. Section Registrars and Deputy Section Registrars, as referred to in Rule 18 § 2, shall act *ex officio* as non-judicial rapporteurs.

Rule 18B³ – Jurisconsult

For the purposes of ensuring the quality and consistency of its case-law, the Court shall be assisted by a Jurisconsult. He or she shall be a member of the Registry. The Jurisconsult shall provide opinions and information, in particular to the judicial formations and the members of the Court.

1. As amended by the Court on 13 November 2006 and 2 April 2012.
 2. Inserted by the Court on 13 November 2006 and amended on 14 January 2013.
 3. Inserted by the Court on 23 June 2014.

Chapter IV – The Working of the Court

Rule 19 – Seat of the Court

1. The seat of the Court shall be at the seat of the Council of Europe at Strasbourg. The Court may, however, if it considers it expedient, perform its functions elsewhere in the territories of the member States of the Council of Europe.
2. The Court may decide, at any stage of the examination of an application, that it is necessary that an investigation or any other function be carried out elsewhere by it or one or more of its members.

Rule 20 – Sessions of the plenary Court

1. The plenary sessions of the Court shall be convened by the President of the Court whenever the performance of its functions under the Convention and under these Rules so requires. The President of the Court shall convene a plenary session if at least one-third of the members of the Court so request, and in any event once a year to consider administrative matters.
2. The quorum of the plenary Court shall be two-thirds of the elected judges in office.
3. If there is no quorum, the President shall adjourn the sitting.

Rule 21 – Other sessions of the Court

1. The Grand Chamber, the Chambers and the Committees shall sit full time. On a proposal by the President, however, the Court shall fix session periods each year.
2. Outside those periods the Grand Chamber and the Chambers shall be convened by their Presidents in cases of urgency.

Rule 22 – Deliberations

1. The Court shall deliberate in private. Its deliberations shall remain secret.
2. Only the judges shall take part in the deliberations. The Registrar or the designated substitute, as well as such other officials of the Registry and interpreters whose assistance is deemed necessary, shall be present. No other person may be admitted except by special decision of the Court.
3. Before a vote is taken on any matter in the Court, the President may request the judges to state their opinions on it.

Rule 23 – Votes

1. The decisions of the Court shall be taken by a majority of the judges present. In the event of a tie, a fresh vote shall be taken and, if there is still a tie, the President shall have a casting vote. This paragraph shall apply unless otherwise provided for in these Rules.
2. The decisions and judgments of the Grand Chamber and the Chambers shall be adopted by a majority of the sitting judges. Abstentions shall not be allowed in final votes on the admissibility and merits of cases.
3. As a general rule, votes shall be taken by a show of hands. The President may take a roll-call vote, in reverse order of precedence.
4. Any matter that is to be voted upon shall be formulated in precise terms.

Rule 23A¹ – Decision by tacit agreement

Where it is necessary for the Court to decide a point of procedure or any other question other than at a scheduled meeting of the Court, the President may direct that a draft decision be circulated among the judges and that a deadline be set for their comments on the draft. In the absence of any objection from a judge, the proposal shall be deemed to have been adopted at the expiry of the deadline.

1. Inserted by the Court on 13 December 2004.

Chapter V – The Composition of the Court

Rule 24¹ – Composition of the Grand Chamber

1. The Grand Chamber shall be composed of seventeen judges and at least three substitute judges.
2. (a) The Grand Chamber shall include the President and the Vice-Presidents of the Court and the Presidents of the Sections. Any Vice-President of the Court or President of a Section who is unable to sit as a member of the Grand Chamber shall be replaced by the Vice-President of the relevant Section.

(b) The judge elected in respect of the Contracting Party concerned or, where appropriate, the judge designated by virtue of Rule 29 or Rule 30 shall sit as an *ex officio* member of the Grand Chamber in accordance with Article 26 §§ 4 and 5 of the Convention.

(c) In cases referred to the Grand Chamber under Article 30 of the Convention, the Grand Chamber shall also include the members of the Chamber which relinquished jurisdiction.

(d) In cases referred to it under Article 43 of the Convention, the Grand Chamber shall not include any judge who sat in the Chamber which rendered the judgment in the case so referred, with the exception of the President of that Chamber and the judge who sat in respect of the State Party concerned, or any judge who sat in the Chamber or Chambers which ruled on the admissibility of the application.

(e) The judges and substitute judges who are to complete the Grand Chamber in each case referred to it shall be designated from among the remaining judges by a drawing of lots by the President of the Court in the presence of the Registrar. The modalities for the drawing of lots shall be laid down by the Plenary Court, having due regard to the need for a geographically balanced composition reflecting the different legal systems among the Contracting Parties.

(f) In examining a request for an advisory opinion under Article 47 of the Convention, the Grand Chamber shall be constituted in accordance with the provisions of paragraph 2 (a) and (e) of this Rule.

(g) In examining a request under Article 46 § 4 of the Convention, the Grand Chamber shall include, in addition to the judges referred to in paragraph 2 (a) and (b) of this Rule, the members of the Chamber or Committee which rendered the judgment in the case concerned. If the judgment was rendered by a Grand Chamber, the Grand Chamber shall be constituted as the original Grand Chamber. In all cases, including those where it is not possible to reconstitute the original Grand Chamber, the judges and substitute judges who are to complete the Grand Chamber shall be designated in accordance with paragraph 2 (e) of this Rule.
3. If any judges are prevented from sitting, they shall be replaced by the substitute judges in the order in which the latter were selected under paragraph 2 (e) of this Rule.
4. The judges and substitute judges designated in accordance with the above provisions shall continue to sit in the Grand Chamber for the consideration of the case until the proceedings have been completed. Even after the end of their terms of office, they shall continue to deal with the case if they have participated in the consideration of the merits. These provisions shall also apply to proceedings relating to advisory opinions.
5. (a) The panel of five judges of the Grand Chamber called upon to consider a request submitted under Article 43 of the Convention shall be composed of

1. As amended by the Court on 8 December 2000, 13 December 2004, 4 July and 7 November 2005, 29 May and 13 November 2006 and 6 May 2013.

- the President of the Court. If the President of the Court is prevented from sitting, he or she shall be replaced by the Vice-President of the Court taking precedence;
- two Presidents of Sections designated by rotation. If the Presidents of the Sections so designated are prevented from sitting, they shall be replaced by the Vice-Presidents of their Sections;
- two judges designated by rotation from among the judges elected by the remaining Sections to sit on the panel for a period of six months;
- at least two substitute judges designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

(b) When considering a referral request, the panel shall not include any judge who took part in the consideration of the admissibility or merits of the case in question.

(c) No judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request may be a member of the panel when it examines that request. An elected judge appointed pursuant to Rules 29 or 30 shall likewise be excluded from consideration of any such request.

(d) Any member of the panel unable to sit, for the reasons set out in (b) or (c) shall be replaced by a substitute judge designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

Rule 25 – Setting-up of Sections

1. The Chambers provided for in Article 25 (b) of the Convention (referred to in these Rules as “Sections”) shall be set up by the plenary Court, on a proposal by its President, for a period of three years with effect from the election of the presidential office-holders of the Court under Rule 8. There shall be at least four Sections.

2. Each judge shall be a member of a Section. The composition of the Sections shall be geographically and gender balanced and shall reflect the different legal systems among the Contracting Parties.

3. Where a judge ceases to be a member of the Court before the expiry of the period for which the Section has been constituted, the judge’s place in the Section shall be taken by his or her successor as a member of the Court.

4. The President of the Court may exceptionally make modifications to the composition of the Sections if circumstances so require.

5. On a proposal by the President, the plenary Court may constitute an additional Section.

Rule 26¹ – Constitution of Chambers

1. The Chambers of seven judges provided for in Article 26 § 1 of the Convention for the consideration of cases brought before the Court shall be constituted from the Sections as follows.

(a) Subject to paragraph 2 of this Rule and to Rule 28 § 4, last sentence, the Chamber shall in each case include the President of the Section and the judge elected in respect of any Contracting Party concerned. If the latter judge is not a member of the Section to which the application has been assigned under Rules 51 or 52, he or she shall sit as an *ex officio* member of the Chamber in

1. As amended by the Court on 17 June and 8 July 2002 and 6 May 2013.

accordance with Article 26 § 4 of the Convention. Rule 29 shall apply if that judge is unable to sit or withdraws.

(b) The other members of the Chamber shall be designated by the President of the Section in rotation from among the members of the relevant Section.

(c) The members of the Section who are not so designated shall sit in the case as substitute judges.

2. The judge elected in respect of any Contracting Party concerned or, where appropriate, another elected judge or *ad hoc* judge appointed in accordance with Rules 29 and 30 may be dispensed by the President of the Chamber from attending meetings devoted to preparatory or procedural matters. For the purposes of such meetings the first substitute judge shall sit.

3. Even after the end of their terms of office, judges shall continue to deal with cases in which they have participated in the consideration of the merits.

Rule 27¹ – Committees

1. Committees composed of three judges belonging to the same Section shall be set up under Article 26 § 1 of the Convention. After consulting the Presidents of the Sections, the President of the Court shall decide on the number of Committees to be set up.

2. The Committees shall be constituted for a period of twelve months by rotation among the members of each Section, excepting the President of the Section.

3. The judges of the Section, including the President of the Section, who are not members of a Committee may, as appropriate, be called upon to sit. They may also be called upon to take the place of members who are unable to sit.

4. The President of the Committee shall be the member having precedence in the Section.

Rule 27A² – Single-judge formation

1. A single-judge formation shall be introduced in pursuance of Article 26 § 1 of the Convention. After consulting the Bureau, the President of the Court shall decide on the number of single judges to be appointed and shall appoint them. The President shall draw up in advance the list of Contracting Parties in respect of which each judge shall examine applications throughout the period for which that judge is appointed to sit as a single judge.

2. The following shall also sit as single judges

(a) the Presidents of the Sections when exercising their competences under Rule 54 §§ 2 (b) and 3;

(b) Vice-Presidents of Sections appointed to decide on requests for interim measures in accordance with Rule 39 § 4.

3. Single judges shall be appointed for a period of twelve months. They shall continue to carry out their other duties within the Sections of which they are members in accordance with Rule 25 § 2.

4. Pursuant to Article 24 § 2 of the Convention, when deciding, each single judge shall be assisted by a non-judicial rapporteur.

1. As amended by the Court on 13 November 2006 and 16 November 2009.

2. Inserted by the Court on 13 November 2006 and amended on 14 January 2013.

Rule 28¹ – Inability to sit, withdrawal or exemption

1. Any judge who is prevented from taking part in sittings which he or she has been called upon to attend shall, as soon as possible, give notice to the President of the Chamber.
2. A judge may not take part in the consideration of any case if
 - (a) he or she has a personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;
 - (b) he or she has previously acted in the case, whether as the Agent, advocate or adviser of a party or of a person having an interest in the case, or as a member of another national or international tribunal or commission of inquiry, or in any other capacity;
 - (c) he or she, being an *ad hoc* judge or a former elected judge continuing to sit by virtue of Rule 26 § 3, engages in any political or administrative activity or any professional activity which is incompatible with his or her independence or impartiality;
 - (d) he or she has expressed opinions publicly, through the communications media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality;
 - (e) for any other reason, his or her independence or impartiality may legitimately be called into doubt.
3. If a judge withdraws for one of the said reasons, he or she shall notify the President of the Chamber, who shall exempt the judge from sitting.
4. In the event of any doubt on the part of the judge concerned or the President as to the existence of one of the grounds referred to in paragraph 2 of this Rule, that issue shall be decided by the Chamber. After hearing the views of the judge concerned, the Chamber shall deliberate and vote, without that judge being present. For the purposes of the Chamber's deliberations and vote on this issue, he or she shall be replaced by the first substitute judge in the Chamber. The same shall apply if the judge sits in respect of any Contracting Party concerned in accordance with Rules 29 and 30.
5. The provisions above shall apply also to a judge's acting as a single judge or participation in a Committee, save that the notice required under paragraphs 1 or 3 of this Rule shall be given to the President of the Section.

Rule 29² – *Ad hoc* judges

1. (a) If the judge elected in respect of a Contracting Party concerned is unable to sit in the Chamber, withdraws, or is exempted, or if there is none, the President of the Court shall choose an *ad hoc* judge, who is eligible to take part in the consideration of the case in accordance with Rule 28, from a list submitted in advance by the Contracting Party containing the names of three to five persons whom the Contracting Party has designated as eligible to serve as *ad hoc* judges for a renewable period of two years and as satisfying the conditions set out in paragraph 1 (c) of this Rule.

The list shall include both sexes and shall be accompanied by biographical details of the persons whose names appear on the list. The persons whose names appear on the list may not represent a party or a third party in any capacity in proceedings before the Court.

1. As amended by the Court on 17 June and 8 July 2002, 13 December 2004, 13 November 2006 and 6 May 2013.

2. As amended by the Court on 17 June and 8 July 2002, 13 November 2006, 29 March 2010 and 6 May 2013.

(b) The procedure set out in paragraph 1 (a) of this Rule shall apply if the person so appointed is unable to sit or withdraws.

(c) An *ad hoc* judge shall possess the qualifications required by Article 21 § 1 of the Convention and must be in a position to meet the demands of availability and attendance provided for in paragraph 5 of this Rule. For the duration of their appointment, an *ad hoc* judge shall not represent any party or third party in any capacity in proceedings before the Court.

2. The President of the Court shall appoint another elected judge to sit as an *ad hoc* judge where

(a) at the time of notice being given of the application under Rule 54 § 2 (b), the Contracting Party concerned has not supplied the Registrar with a list as described in paragraph 1 (a) of this Rule, or

(b) the President of the Court finds that less than three of the persons indicated in the list satisfy the conditions laid down in paragraph 1 (c) of this Rule.

3. The President of the Court may decide not to appoint an *ad hoc* judge pursuant to paragraph 1 (a) or 2 of this Rule until notice of the application is given to the Contracting Party under Rule 54 § 2 (b). Pending the decision of the President of the Court, the first substitute judge shall sit.

4. An *ad hoc* judge shall, at the beginning of the first sitting held to consider the case after the judge has been appointed, take the oath or make the solemn declaration provided for in Rule 3. This act shall be recorded in minutes.

5. *Ad hoc* judges are required to make themselves available to the Court and, subject to Rule 26 § 2, to attend the meetings of the Chamber.

Rule 30¹ – Common interest

1. If two or more applicant or respondent Contracting Parties have a common interest, the President of the Chamber may invite them to agree to appoint a single judge elected in respect of one of the Contracting Parties concerned as common-interest judge who will be called upon to sit *ex officio*. If the Parties are unable to agree, the President shall choose the common-interest judge by lot from the judges proposed by the Parties.

2. The President of the Chamber may decide not to invite the Contracting Parties concerned to make an appointment under paragraph 1 of this Rule until notice of the application has been given under Rule 54 § 2.

3. In the event of a dispute as to the existence of a common interest or as to any related matter, the Chamber shall decide, if necessary after obtaining written submissions from the Contracting Parties concerned.

1. As amended by the Court on 7 July 2003.

Title II – Procedure

Chapter I – General Rules

Rule 31 – Possibility of particular derogations

The provisions of this Title shall not prevent the Court from derogating from them for the consideration of a particular case after having consulted the parties where appropriate.

Rule 32 – Practice directions

The President of the Court may issue practice directions, notably in relation to such matters as appearance at hearings and the filing of pleadings and other documents.

Rule 33¹ – Public character of documents

1. All documents deposited with the Registry by the parties or by any third party in connection with an application, except those deposited within the framework of friendly-settlement negotiations as provided for in Rule 62, shall be accessible to the public in accordance with arrangements determined by the Registrar, unless the President of the Chamber, for the reasons set out in paragraph 2 of this Rule, decides otherwise, either of his or her own motion or at the request of a party or any other person concerned.

2. Public access to a document or to any part of it may be restricted in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties or of any person concerned so require, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice.

3. Any request for confidentiality made under paragraph 1 of this Rule must include reasons and specify whether it is requested that all or part of the documents be inaccessible to the public.

4. Decisions and judgments given by a Chamber shall be accessible to the public. Decisions and judgments given by a Committee, including decisions covered by the proviso to Rule 53 § 5, shall be accessible to the public. The Court shall periodically make accessible to the public general information about decisions taken by single-judge formations pursuant to Rule 52A § 1 and by Committees in application of Rule 53 § 5.

Rule 34² – Use of languages

1. The official languages of the Court shall be English and French.

2. In connection with applications lodged under Article 34 of the Convention, and for as long as no Contracting Party has been given notice of such an application in accordance with these Rules, all communications with and oral and written submissions by applicants or their representatives, if not in one of the Court's official languages, shall be in one of the official languages of the Contracting Parties. If a Contracting Party is informed or given notice of an application in accordance with these Rules, the application and any accompanying documents shall be communicated to that State in the language in which they were lodged with the Registry by the applicant.

1. As amended by the Court on 17 June and 8 July 2002, 7 July 2003, 4 July 2005, 13 November 2006 and 14 May 2007.

2. As amended by the Court on 13 December 2004.

3. (a) All communications with and oral and written submissions by applicants or their representatives in respect of a hearing, or after notice of an application has been given to a Contracting Party, shall be in one of the Court's official languages, unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.

(b) If such leave is granted, the Registrar shall make the necessary arrangements for the interpretation and translation into English or French of the applicant's oral and written submissions respectively, in full or in part, where the President of the Chamber considers it to be in the interests of the proper conduct of the proceedings.

(c) Exceptionally the President of the Chamber may make the grant of leave subject to the condition that the applicant bear all or part of the costs of making such arrangements.

(d) Unless the President of the Chamber decides otherwise, any decision made under the foregoing provisions of this paragraph shall remain valid in all subsequent proceedings in the case, including those in respect of requests for referral of the case to the Grand Chamber and requests for interpretation or revision of a judgment under Rules 73, 79 and 80 respectively.

4. (a) All communications with and oral and written submissions by a Contracting Party which is a party to the case shall be in one of the Court's official languages. The President of the Chamber may grant the Contracting Party concerned leave to use one of its official languages for its oral and written submissions.

(b) If such leave is granted, it shall be the responsibility of the requesting Party

(i) to file a translation of its written submissions into one of the official languages of the Court within a time-limit to be fixed by the President of the Chamber. Should that Party not file the translation within that time-limit, the Registrar may make the necessary arrangements for such translation, the expenses to be charged to the requesting Party;

(ii) to bear the expenses of interpreting its oral submissions into English or French. The Registrar shall be responsible for making the necessary arrangements for such interpretation.

(c) The President of the Chamber may direct that a Contracting Party which is a party to the case shall, within a specified time, provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant document, or of extracts therefrom.

(d) The preceding sub-paragraphs of this paragraph shall also apply, *mutatis mutandis*, to third-party intervention under Rule 44 and to the use of a non-official language by a third party.

5. The President of the Chamber may invite the respondent Contracting Party to provide a translation of its written submissions in the or an official language of that Party in order to facilitate the applicant's understanding of those submissions.

6. Any witness, expert or other person appearing before the Court may use his or her own language if he or she does not have sufficient knowledge of either of the two official languages. In that event the Registrar shall make the necessary arrangements for interpreting or translation.

Rule 35 – Representation of Contracting Parties

The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers.

Rule 36¹ – Representation of applicants

1. Persons, non-governmental organisations or groups of individuals may initially present applications under Article 34 of the Convention themselves or through a representative.
2. Following notification of the application to the respondent Contracting Party under Rule 54 § 2 (b), the applicant should be represented in accordance with paragraph 4 of this Rule, unless the President of the Chamber decides otherwise.
3. The applicant must be so represented at any hearing decided on by the Chamber, unless the President of the Chamber exceptionally grants leave to the applicant to present his or her own case, subject, if necessary, to being assisted by an advocate or other approved representative.
4. (a) The representative acting on behalf of the applicant pursuant to paragraphs 2 and 3 of this Rule shall be an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.
(b) In exceptional circumstances and at any stage of the procedure, the President of the Chamber may, where he or she considers that the circumstances or the conduct of the advocate or other person appointed under the preceding sub-paragraph so warrant, direct that the latter may no longer represent or assist the applicant and that the applicant should seek alternative representation.
5. (a) The advocate or other approved representative, or the applicant in person who seeks leave to present his or her own case, must even if leave is granted under the following sub-paragraph have an adequate understanding of one of the Court's official languages.
(b) If he or she does not have sufficient proficiency to express himself or herself in one of the Court's official languages, leave to use one of the official languages of the Contracting Parties may be given by the President of the Chamber under Rule 34 § 3.

Rule 37² – Communications, notifications and summonses

1. Communications or notifications addressed to the Agents or advocates of the parties shall be deemed to have been addressed to the parties.
2. If, for any communication, notification or summons addressed to persons other than the Agents or advocates of the parties, the Court considers it necessary to have the assistance of the Government of the State on whose territory such communication, notification or summons is to have effect, the President of the Court shall apply directly to that Government in order to obtain the necessary facilities.

Rule 38 – Written pleadings

1. No written observations or other documents may be filed after the time-limit set by the President of the Chamber or the Judge Rapporteur, as the case may be, in accordance with these Rules. No written observations or other documents filed outside that time-limit or contrary to any practice direction issued under Rule 32 shall be included in the case file unless the President of the Chamber decides otherwise.
2. For the purposes of observing the time-limit referred to in paragraph 1 of this Rule, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the Registry.

1. As amended by the Court on 7 July 2003.
2. As amended by the Court on 7 July 2003.

Rule 38A¹ – Examination of matters of procedure

Questions of procedure requiring a decision by the Chamber shall be considered simultaneously with the examination of the case, unless the President of the Chamber decides otherwise.

Rule 39² – Interim measures

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

Rule 40 – Urgent notification of an application

In any case of urgency the Registrar, with the authorisation of the President of the Chamber, may, without prejudice to the taking of any other procedural steps and by any available means, inform a Contracting Party concerned in an application of the introduction of the application and of a summary of its objects.

Rule 41³ – Order of dealing with cases

In determining the order in which cases are to be dealt with, the Court shall have regard to the importance and urgency of the issues raised on the basis of criteria fixed by it. The Chamber, or its President, may, however, derogate from these criteria so as to give priority to a particular application.

Rule 42 – Joinder and simultaneous examination of applications (former Rule 43)

1. The Chamber may, either at the request of the parties or of its own motion, order the joinder of two or more applications.
2. The President of the Chamber may, after consulting the parties, order that the proceedings in applications assigned to the same Chamber be conducted simultaneously, without prejudice to the decision of the Chamber on the joinder of the applications.

1. Inserted by the Court on 17 June and 8 July 2002.

2. As amended by the Court on 4 July 2005, 16 January 2012 and 14 January 2013.

3. As amended by the Court on 17 June and 8 July 2002 and 29 June 2009.

Rule 43¹ – Striking out and restoration to the list (former Rule 44)

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases in accordance with Article 37 of the Convention.
2. When an applicant Contracting Party notifies the Registrar of its intention not to proceed with the case, the Chamber may strike the application out of the Court's list under Article 37 of the Convention if the other Contracting Party or Parties concerned in the case agree to such discontinuance.
3. If a friendly settlement is effected in accordance with Article 39 of the Convention, the application shall be struck out of the Court's list of cases by means of a decision. In accordance with Article 39 § 4 of the Convention, this decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision. In other cases provided for in Article 37 of the Convention, the application shall be struck out by means of a judgment if it has been declared admissible or, if not declared admissible, by means of a decision. Where the application has been struck out by means of a judgment, the President of the Chamber shall forward that judgment, once it has become final, to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance or solution of the matter.
4. When an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court. If an award of costs is made in a decision striking out an application which has not been declared admissible, the President of the Chamber shall forward the decision to the Committee of Ministers.
5. Where an application has been struck out in accordance with Article 37 of the Convention, the Court may restore it to its list if it considers that exceptional circumstances so justify.

Rule 44² – Third-party intervention

1. (a) When notice of an application lodged under Article 33 or 34 of the Convention is given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), a copy of the application shall at the same time be transmitted by the Registrar to any other Contracting Party one of whose nationals is an applicant in the case. The Registrar shall similarly notify any such Contracting Party of a decision to hold an oral hearing in the case.

 (b) If a Contracting Party wishes to exercise its right under Article 36 § 1 of the Convention to submit written comments or to take part in a hearing, it shall so advise the Registrar in writing not later than twelve weeks after the transmission or notification referred to in the preceding sub-paragraph. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.
2. If the Council of Europe Commissioner for Human Rights wishes to exercise the right under Article 36 § 3 of the Convention to submit written observations or take part in a hearing, he or she shall so advise the Registrar in writing not later than twelve weeks after transmission of the application to the respondent Contracting Party or notification to it of the decision to hold an oral hearing. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

1. As amended by the Court on 17 June and 8 July 2002, 7 July 2003, 13 November 2006 and 2 April 2012.

2. As amended by the Court on 7 July 2003 and 13 November 2006.

Should the Commissioner for Human Rights be unable to take part in the proceedings before the Court himself, he or she shall indicate the name of the person or persons from his or her Office whom he or she has appointed to represent him. He or she may be assisted by an advocate.

3. (a) Once notice of an application has been given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), the President of the Chamber may, in the interests of the proper administration of justice, as provided in Article 36 § 2 of the Convention, invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.

(b) Requests for leave for this purpose must be duly reasoned and submitted in writing in one of the official languages as provided in Rule 34 § 4 not later than twelve weeks after notice of the application has been given to the respondent Contracting Party. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

4. (a) In cases to be considered by the Grand Chamber, the periods of time prescribed in the preceding paragraphs shall run from the notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber under Rule 73 § 2 to accept a request by a party for referral of the case to the Grand Chamber.

(b) The time-limits laid down in this Rule may exceptionally be extended by the President of the Chamber if sufficient cause is shown.

5. Any invitation or grant of leave referred to in paragraph 3 (a) of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file or to limit participation in the hearing to the extent that he or she considers appropriate.

6. Written comments submitted under this Rule shall be drafted in one of the official languages as provided in Rule 34 § 4. They shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions, including time-limits, set by the President of the Chamber, to file written observations in reply or, where appropriate, to reply at the hearing.

Rule 44A¹ – Duty to cooperate with the Court

The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice. This duty shall also apply to a Contracting Party not party to the proceedings where such cooperation is necessary.

Rule 44B² – Failure to comply with an order of the Court

Where a party fails to comply with an order of the Court concerning the conduct of the proceedings, the President of the Chamber may take any steps which he or she considers appropriate.

1. Inserted by the Court on 13 December 2004.

2. Inserted by the Court on 13 December 2004.

Rule 44C¹ – Failure to participate effectively

1. Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.
2. Failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of the application.

Rule 44D² – Inappropriate submissions by a party

If the representative of a party makes abusive, frivolous, vexatious, misleading or prolix submissions, the President of the Chamber may exclude that representative from the proceedings, refuse to accept all or part of the submissions or make any other order which he or she considers it appropriate to make, without prejudice to Article 35 § 3 of the Convention.

Rule 44E³ – Failure to pursue an application

In accordance with Article 37 § 1 (a) of the Convention, if an applicant Contracting Party or an individual applicant fails to pursue the application, the Chamber may strike the application out of the Court's list under Rule 43.

1. Inserted by the Court on 13 December 2004.

2. Inserted by the Court on 13 December 2004.

3. Inserted by the Court on 13 December 2004.

Chapter II – Institution of Proceedings

Rule 45 – Signatures

1. Any application made under Articles 33 or 34 of the Convention shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.
2. Where an application is made by a non-governmental organisation or by a group of individuals, it shall be signed by those persons competent to represent that organisation or group. The Chamber or Committee concerned shall determine any question as to whether the persons who have signed an application are competent to do so.
3. Where applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives.

Rule 46 – Contents of an inter-State application

Any Contracting Party or Parties intending to bring a case before the Court under Article 33 of the Convention shall file with the Registry an application setting out

- (a) the name of the Contracting Party against which the application is made;
 - (b) a statement of the facts;
 - (c) a statement of the alleged violation(s) of the Convention and the relevant arguments;
 - (d) a statement on compliance with the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention;
 - (e) the object of the application and a general indication of any claims for just satisfaction made under Article 41 of the Convention on behalf of the alleged injured party or parties; and
 - (f) the name and address of the person or persons appointed as Agent;
- and accompanied by
- (g) copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

Rule 47¹ – Contents of an individual application

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out
 - (a) the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;
 - (b) the name, address, telephone and fax numbers and e-mail address of the representative, if any;
 - (c) where the applicant is represented, the dated and original signature of the applicant on the authority section of the application form; the original signature of the representative showing that he or she has agreed to act for the applicant must also be on the authority section of the application form;

1. As amended by the Court on 17 June and 8 July 2002, 11 December 2007, 22 September 2008, 6 May 2013 and 1 June and 5 October 2015.

- (d) the name of the Contracting Party or Parties against which the application is made;
 - (e) a concise and legible statement of the facts;
 - (f) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and
 - (g) a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.
2. (a) All of the information referred to in paragraph 1 (e) to (g) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.
- (b) The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.
- 3.1. The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by
- (a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;
 - (b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;
 - (c) where appropriate, copies of documents relating to any other procedure of international investigation or settlement;
 - (d) where the applicant is a legal person as referred to in Rule 47 § 1 (a), a document or documents showing that the individual who lodged the application has the standing or authority to represent the applicant.
- 3.2. Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.
4. Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.
- 5.1. Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless
- (a) the applicant has provided an adequate explanation for the failure to comply;
 - (b) the application concerns a request for an interim measure;
 - (c) the Court otherwise directs of its own motion or at the request of an applicant.
- 5.2. The Court may in any case request an applicant to provide information or documents in any form or manner which may be appropriate within a fixed time-limit.
6. (a) The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark.
- (b) Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.
7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

Chapter III – Judge Rapporteurs

Rule 48¹ – Inter-State applications

1. Where an application is made under Article 33 of the Convention, the Chamber constituted to consider the case shall designate one or more of its judges as Judge Rapporteur(s), who shall submit a report on admissibility when the written observations of the Contracting Parties concerned have been received.
2. The Judge Rapporteur(s) shall submit such reports, drafts and other documents as may assist the Chamber and its President in carrying out their functions.

Rule 49² – Individual applications

1. Where the material submitted by the applicant is on its own sufficient to disclose that the application is inadmissible or should be struck out of the list, the application shall be considered by a single-judge formation unless there is some special reason to the contrary.
2. Where an application is made under Article 34 of the Convention and its examination by a Chamber or a Committee exercising the functions attributed to it under Rule 53 § 2 seems justified, the President of the Section to which the case has been assigned shall designate a judge as Judge Rapporteur, who shall examine the application.
3. In their examination of applications, Judge Rapporteurs
 - (a) may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant;
 - (b) shall, subject to the President of the Section directing that the case be considered by a Chamber or a Committee, decide whether the application is to be considered by a single-judge formation, by a Committee or by a Chamber;
 - (c) shall submit such reports, drafts and other documents as may assist the Chamber or the Committee or the respective President in carrying out their functions.

Rule 50 – Grand Chamber proceedings

Where a case has been submitted to the Grand Chamber either under Article 30 or under Article 43 of the Convention, the President of the Grand Chamber shall designate as Judge Rapporteur(s) one or, in the case of an inter-State application, one or more of its members.

1. As amended by the Court on 17 June and 8 July 2002.

2. As amended by the Court on 17 June and 8 July 2002, 4 July 2005, 13 November 2006 and 14 May 2007.

Chapter IV – Proceedings on Admissibility

Inter-State applications

Rule 51¹ – Assignment of applications and subsequent procedure

1. When an application is made under Article 33 of the Convention, the President of the Court shall immediately give notice of the application to the respondent Contracting Party and shall assign the application to one of the Sections.
2. In accordance with Rule 26 § 1 (a), the judges elected in respect of the applicant and respondent Contracting Parties shall sit as *ex officio* members of the Chamber constituted to consider the case. Rule 30 shall apply if the application has been brought by several Contracting Parties or if applications with the same object brought by several Contracting Parties are being examined jointly under Rule 42.
3. On assignment of the case to a Section, the President of the Section shall constitute the Chamber in accordance with Rule 26 § 1 and shall invite the respondent Contracting Party to submit its observations in writing on the admissibility of the application. The observations so obtained shall be communicated by the Registrar to the applicant Contracting Party, which may submit written observations in reply.
4. Before the ruling on the admissibility of the application is given, the Chamber or its President may decide to invite the Parties to submit further observations in writing.
5. A hearing on the admissibility shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion.
6. Before fixing the written and, where appropriate, oral procedure, the President of the Chamber shall consult the Parties.

Individual applications

Rule 52² – Assignment of applications to the Sections

1. Any application made under Article 34 of the Convention shall be assigned to a Section by the President of the Court, who in so doing shall endeavour to ensure a fair distribution of cases between the Sections.
2. The Chamber of seven judges provided for in Article 26 § 1 of the Convention shall be constituted by the President of the Section concerned in accordance with Rule 26 § 1.
3. Pending the constitution of a Chamber in accordance with paragraph 2 of this Rule, the President of the Section shall exercise any powers conferred on the President of the Chamber by these Rules.

Rule 52A³ – Procedure before a single judge

1. In accordance with Article 27 of the Convention, a single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can

1. As amended by the Court on 17 June and 8 July 2002.

2. As amended by the Court on 17 June and 8 July 2002.

3. Inserted by the Court on 13 November 2006.

be taken without further examination. The decision shall be final. The applicant shall be informed of the decision by letter.

2. In accordance with Article 26 § 3 of the Convention, a single judge may not examine any application against the Contracting Party in respect of which that judge has been elected.

3. If the single judge does not take a decision of the kind provided for in the first paragraph of the present Rule, that judge shall forward the application to a Committee or to a Chamber for further examination.

Rule 53¹ – Procedure before a Committee

1. In accordance with Article 28 § 1 (a) of the Convention, the Committee may, by a unanimous vote and at any stage of the proceedings, declare an application inadmissible or strike it out of the Court's list of cases where such a decision can be taken without further examination.

2. If the Committee is satisfied, in the light of the parties' observations received pursuant to Rule 54 § 2 (b), that the case falls to be examined in accordance with the procedure under Article 28 § 1 (b) of the Convention, it shall, by a unanimous vote, adopt a judgment including its decision on admissibility and, as appropriate, on just satisfaction.

3. If the judge elected in respect of the Contracting Party concerned is not a member of the Committee, the Committee may at any stage of the proceedings before it, by a unanimous vote, invite that judge to take the place of one of its members, having regard to all relevant factors, including whether that Party has contested the application of the procedure under Article 28 § 1 (b) of the Convention.

4. Decisions and judgments under Article 28 § 1 of the Convention shall be final.

5. The applicant, as well as the Contracting Parties concerned where these have previously been involved in the application in accordance with the present Rules, shall be informed of the decision of the Committee pursuant to Article 28 § 1 (a) of the Convention by letter, unless the Committee decides otherwise.

6. If no decision or judgment is adopted by the Committee, the application shall be forwarded to the Chamber constituted under Rule 52 § 2 to examine the case.

7. The provisions of Rule 42 § 1 and Rules 79 to 81 shall apply, *mutatis mutandis*, to proceedings before a Committee.

Rule 54² – Procedure before a Chamber

1. The Chamber may at once declare the application inadmissible or strike it out of the Court's list of cases. The decision of the Chamber may relate to all or part of the application.

2. Alternatively, the Chamber or the President of the Section may decide to

(a) request the parties to submit any factual information, documents or other material considered by the Chamber or its President to be relevant;

(b) give notice of the application or part of the application to the respondent Contracting Party and invite that Party to submit written observations thereon and, upon receipt thereof, invite the applicant to submit observations in reply;

1. As amended by the Court on 17 June and 8 July 2002, 4 July 2005, 14 May 2007 and 16 January 2012.

2. As amended by the Court on 17 June and 8 July 2002 and 14 January 2013.

(c) invite the parties to submit further observations in writing.

3. In the exercise of the competences under paragraph 2 (b) of this Rule, the President of the Section, acting as a single judge, may at once declare part of the application inadmissible or strike part of the application out of the Court's list of cases. The decision shall be final. The applicant shall be informed of the decision by letter.

4. Paragraphs 2 and 3 of this Rule shall also apply to Vice-Presidents of Sections appointed as duty judges in accordance with Rule 39 § 4 to decide on requests for interim measures.

5. Before taking a decision on admissibility, the Chamber may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under the Convention so requires. In that event, unless the Chamber shall exceptionally decide otherwise, the parties shall also be invited to address the issues arising in relation to the merits of the application.

Rule 54A¹ – Joint examination of admissibility and merits

1. When giving notice of the application to the respondent Contracting Party pursuant to Rule 54 § 2 (b), the Chamber may also decide to examine the admissibility and merits at the same time in accordance with Article 29 § 1 of the Convention. The parties shall be invited to include in their observations any submissions concerning just satisfaction and any proposals for a friendly settlement. The conditions laid down in Rules 60 and 62 shall apply, *mutatis mutandis*. The Court may, however, decide at any stage, if necessary, to take a separate decision on admissibility.

2. If no friendly settlement or other solution is reached and the Chamber is satisfied, in the light of the parties' arguments, that the case is admissible and ready for a determination on the merits, it shall immediately adopt a judgment including the Chamber's decision on admissibility, save in cases where it decides to take such a decision separately.

Inter-State and individual applications

Rule 55 – Pleas of inadmissibility

Any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be.

Rule 56² – Decision of a Chamber

1. The decision of the Chamber shall state whether it was taken unanimously or by a majority and shall be accompanied or followed by reasons.

2. The decision of the Chamber shall be communicated by the Registrar to the applicant. It shall also be communicated to the Contracting Party or Parties concerned and to any third party, including the Council of Europe Commissioner for Human Rights, where these have previously been informed of the application in accordance with the present Rules. If a friendly settlement is effected, the decision to strike an application out of the list of cases shall be forwarded to the Committee of Ministers in accordance with Rule 43 § 3.

1. Inserted by the Court on 17 June and 8 July 2002 and amended on 13 December 2004 and 13 November 2006.

2. As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.

Rule 57¹ – Language of the decision

1. Unless the Court decides that a decision shall be given in both official languages, all decisions of Chambers shall be given either in English or in French.
2. Publication of such decisions in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

1. As amended by the Court on 17 June and 8 July 2002.

Chapter V – Proceedings after the Admission of an Application

Rule 58¹ – Inter-State applications

1. Once the Chamber has decided to admit an application made under Article 33 of the Convention, the President of the Chamber shall, after consulting the Contracting Parties concerned, lay down the time-limits for the filing of written observations on the merits and for the production of any further evidence. The President may however, with the agreement of the Contracting Parties concerned, direct that a written procedure is to be dispensed with.
2. A hearing on the merits shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion. The President of the Chamber shall fix the oral procedure.

Rule 59² – Individual applications

1. Once an application made under Article 34 of the Convention has been declared admissible, the Chamber or its President may invite the parties to submit further evidence and written observations.
2. Unless decided otherwise, the parties shall be allowed the same time for submission of their observations.
3. The Chamber may decide, either at the request of a party or of its own motion, to hold a hearing on the merits if it considers that the discharge of its functions under the Convention so requires.
4. The President of the Chamber shall, where appropriate, fix the written and oral procedure.

Rule 60³ – Claims for just satisfaction

1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
4. The applicant's claims shall be transmitted to the respondent Contracting Party for comment.

Rule 61⁴ – Pilot-judgment procedure

1. The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.
2. (a) Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or

1. As amended by the Court on 17 June and 8 July 2002.
 2. As amended by the Court on 17 June and 8 July 2002.
 3. As amended by the Court on 13 December 2004.
 4. Inserted by the Court on 21 February 2011.

dysfunction in the Contracting Party concerned and on the suitability of processing the application in accordance with that procedure.

(b) A pilot-judgment procedure may be initiated by the Court of its own motion or at the request of one or both parties.

(c) Any application selected for pilot-judgment treatment shall be processed as a matter of priority in accordance with Rule 41 of the Rules of Court.

3. The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.

4. The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.

5. When adopting a pilot judgment, the Court may reserve the question of just satisfaction either in whole or in part pending the adoption by the respondent Contracting Party of the individual and general measures specified in the pilot judgment.

6. (a) As appropriate, the Court may adjourn the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment.

(b) The applicants concerned shall be informed in a suitable manner of the decision to adjourn. They shall be notified as appropriate of all relevant developments affecting their cases.

(c) The Court may at any time examine an adjourned application where the interests of the proper administration of justice so require.

7. Where the parties to the pilot case reach a friendly-settlement agreement, such agreement shall comprise a declaration by the respondent Contracting Party on the implementation of the general measures identified in the pilot judgment as well as the redress to be afforded to other actual or potential applicants.

8. Subject to any decision to the contrary, in the event of the failure of the Contracting Party concerned to comply with the operative provisions of a pilot judgment, the Court shall resume its examination of the applications which have been adjourned in accordance with paragraph 6 above.

9. The Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the Secretary General of the Council of Europe, and the Council of Europe Commissioner for Human Rights shall be informed of the adoption of a pilot judgment as well as of any other judgment in which the Court draws attention to the existence of a structural or systemic problem in a Contracting Party.

10. Information about the initiation of pilot-judgment procedures, the adoption of pilot judgments and their execution as well as the closure of such procedures shall be published on the Court's website.

Rule 62¹ – Friendly settlement

1. Once an application has been declared admissible, the Registrar, acting on the instructions of the Chamber or its President, shall enter into contact with the parties with a view to securing a friendly

1. As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.

settlement of the matter in accordance with Article 39 § 1 of the Convention. The Chamber shall take any steps that appear appropriate to facilitate such a settlement.

2. In accordance with Article 39 § 2 of the Convention, the friendly-settlement negotiations shall be confidential and without prejudice to the parties' arguments in the contentious proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in the contentious proceedings.

3. If the Chamber is informed by the Registrar that the parties have agreed to a friendly settlement, it shall, after verifying that the settlement has been reached on the basis of respect for human rights as defined in the Convention and the Protocols thereto, strike the case out of the Court's list in accordance with Rule 43 § 3.

4. Paragraphs 2 and 3 apply, *mutatis mutandis*, to the procedure under Rule 54A.

Rule 62A¹ – Unilateral declaration

1. (a) Where an applicant has refused the terms of a friendly-settlement proposal made pursuant to Rule 62, the Contracting Party concerned may file with the Court a request to strike the application out of the list in accordance with Article 37 § 1 of the Convention.

(b) Such request shall be accompanied by a declaration clearly acknowledging that there has been a violation of the Convention in the applicant's case together with an undertaking to provide adequate redress and, as appropriate, to take necessary remedial measures.

(c) The filing of a declaration under paragraph 1 (b) of this Rule must be made in public and adversarial proceedings conducted separately from and with due respect for the confidentiality of any friendly-settlement proceedings referred to in Article 39 § 2 of the Convention and Rule 62 § 2.

2. Where exceptional circumstances so justify, a request and accompanying declaration may be filed with the Court even in the absence of a prior attempt to reach a friendly settlement.

3. If it is satisfied that the declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the application, the Court may strike it out of the list, either in whole or in part, even if the applicant wishes the examination of the application to be continued.

4. This Rule applies, *mutatis mutandis*, to the procedure under Rule 54A.

1. Inserted by the Court on 2 April 2012.

Chapter VI – Hearings

Rule 63¹ – Public character of hearings

1. Hearings shall be public unless, in accordance with paragraph 2 of this Rule, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.
2. The press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.
3. Any request for a hearing to be held in camera made under paragraph 1 of this Rule must include reasons and specify whether it concerns all or only part of the hearing.

Rule 64² – Conduct of hearings

1. The President of the Chamber shall organise and direct hearings and shall prescribe the order in which those appearing before the Chamber shall be called upon to speak.
2. Any judge may put questions to any person appearing before the Chamber.

Rule 65³ – Failure to appear

Where a party or any other person due to appear fails or declines to do so, the Chamber may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless proceed with the hearing.

Rules 66 to 69 deleted

Rule 70⁴ – Verbatim record of a hearing

1. If the President of the Chamber so directs, the Registrar shall be responsible for the making of a verbatim record of the hearing. Any such record shall include:
 - (a) the composition of the Chamber;
 - (b) a list of those appearing before the Chamber;
 - (c) the text of the submissions made, questions put and replies given;
 - (d) the text of any ruling delivered during the hearing.
2. If all or part of the verbatim record is in a non-official language, the Registrar shall arrange for its translation into one of the official languages.
3. The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the President of the Chamber, make corrections, but

1. As amended by the Court on 7 July 2003.
2. As amended by the Court on 7 July 2003.
3. As amended by the Court on 7 July 2003.
4. As amended by the Court on 17 June and 8 July 2002.

in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the President of the Chamber, the time-limits granted for this purpose.

4. The verbatim record, once so corrected, shall be signed by the President of the Chamber and the Registrar and shall then constitute certified matters of record.

Chapter VII – Proceedings before the Grand Chamber

Rule 71¹ – Applicability of procedural provisions

1. Any provisions governing proceedings before the Chambers shall apply, *mutatis mutandis*, to proceedings before the Grand Chamber.
2. The powers conferred on a Chamber by Rules 54 § 5 and 59 § 3 in relation to the holding of a hearing may, in proceedings before the Grand Chamber, also be exercised by the President of the Grand Chamber.

Rule 72² – Relinquishment of jurisdiction in favour of the Grand Chamber

1. Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, the Chamber may relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case has objected in accordance with paragraph 4 of this Rule.
2. Where the resolution of a question raised in a case before the Chamber might have a result inconsistent with the Court's case-law, the Chamber shall relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case has objected in accordance with paragraph 4 of this Rule.
3. Reasons need not be given for the decision to relinquish.
4. The Registrar shall notify the parties of the Chamber's intention to relinquish jurisdiction. The parties shall have one month from the date of that notification within which to file at the Registry a duly reasoned objection. An objection which does not fulfil these conditions shall be considered invalid by the Chamber.

Rule 73 – Request by a party for referral of a case to the Grand Chamber

1. In accordance with Article 43 of the Convention, any party to a case may exceptionally, within a period of three months from the date of delivery of the judgment of a Chamber, file in writing at the Registry a request that the case be referred to the Grand Chamber. The party shall specify in its request the serious question affecting the interpretation or application of the Convention or the Protocols thereto, or the serious issue of general importance, which in its view warrants consideration by the Grand Chamber.
2. A panel of five judges of the Grand Chamber constituted in accordance with Rule 24 § 5 shall examine the request solely on the basis of the existing case file. It shall accept the request only if it considers that the case does raise such a question or issue. Reasons need not be given for a refusal of the request.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

1. As amended by the Court on 17 June and 8 July 2002.
2. As amended by the Court on 6 February 2013.

Chapter VIII – Judgments

Rule 74¹ – Contents of the judgment

1. A judgment as referred to in Articles 28, 42 and 44 of the Convention shall contain
 - (a) the names of the President and the other judges constituting the Chamber or the Committee concerned, and the name of the Registrar or the Deputy Registrar;
 - (b) the dates on which it was adopted and delivered;
 - (c) a description of the parties;
 - (d) the names of the Agents, advocates or advisers of the parties;
 - (e) an account of the procedure followed;
 - (f) the facts of the case;
 - (g) a summary of the submissions of the parties;
 - (h) the reasons in point of law;
 - (i) the operative provisions;
 - (j) the decision, if any, in respect of costs;
 - (k) the number of judges constituting the majority;
 - (l) where appropriate, a statement as to which text is authentic.
2. Any judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.

Rule 75² – Ruling on just satisfaction

1. Where the Chamber or the Committee finds that there has been a violation of the Convention or the Protocols thereto, it shall give in the same judgment a ruling on the application of Article 41 of the Convention if a specific claim has been submitted in accordance with Rule 60 and the question is ready for decision; if the question is not ready for decision, the Chamber or the Committee shall reserve it in whole or in part and shall fix the further procedure.
2. For the purposes of ruling on the application of Article 41 of the Convention, the Chamber or the Committee shall, as far as possible, be composed of those judges who sat to consider the merits of the case. Where it is not possible to constitute the original Chamber or Committee, the President of the Section shall complete or compose the Chamber or Committee by drawing lots.
3. The Chamber or the Committee may, when affording just satisfaction under Article 41 of the Convention, direct that if settlement is not made within a specified time, interest is to be payable on any sums awarded.
4. If the Court is informed that an agreement has been reached between the injured party and the Contracting Party liable, it shall verify the equitable nature of the agreement and, where it finds the agreement to be equitable, strike the case out of the list in accordance with Rule 43 § 3.

1. As amended by the Court on 13 November 2006.

2. As amended by the Court on 13 December 2004 and 13 November 2006.

Rule 76¹ – Language of the judgment

1. Unless the Court decides that a judgment shall be given in both official languages, all judgments shall be given either in English or in French.
2. Publication of such judgments in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

Rule 77² – Signature, delivery and notification of the judgment

1. Judgments shall be signed by the President of the Chamber or the Committee and the Registrar.
2. The judgment adopted by a Chamber may be read out at a public hearing by the President of the Chamber or by another judge delegated by him or her. The Agents and representatives of the parties shall be informed in due time of the date of the hearing. Otherwise, and in respect of judgments adopted by Committees, the notification provided for in paragraph 3 of this Rule shall constitute delivery of the judgment.
3. The judgment shall be transmitted to the Committee of Ministers. The Registrar shall send copies to the parties, to the Secretary General of the Council of Europe, to any third party, including the Council of Europe Commissioner for Human Rights, and to any other person directly concerned. The original copy, duly signed, shall be placed in the archives of the Court.

Rule 78 – Publication of judgments and other documents

In accordance with Article 44 § 3 of the Convention, final judgments of the Court shall be published, under the responsibility of the Registrar, in an appropriate form. The Registrar shall in addition be responsible for the publication of official reports of selected judgments and decisions and of any document which the President of the Court considers it useful to publish.

Rule 79 – Request for interpretation of a judgment

1. A party may request the interpretation of a judgment within a period of one year following the delivery of that judgment.
2. The request shall be filed with the Registry. It shall state precisely the point or points in the operative provisions of the judgment on which interpretation is required.
3. The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

Rule 80 – Request for revision of a judgment

1. A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not

1. As amended by the Court on 17 June and 8 July 2002.

2. As amended by the Court on 13 November 2006, 1 December 2008 and 1 June 2015.

reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.

2. The request shall mention the judgment of which revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Rule have been complied with. It shall be accompanied by a copy of all supporting documents. The request and supporting documents shall be filed with the Registry.

3. The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.

4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

Rule 81 – Rectification of errors in decisions and judgments

Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes.

Chapter IX – Advisory Opinions

Rule 82

In proceedings relating to advisory opinions the Court shall apply, in addition to the provisions of Articles 47, 48 and 49 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

Rule 83¹

The request for an advisory opinion shall be filed with the Registrar. It shall state fully and precisely the question on which the opinion of the Court is sought, and also

- (a) the date on which the Committee of Ministers adopted the decision referred to in Article 47 § 3 of the Convention;
- (b) the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.

The request shall be accompanied by all documents likely to elucidate the question.

Rule 84²

- 1. On receipt of a request, the Registrar shall transmit a copy of it and of the accompanying documents to all members of the Court.
- 2. The Registrar shall inform the Contracting Parties that they may submit written comments on the request.

Rule 85³

- 1. The President of the Court shall lay down the time-limits for filing written comments or other documents.
- 2. Written comments or other documents shall be filed with the Registrar. The Registrar shall transmit copies of them to all the members of the Court, to the Committee of Ministers and to each of the Contracting Parties.

Rule 86

After the close of the written procedure, the President of the Court shall decide whether the Contracting Parties which have submitted written comments are to be given an opportunity to develop them at an oral hearing held for the purpose.

Rule 87⁴

- 1. A Grand Chamber shall be constituted to consider the request for an advisory opinion.

1. As amended by the Court on 4 July 2005.
2. As amended by the Court on 4 July 2005.
3. As amended by the Court on 4 July 2005.
4. As amended by the Court on 4 July 2005.

2. If the Grand Chamber considers that the request is not within its competence as defined in Article 47 of the Convention, it shall so declare in a reasoned decision.

Rule 88¹

1. Reasoned decisions and advisory opinions shall be given by a majority vote of the Grand Chamber. They shall mention the number of judges constituting the majority.

2. Any judge may, if he or she so desires, attach to the reasoned decision or advisory opinion of the Court either a separate opinion, concurring with or dissenting from the reasoned decision or advisory opinion, or a bare statement of dissent.

Rule 89²

The reasoned decision or advisory opinion may be read out in one of the two official languages by the President of the Grand Chamber, or by another judge delegated by the President, at a public hearing, prior notice having been given to the Committee of Ministers and to each of the Contracting Parties. Otherwise the notification provided for in Rule 90 shall constitute delivery of the opinion or reasoned decision.

Rule 90³

The advisory opinion or reasoned decision shall be signed by the President of the Grand Chamber and by the Registrar. The original copy, duly signed, shall be placed in the archives of the Court. The Registrar shall send certified copies to the Committee of Ministers, to the Contracting Parties and to the Secretary General of the Council of Europe.

1. As amended by the Court on 4 July 2005.
 2. As amended by the Court on 4 July 2005.
 3. As amended by the Court on 4 July 2005 and 1 June 2015.

Chapter X¹ – Proceedings under Article 46 §§ 3, 4 and 5 of the Convention

Sub-chapter I – Proceedings under Article 46 § 3 of the Convention

Rule 91

Any request for interpretation under Article 46 § 3 of the Convention shall be filed with the Registrar. The request shall state fully and precisely the nature and source of the question of interpretation that has hindered execution of the judgment mentioned in the request and shall be accompanied by

- (a) information about the execution proceedings, if any, before the Committee of Ministers in respect of the judgment;
- (b) a copy of the decision referred to in Article 46 § 3 of the Convention;
- (c) the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.

Rule 92

1. The request shall be examined by the Grand Chamber, Chamber or Committee which rendered the judgment in question.
2. Where it is not possible to constitute the original Grand Chamber, Chamber or Committee, the President of the Court shall complete or compose it by drawing lots.

Rule 93

The decision of the Court on the question of interpretation referred to it by the Committee of Ministers is final. No separate opinion of the judges may be delivered thereto. Copies of the ruling shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Council of Europe Commissioner for Human Rights.

Sub-chapter II – Proceedings under Article 46 §§ 4 and 5 of the Convention

Rule 94

In proceedings relating to a referral to the Court of a question whether a Contracting Party has failed to fulfil its obligation under Article 46 § 1 of the Convention the Court shall apply, in addition to the provisions of Article 31 (b) and Article 46 §§ 4 and 5 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

Rule 95

Any request made pursuant to Article 46 § 4 of the Convention shall be reasoned and shall be filed with the Registrar. It shall be accompanied by

1. Inserted by the Court on 13 November 2006 and 14 May 2007.

- (a) the judgment concerned;
- (b) information about the execution proceedings before the Committee of Ministers in respect of the judgment concerned, including, if any, the views expressed in writing by the parties concerned and communications submitted in those proceedings;
- (c) copies of the formal notice served on the respondent Contracting Party or Parties and the decision referred to in Article 46 § 4 of the Convention;
- (d) the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require;
- (e) copies of all other documents likely to elucidate the question.

Rule 96

A Grand Chamber shall be constituted, in accordance with Rule 24 § 2 (g), to consider the question referred to the Court.

Rule 97

The President of the Grand Chamber shall inform the Committee of Ministers and the parties concerned that they may submit written comments on the question referred.

Rule 98

1. The President of the Grand Chamber shall lay down the time-limits for filing written comments or other documents.
2. The Grand Chamber may decide to hold a hearing.

Rule 99

The Grand Chamber shall decide by means of a judgment. Copies of the judgment shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Council of Europe Commissioner for Human Rights.

Chapter XI – Legal Aid

Rule 100 (former Rule 91)

1. The President of the Chamber may, either at the request of an applicant having lodged an application under Article 34 of the Convention or of his or her own motion, grant free legal aid to the applicant in connection with the presentation of the case from the moment when observations in writing on the admissibility of that application are received from the respondent Contracting Party in accordance with Rule 54 § 2 b, or where the time-limit for their submission has expired.
2. Subject to Rule 105, where the applicant has been granted legal aid in connection with the presentation of his or her case before the Chamber, that grant shall continue in force for the purposes of his or her representation before the Grand Chamber.

Rule 101 (former Rule 92)

Legal aid shall be granted only where the President of the Chamber is satisfied

- (a) that it is necessary for the proper conduct of the case before the Chamber;
- (b) that the applicant has insufficient means to meet all or part of the costs entailed.

Rule 102 (former Rule 93¹)

1. In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.
2. The President of the Chamber may invite the Contracting Party concerned to submit its comments in writing.
3. After receiving the information mentioned in paragraph 1 of this Rule, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.

Rule 103 (former Rule 94)

1. Fees shall be payable to the advocates or other persons appointed in accordance with Rule 36 § 4. Fees may, where appropriate, be paid to more than one such representative.
2. Legal aid may be granted to cover not only representatives' fees but also travelling and subsistence expenses and other necessary expenses incurred by the applicant or appointed representative.

1. As amended by the Court on 29 May 2006.

Rule 104
(former Rule 95)

On a decision to grant legal aid, the Registrar shall fix

- (a) the rate of fees to be paid in accordance with the legal-aid scales in force;
- (b) the level of expenses to be paid.

Rule 105
(former Rule 96)

The President of the Chamber may, if satisfied that the conditions stated in Rule 101 are no longer fulfilled, revoke or vary a grant of legal aid at any time.

Title III – Transitional Rules

Former rules 97 and 98 deleted

Rule 106 – Relations between the Court and the Commission (former Rule 99)

1. In cases brought before the Court under Article 5 §§ 4 and 5 of Protocol No. 11 to the Convention, the Court may invite the Commission to delegate one or more of its members to take part in the consideration of the case before the Court.
2. In cases referred to in paragraph 1 of this Rule, the Court shall take into consideration the report of the Commission adopted pursuant to former Article 31 of the Convention.
3. Unless the President of the Chamber decides otherwise, the said report shall be made available to the public through the Registrar as soon as possible after the case has been brought before the Court.
4. The remainder of the case file of the Commission, including all pleadings, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 shall remain confidential unless the President of the Chamber decides otherwise.
5. In cases where the Commission has taken evidence but has been unable to adopt a report in accordance with former Article 31 of the Convention, the Court shall take into consideration the verbatim records, documentation and opinion of the Commission's delegations arising from such investigations.

Rule 107 – Chamber and Grand Chamber proceedings (former Rule 100)

1. In cases referred to the Court under Article 5 § 4 of Protocol No. 11 to the Convention, a panel of the Grand Chamber constituted in accordance with Rule 24 § 5 shall determine, solely on the basis of the existing case file, whether a Chamber or the Grand Chamber is to decide the case.
2. If the case is decided by a Chamber, the judgment of the Chamber shall, in accordance with Article 5 § 4 of Protocol No. 11, be final and Rule 73 shall be inapplicable.
3. Cases transmitted to the Court under Article 5 § 5 of Protocol No. 11 shall be forwarded by the President of the Court to the Grand Chamber.
4. For each case transmitted to the Grand Chamber under Article 5 § 5 of Protocol No. 11, the Grand Chamber shall be completed by judges designated by rotation within one of the groups mentioned in Rule 24 § 3¹, the cases being allocated to the groups on an alternate basis.

Rule 108 – Grant of legal aid (former Rule 101)

Subject to Rule 96, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 to the Convention, a grant of legal aid made to an applicant in the proceedings before the Commission

1. As amended by the Court on 13 December 2004.

or the former Court shall continue in force for the purposes of his or her representation before the Court.

**Rule 109 – Request for revision of a judgment
(former Rule 102¹)**

1. Where a party requests revision of a judgment delivered by the former Court, the President of the Court shall assign the request to one of the Sections in accordance with the conditions laid down in Rule 51 or 52, as the case may be.
2. The President of the relevant Section shall, notwithstanding Rule 80 § 3, constitute a new Chamber to consider the request.
3. The Chamber to be constituted shall include as *ex officio* members
 - (a) the President of the Section;
 and, whether or not they are members of the relevant Section,
 - (b) the judge elected in respect of any Contracting Party concerned or, if he or she is unable to sit, any judge appointed under Rule 29;
 - (c) any judge of the Court who was a member of the original Chamber that delivered the judgment in the former Court.
4. (a) The other members of the Chamber shall be designated by the President of the Section by means of a drawing of lots from among the members of the relevant Section.
- (b) The members of the Section who are not so designated shall sit in the case as substitute judges.

1. As amended by the Court on 13 December 2004.

Title IV – Final Clauses

Rule 110 – Suspension of a Rule (former Rule 103¹)

A Rule relating to the internal working of the Court may be suspended upon a motion made without notice, provided that this decision is taken unanimously by the Chamber concerned. The suspension of a Rule shall in this case be limited in its operation to the particular purpose for which it was sought.

Rule 111 – Amendment of a Rule (former Rule 110)²

1. Any Rule may be amended upon a motion made after notice where such a motion is carried at the next session of the plenary Court by a majority of all the members of the Court. Notice of such a motion shall be delivered in writing to the Registrar at least one month before the session at which it is to be discussed. On receipt of such a notice of motion, the Registrar shall inform all members of the Court at the earliest possible moment.

2. The Registrar shall inform the Contracting Parties of any proposals by the Court to amend the Rules which directly concern the conduct of proceedings before it and invite them to submit written comments on such proposals. The Registrar shall also invite written comments from organisations with experience in representing applicants before the Court as well as from relevant bar associations.

Rule 112 – Entry into force of the Rules (former Rule 111³)

The present Rules shall enter into force on 1 November 1998.

1. As amended by the Court on 14 November 2016.

2. As amended by the Court on 14 November 2016.

3. The amendments adopted on 8 December 2000 entered into force immediately. The amendments adopted on 17 June 2002 and 8 July 2002 entered into force on 1 October 2002. The amendments adopted on 7 July 2003 entered into force on 1 November 2003. The amendments adopted on 13 December 2004 entered into force on 1 March 2005. The amendments adopted on 4 July 2005 entered into force on 3 October 2005. The amendments adopted on 7 November 2005 entered into force on 1 December 2005. The amendments adopted on 29 May 2006 entered into force on 1 July 2006. The amendments adopted on 14 May 2007 entered into force on 1 July 2007. The amendments adopted on 11 December 2007, 22 September and 1 December 2008 entered into force on 1 January 2009. The amendments adopted on 29 June 2009 entered into force on 1 July 2009. The amendments relating to Protocol No. 14 to the Convention, adopted on 13 November 2006 and 14 May 2007, entered into force on 1 June 2010. The amendments adopted on 21 February 2011 entered into force on 1 April 2011. The amendments adopted on 16 January 2012 entered into force on 1 February 2012. The amendments adopted on 20 February 2012 entered into force on 1 May 2012. The amendments adopted on 2 April 2012 entered into force on 1 September 2012. The amendments adopted on 14 January and 6 February 2013 entered into force on 1 May 2013. The amendments adopted on 6 May 2013 entered into force on 1 July 2013 and 1 January 2014. The amendments adopted on 14 April and 23 June 2014 entered into force on 1 July 2014. Certain amendments adopted on 1 June 2015 entered immediately into force. The amendments to Rule 47 which were adopted on 1 June and 5 October 2015 entered into force on 1 January 2016. The amendments to Rule 8 which were adopted on 19 September 2016 entered into force on the same date. The amendments adopted on 14 November 2016 entered into force on the same date.

Annex to the Rules¹ (concerning investigations)

Rule A1 – Investigative measures

1. The Chamber may, at the request of a party or of its own motion, adopt any investigative measure which it considers capable of clarifying the facts of the case. The Chamber may, *inter alia*, invite the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in carrying out its tasks.
2. The Chamber may also ask any person or institution of its choice to express an opinion or make a written report on any matter considered by it to be relevant to the case.
3. After a case has been declared admissible or, exceptionally, before the decision on admissibility, the Chamber may appoint one or more of its members or of the other judges of the Court, as its delegate or delegates, to conduct an inquiry, carry out an on-site investigation or take evidence in some other manner. The Chamber may also appoint any person or institution of its choice to assist the delegation in such manner as it sees fit.
4. The provisions of this Chapter concerning investigative measures by a delegation shall apply, *mutatis mutandis*, to any such proceedings conducted by the Chamber itself.
5. Proceedings forming part of any investigation by a Chamber or its delegation shall be held in camera, save in so far as the President of the Chamber or the head of the delegation decides otherwise.
6. The President of the Chamber may, as he or she considers appropriate, invite, or grant leave to, any third party to participate in an investigative measure. The President shall lay down the conditions of any such participation and may limit that participation if those conditions are not complied with.

Rule A2 – Obligations of the parties as regards investigative measures

1. The applicant and any Contracting Party concerned shall assist the Court as necessary in implementing any investigative measures.
2. The Contracting Party on whose territory on-site proceedings before a delegation take place shall extend to the delegation the facilities and cooperation necessary for the proper conduct of the proceedings. These shall include, to the full extent necessary, freedom of movement within the territory and all adequate security arrangements for the delegation, for the applicant and for all witnesses, experts and others who may be heard by the delegation. It shall be the responsibility of the Contracting Party concerned to take steps to ensure that no adverse consequences are suffered by any person or organisation on account of any evidence given, or of any assistance provided, to the delegation.

Rule A3 – Failure to appear before a delegation

Where a party or any other person due to appear fails or declines to do so, the delegation may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless continue with the proceedings.

1. Inserted by the Court on 7 July 2003.

Rule A4 – Conduct of proceedings before a delegation

1. The delegates shall exercise any relevant power conferred on the Chamber by the Convention or these Rules and shall have control of the proceedings before them.
2. The head of the delegation may decide to hold a preparatory meeting with the parties or their representatives prior to any proceedings taking place before the delegation.

Rule A5 – Convocation of witnesses, experts and of other persons to proceedings before a delegation

1. Witnesses, experts and other persons to be heard by the delegation shall be summoned by the Registrar.
2. The summons shall indicate
 - (a) the case in connection with which it has been issued;
 - (b) the object of the inquiry, expert opinion or other investigative measure ordered by the Chamber or the President of the Chamber;
 - (c) any provisions for the payment of sums due to the person summoned.
3. The parties shall provide, in so far as possible, sufficient information to establish the identity and addresses of witnesses, experts or other persons to be summoned.
4. In accordance with Rule 37 § 2, the Contracting Party in whose territory the witness resides shall be responsible for servicing any summons sent to it by the Chamber for service. In the event of such service not being possible, the Contracting Party shall give reasons in writing. The Contracting Party shall further take all reasonable steps to ensure the attendance of persons summoned who are under its authority or control.
5. The head of the delegation may request the attendance of witnesses, experts and other persons during on-site proceedings before a delegation. The Contracting Party on whose territory such proceedings are held shall, if so requested, take all reasonable steps to facilitate that attendance.
6. Where a witness, expert or other person is summoned at the request or on behalf of a Contracting Party, the costs of their appearance shall be borne by that Party unless the Chamber decides otherwise. The costs of the appearance of any such person who is in detention in the Contracting Party on whose territory on-site proceedings before a delegation take place shall be borne by that Party unless the Chamber decides otherwise. In all other cases, the Chamber shall decide whether such costs are to be borne by the Council of Europe or awarded against the applicant or third party at whose request or on whose behalf the person appears. In all cases, such costs shall be taxed by the President of the Chamber.

Rule A6 – Oath or solemn declaration by witnesses and experts heard by a delegation

1. After the establishment of the identity of a witness and before testifying, each witness shall take the oath or make the following solemn declaration:

“I swear” – or “I solemnly declare upon my honour and conscience” – “that I shall speak the truth, the whole truth and nothing but the truth.”

This act shall be recorded in minutes.

2. After the establishment of the identity of the expert and before carrying out his or her task for the delegation, every expert shall take the oath or make the following solemn declaration:

“I swear” – or “I solemnly declare” – “that I will discharge my duty as an expert honourably and conscientiously.”

This act shall be recorded in minutes.

Rule A7 – Hearing of witnesses, experts and other persons by a delegation

1. Any delegate may put questions to the Agents, advocates or advisers of the parties, to the applicant, witnesses and experts, and to any other persons appearing before the delegation.
2. Witnesses, experts and other persons appearing before the delegation may, subject to the control of the head of the delegation, be examined by the Agents and advocates or advisers of the parties. In the event of an objection to a question put, the head of the delegation shall decide.
3. Save in exceptional circumstances and with the consent of the head of the delegation, witnesses, experts and other persons to be heard by a delegation will not be admitted to the hearing room before they give evidence.
4. The head of the delegation may make special arrangements for witnesses, experts or other persons to be heard in the absence of the parties where that is required for the proper administration of justice.
5. The head of the delegation shall decide in the event of any dispute arising from an objection to a witness or expert. The delegation may hear for information purposes a person who is not qualified to be heard as a witness or expert.

Rule A8 – Verbatim record of proceedings before a delegation

1. A verbatim record shall be prepared by the Registrar of any proceedings concerning an investigative measure by a delegation. The verbatim record shall include:
 - (a) the composition of the delegation;
 - (b) a list of those appearing before the delegation, that is to say Agents, advocates and advisers of the parties taking part;
 - (c) the surname, forenames, description and address of each witness, expert or other person heard;
 - (d) the text of statements made, questions put and replies given;
 - (e) the text of any ruling delivered during the proceedings before the delegation or by the head of the delegation.
2. If all or part of the verbatim record is in a non-official language, the Registrar shall arrange for its translation into one of the official languages.
3. The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the head of the delegation, make corrections, but in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the head of the delegation, the time-limits granted for this purpose.
4. The verbatim record, once so corrected, shall be signed by the head of the delegation and the Registrar and shall then constitute certified matters of record.

Practice Directions

Requests for interim measures¹

(Rule 39 of the Rules of Court)

By virtue of Rule 39 of the Rules of Court, the Court may issue interim measures which are binding on the State concerned. Interim measures are only applied in exceptional cases.

The Court will only issue an interim measure against a Member State where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied.

Applicants or their legal representatives² who make a request for an interim measure pursuant to Rule 39 of the Rules of Court should comply with the requirements set out below.

I. Accompanying information

Any request lodged with the Court must state reasons. The applicant must in particular specify in detail the grounds on which his or her particular fears are based, the nature of the alleged risks and the Convention provisions alleged to have been violated.

A mere reference to submissions in other documents or domestic proceedings is not sufficient. It is essential that requests be accompanied by all necessary supporting documents, in particular relevant domestic court, tribunal or other decisions, together with any other material which is considered to substantiate the applicant's allegations.

The Court will not necessarily contact applicants whose request for interim measures is incomplete, and requests which do not include the information necessary to make a decision will not normally be submitted for a decision.

Where the case is already pending before the Court, reference should be made to the application number allocated to it.

In cases concerning extradition or deportation, details should be provided of the expected date and time of the removal, the applicant's address or place of detention and his or her official case-reference number. The Court must be notified of any change to those details (date and time of removal, address etc.) as soon as possible.

The Court may decide to take a decision on the admissibility of the case at the same time as considering the request for interim measures.

II. Requests to be made by facsimile or letter³

Requests for interim measures under Rule 39 should be sent by facsimile or by post. The Court will not deal with requests sent by e-mail. The request should, where possible, be in one of the official languages of the Contracting Parties. All requests should be marked as follows in bold on the face of the request:

"Rule 39 – Urgent

Person to contact (name and contact details): ...

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 5 March 2003 and amended on 16 October 2009 and on 7 July 2011.

2. It is essential that full contact details be provided.

3. According to the degree of urgency and bearing in mind that requests by letter must not be sent by standard post.

[In deportation or extradition cases]**Date and time of removal and destination: ...”****III. Making requests in good time**

Requests for interim measures should normally be received as soon as possible after the final domestic decision has been taken, in order to enable the Court and its Registry to have sufficient time to examine the matter. The Court may not be able to deal with requests in removal cases received less than a working day before the planned time of removal¹.

Where the final domestic decision is imminent and there is a risk of immediate enforcement, especially in extradition or deportation cases, applicants and their representatives should submit the request for interim measures without waiting for that decision, indicating clearly the date on which it will be taken and that the request is subject to the final domestic decision being negative.

IV. Domestic measures with suspensive effect

The Court is not an appeal tribunal from domestic tribunals, and applicants in extradition and expulsion cases should pursue domestic avenues which are capable of suspending removal before applying to the Court for interim measures. Where it remains open to an applicant to pursue domestic remedies which have suspensive effect, the Court will not apply Rule 39 to prevent removal.

V. Follow-up

Applicants who apply for an interim measure under Rule 39 should ensure that they reply to correspondence from the Court's Registry. In particular, where a measure has been refused, they should inform the Court whether they wish to pursue the application. Where a measure has been applied, they must keep the Court regularly and promptly informed about the state of any continuing domestic proceedings. Failure to do so may lead to the case being struck out of the Court's list of cases.

1. The list of public and other holidays when the Court's Registry is closed can be consulted on the Court's internet site: www.echr.coe.int/contact.

Institution of proceedings¹

(Individual applications under Article 34 of the Convention)

I. General

1. An application under Article 34 of the Convention must be submitted in writing. No application may be made by telephone. Except as provided otherwise by Rule 47 of the Rules of Court, only a completed application form will interrupt the running of the six-month time-limit set out in Article 35 § 1 of the Convention. An application form is available online from the Court's website². Applicants are strongly encouraged to download and print the application form instead of contacting the Court for a paper copy to be sent by post. By doing this, applicants will save time and will be in a better position to ensure that their completed application form is submitted within the six-month time-limit. Help with the completion of the various fields is available online.

2. An application must be sent to the following address:

The Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex

3. Applications sent by fax will not interrupt the running of the six-month time-limit set out in Article 35 § 1 of the Convention. Applicants must also dispatch the signed original by post within the same six-month time-limit.

4. An applicant should be diligent in corresponding with the Court's Registry. A delay in replying or failure to reply may be regarded as a sign that the applicant is no longer interested in pursuing his or her application.

II. Form and contents

5. The submissions in the application form concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the time-limit set out in Article 35 § 1 of the Convention must respect the conditions set out in Rule 47 of the Rules of Court. Any additional submissions, presented as a separate document, must not exceed 20 pages (see Rule 47 § 2 (b)) and should:

- a) be in an A4 page format with a margin of not less than 3.5 cm;
- b) be wholly legible and, if typed, the text should be at least 12 pt in the body of the document and 10 pt in the footnotes, with one and a half line spacing;
- c) have all numbers expressed as figures;
- d) have pages numbered consecutively;
- e) be divided into numbered paragraphs;
- f) be divided into headings corresponding to "Facts", "Complaints or statements of violations" and "Information about the exhaustion of domestic remedies and compliance with the time-limit set out in Article 35 § 1".

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008, 24 June 2009, 6 November 2013 and 5 October 2015. This practice direction supplements Rules 45 and 47.

2. www.echr.coe.int.

6. All applicable fields in the application form must be filled in by use of words. Avoid using symbols, signs or abbreviations. Explain in words, even if the answer is negative or the question does not appear relevant.

7. The applicant must set out the facts of the case, his or her complaints and the explanations as to compliance with the admissibility criteria in the space provided in the application form. The information should be enough to enable the Court to determine the nature and scope of the application and, as such, the completed application form alone should suffice. It is not acceptable merely to annex a statement of facts, complaints and compliance to the application form, with or without the mention “see attached”. Filling in this information on the application form is to assist the Court in speedily assessing and allocating incoming cases. Additional explanations may be appended, if necessary, in a separate document up to a maximum of 20 pages: these only develop and cannot replace the statement of facts, complaints and compliance with the admissibility criteria that must be on the application form itself. An application form will not be regarded as compliant with Rule 47 if this information is not found on the form itself.

8. A legal person (which includes a company, non-governmental organisation or association) that applies to the Court must do so through a representative of that legal person who is identified in the relevant section of the application form and who provides contact details and explains his or her capacity or relationship with the legal person. Proof must be supplied with the application form that the representative has authority to act on behalf of the legal person, for example an extract from the Chamber of Commerce register or minutes of the governing body. The representative of the legal person is distinct from the lawyer authorised to act before the Court as legal representative. It may be that a legal person’s representative is also a lawyer or legal officer and has the capacity to act additionally as legal representative. Both parts of the application form concerning representation must still be filled in, and requisite documentary proof provided of authority to represent the legal person must be attached.

9. An applicant does not have to have legal representation at the introductory stage of proceedings. If he or she does instruct a lawyer, the authority section on the application form must be filled in. Both the applicant and the representative must sign the authority section. A separate power of attorney is not acceptable at this stage as the Court requires all essential information to be contained in its application form. If it is claimed that it is not possible to obtain the applicant’s signature on the authority section in the application form due to insurmountable practical difficulties, this should be explained to the Court with any substantiating elements. The requirement of completing the application form speedily within the six-month time-limit will not be accepted as an adequate explanation.

10. An application form must be accompanied by the relevant documents

- (a) relating to the decisions or measures complained of;
- (b) showing that the applicant has complied with the exhaustion of available domestic remedies and the time-limit contained in Article 35 § 1 of the Convention;
- (c) showing, where applicable, information regarding other international proceedings.

If the applicant is unable to provide a copy of any of these documents, he or she must provide an adequate explanation: merely stating that he or she encountered difficulties (in obtaining the documents) will not suffice if it can be reasonably expected for the explanation to be supported by documentary evidence, such as proof of indigence, a refusal of an authority to furnish a decision or otherwise demonstrating the applicant’s inability to access the document. If the explanation is not forthcoming or adequate, the application will not be allocated to a judicial formation.

Where documents are provided by electronic means, they must be in the format required by this practice direction; they must also be arranged and numbered in accordance with the list of documents on the application form.

11. An applicant who has already had a previous application or applications decided by the Court or who has an application or applications pending before the Court must inform the Registry accordingly, stating the application number or numbers.

12. (a) Where an applicant does not wish to have his or her identity disclosed, he or she should state the reasons for his or her request in writing, pursuant to Rule 47 § 4.

(b) The applicant should also state whether, in the event of anonymity being authorised by the President of the Chamber, he or she wishes to be designated by his or her initials or by a single letter (e.g. “X”, “Y” or “Z”).

13. The applicant or the designated representative must sign the application form. If represented, both the applicant and the representative must sign the authority section of the application form. Neither the application form nor the authority section can be signed *per procuracionem* (p.p.).

III. Grouped applications and multiple applicants

14. Where an applicant or representative lodges complaints on behalf of two or more applicants whose applications are based on different facts, a separate application form should be filled in for each individual giving all the information required. The documents relevant to each applicant should also be annexed to that individual’s application form.

15. Where there are more than five applicants, the representative should provide – in addition to the application forms and documents – a table setting out for each applicant the required personal information; this table may be downloaded from the Court’s website¹. Where the representative is a lawyer, the table should also be provided in electronic form.

16. In cases of large groups of applicants or applications, applicants or their representatives may be directed by the Court to provide the text of their submissions or documents by electronic or other means. Other directions may be given by the Court as to steps required to facilitate the effective and speedy processing of applications.

IV. Failure to comply with requests for information or directions

17. Failure, within the specified time-limit, to provide further information or documents at the Court’s request or to comply with the Court’s directions as to the form or manner of the lodging of an application – including grouped applications or applications by multiple applicants – may result, depending on the stage reached in the proceedings, in the complaint(s) not being examined by the Court or the application(s) being declared inadmissible or struck out of the Court’s list of cases.

1. www.echr.coe.int.

Written pleadings¹

I. Filing of pleadings

General

1. A pleading must be filed with the Registry within the time-limit fixed in accordance with Rule 38 of the Rules of Court and in the manner described in paragraph 2 of that Rule.
2. The date on which a pleading or other document is received at the Court's Registry will be recorded on that document by a receipt stamp.
3. With the exception of pleadings and documents for which a system of electronic filing has been set up (see the relevant practice directions), all other pleadings, as well as all documents annexed thereto, should be submitted to the Court's Registry in three copies sent by post or in one copy by fax², followed by three copies sent by post.
4. Pleadings or other documents submitted by electronic mail shall not be accepted.
5. Secret documents should be filed by registered post.
6. Unsolicited pleadings shall not be admitted to the case file unless the President of the Chamber decides otherwise (see Rule 38 § 1).

Filing by fax

7. A party may file pleadings or other documents with the Court by sending them by fax.
8. The name of the person signing a pleading must also be printed on it so that he or she can be identified.

Electronic filing

9. The Court may authorise the Government of a Contracting Party or, after the communication of an application, an applicant to file pleadings and other documents electronically. In such cases, the practice direction on written pleadings shall apply in conjunction with the practice directions on electronic filing.

II. Form and contents

Form

10. A pleading should include:
 - (a) the application number and the name of the case;
 - (b) a title indicating the nature of the content (e.g., observations on admissibility [and the merits]; reply to the Government's/the applicant's observations on admissibility [and the merits]; observations on the merits; additional observations on admissibility [and the merits]; memorial etc.).
11. In addition, a pleading should normally:
 - (a) be in an A4 page format having a margin of not less than 3.5 cm wide;

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008 and 29 September 2014.

2. Fax no. +33 (0)3 88 41 27 30; other fax numbers can be found on the Court's website (www.echr.coe.int).

- (b) be typed and wholly legible, the text appearing in at least 12 pt in the body and 10 pt in the footnotes, with one-and-a-half line spacing;
 - (c) have all numbers expressed as figures;
 - (d) have pages numbered consecutively;
 - (e) be divided into numbered paragraphs;
 - (f) be divided into chapters and/or headings corresponding to the form and style of the Court's decisions and judgments ("Facts"/"Domestic law [and practice]"/"Complaints"/"Law"; the latter chapter should be followed by headings entitled "Preliminary objection on ...", "Alleged violation of Article ...", as the case may be);
 - (g) place any answer to a question by the Court or to the other party's arguments under a separate heading;
 - (h) give a reference to every document or piece of evidence mentioned in the pleading and annexed thereto;
 - (i) if sent by post, have its text printed on one side of the page only and pages and attachments placed together in such a way as to enable them to be easily separated (they must not be glued or stapled).
12. If a pleading exceptionally exceeds thirty pages, a short summary should also be filed with it.
13. Where a party produces documents and/or other exhibits together with a pleading, every piece of evidence should be listed in a separate annex.

Contents

14. The parties' pleadings following communication of the application should include:
- (a) any comments they wish to make on the facts of the case; however,
 - (i) if a party does not contest the facts as set out in the statement of facts prepared by the Registry, it should limit its observations to a brief statement to that effect;
 - (ii) if a party contests only part of the facts as set out by the Registry, or wishes to supplement them, it should limit its observations to those specific points;
 - (iii) if a party objects to the facts or part of the facts as presented by the other party, it should state clearly which facts are uncontested and limit its observations to the points in dispute;
 - (b) legal arguments relating firstly to admissibility and, secondly, to the merits of the case; however,
 - (i) if specific questions on a factual or legal point were put to a party, it should, without prejudice to Rule 55, limit its arguments to such questions;
 - (ii) if a pleading replies to arguments of the other party, submissions should refer to the specific arguments in the order prescribed above.
15. (a) The parties' pleadings following the admission of the application should include:
- (i) a short statement confirming a party's position on the facts of the case as established in the decision on admissibility;
 - (ii) legal arguments relating to the merits of the case;
 - (iii) a reply to any specific questions on a factual or legal point put by the Court.
- (b) An applicant party submitting claims for just satisfaction at the same time should do so in the manner described in the practice direction on filing just satisfaction claims.

16. In view of the confidentiality of friendly-settlement proceedings (see Article 39 § 2 of the Convention and Rule 62 § 2), all submissions and documents filed as part of the attempt to secure a friendly settlement should be submitted separately from the written pleadings.

17. No reference to offers, concessions or other statements submitted in connection with the friendly settlement may be made in the pleadings filed in the contentious proceedings.

III. Time-limits

General

18. It is the responsibility of each party to ensure that pleadings and any accompanying documents or evidence are delivered to the Court's Registry in time.

Extension of time-limits

19. A time-limit set under Rule 38 may be extended on request from a party.

20. A party seeking an extension of the time allowed for submission of a pleading must make a request as soon as it has become aware of the circumstances justifying such an extension and, in any event, before the expiry of the time-limit. It should state the reason for the delay.

21. If an extension is granted, it shall apply to all parties for which the relevant time-limit is running, including those which have not asked for it.

IV. Failure to comply with requirements for pleadings

22. Where a pleading has not been filed in accordance with the requirements set out in paragraphs 8 to 15 of this practice direction, the President of the Chamber may request the party concerned to resubmit the pleading in compliance with those requirements.

23. A failure to satisfy the conditions listed above may result in the pleading being considered not to have been properly lodged (see Rule 38 § 1).

Just satisfaction claims¹

I. Introduction

1. The award of just satisfaction is not an automatic consequence of a finding by the European Court of Human Rights that there has been a violation of a right guaranteed by the European Convention on Human Rights or its Protocols. The wording of Article 41, which provides that the Court shall award just satisfaction only if domestic law does not allow complete reparation to be made, and even then only “if necessary” (*s’il y a lieu* in the French text), makes this clear.

2. Furthermore, the Court will only award such satisfaction as is considered to be “just” (*équitable* in the French text) in the circumstances. Consequently, regard will be had to the particular features of each case. The Court may decide that for some heads of alleged prejudice the finding of violation constitutes in itself sufficient just satisfaction, without there being any call to afford financial compensation. It may also find reasons of equity to award less than the value of the actual damage sustained or the costs and expenses actually incurred, or even not to make any award at all. This may be the case, for example, if the situation complained of, the amount of damage or the level of the costs is due to the applicant’s own fault. In setting the amount of an award, the Court may also consider the respective positions of the applicant as the party injured by a violation and the Contracting Party as responsible for the public interest. Finally, the Court will normally take into account the local economic circumstances.

3. When it makes an award under Article 41, the Court may decide to take guidance from domestic standards. It is, however, never bound by them.

4. Claimants are warned that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is a condition for the award of just satisfaction.

II. Submitting claims for just satisfaction: formal requirements

5. Time-limits and other formal requirements for submitting claims for just satisfaction are laid down in Rule 60 of the Rules of Court, the relevant part of which provides as follows:

“1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.

2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant’s observations on the merits unless the President of the Chamber directs otherwise.

3. If the applicant fails to comply with the requirements set out in the preceding paragraphs, the Chamber may reject the claims in whole or in part.

...”

Thus, the Court requires specific claims supported by appropriate documentary evidence, failing which it may make no award. The Court will also reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings and claims lodged out of time.

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 28 March 2007.

III. Submitting claims for just satisfaction: substantive requirements

6. Just satisfaction may be afforded under Article 41 of the Convention in respect of:

- (a) pecuniary damage;
- (b) non-pecuniary damage; and
- (c) costs and expenses.

1. Damage in general

7. A clear causal link must be established between the damage claimed and the violation alleged. The Court will not be satisfied by a merely tenuous connection between the alleged violation and the damage, nor by mere speculation as to what might have been.

8. Compensation for damage can be awarded in so far as the damage is the result of a violation found. No award can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible at an earlier stage of the proceedings.

9. The purpose of the Court's award in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. It is not intended to punish the Contracting Party responsible. The Court has therefore, until now, considered it inappropriate to accept claims for damages with labels such as "punitive", "aggravated" or "exemplary".

2. Pecuniary damage

10. The principle with regard to pecuniary damage is that the applicant should be placed, as far as possible, in the position in which he or she would have been had the violation found not taken place, in other words, *restitutio in integrum*. This can involve compensation for both loss actually suffered (*damnum emergens*) and loss, or diminished gain, to be expected in the future (*lucrum cessans*).

11. It is for the applicant to show that pecuniary damage has resulted from the violation or violations alleged. The applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage.

12. Normally, the Court's award will reflect the full calculated amount of the damage. However, if the actual damage cannot be precisely calculated, the Court will make an estimate based on the facts at its disposal. As pointed out in paragraph 2 above, it is also possible that the Court may find reasons in equity to award less than the full amount of the loss.

3. Non-pecuniary damage

13. The Court's award in respect of non-pecuniary damage is intended to provide financial compensation for non-material harm, for example mental or physical suffering.

14. It is in the nature of non-pecuniary damage that it does not lend itself to precise calculation. If the existence of such damage is established, and if the Court considers that a monetary award is necessary, it will make an assessment on an equitable basis, having regard to the standards which emerge from its case-law.

15. Applicants who wish to be compensated for non-pecuniary damage are invited to specify a sum which in their view would be equitable. Applicants who consider themselves victims of more than one violation may claim either a single lump sum covering all alleged violations or a separate sum in respect of each alleged violation.

4. Costs and expenses

16. The Court can order the reimbursement to the applicant of costs and expenses which he or she has incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress therefor. Such costs and expenses will typically include the cost of legal assistance, court registration fees and suchlike. They may also include travel and subsistence expenses, in particular if these have been incurred by attendance at a hearing of the Court.

17. The Court will uphold claims for costs and expenses only in so far as they are referable to the violations it has found. It will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible. This being so, applicants may wish to link separate claim items to particular complaints.

18. Costs and expenses must have been actually incurred. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation. Any sums paid or payable by domestic authorities or by the Council of Europe by way of legal aid will be deducted.

19. Costs and expenses must have been necessarily incurred. That is, they must have become unavoidable in order to prevent the violation or obtain redress therefor.

20. They must be reasonable as to quantum. If the Court finds them to be excessive, it will award a sum which, on its own estimate, is reasonable.

21. The Court requires evidence, such as itemised bills and invoices. These must be sufficiently detailed to enable the Court to determine to what extent the above requirements have been met.

5. Payment information

22. Applicants are invited to identify a bank account into which they wish any sums awarded to be paid. If they wish particular amounts, for example the sums awarded in respect of costs and expenses, to be paid separately, for example directly into the bank account of their representative, they should so specify.

IV. The form of the Court's awards

23. The Court's awards, if any, will normally be in the form of a sum of money to be paid by the respondent Contracting Party to the victim or victims of the violations found. Only in extremely rare cases can the Court consider a consequential order aimed at putting an end or remedying the violation in question. The Court may, however, decide at its discretion to offer guidance for the execution of its judgment (Article 46 of the Convention).

24. Any monetary award under Article 41 will normally be in euros (EUR, €) irrespective of the currency in which the applicant expresses his or her claims. If the applicant is to receive payment in a currency other than the euro, the Court will order the sums awarded to be converted into that other currency at the exchange rate applicable on the date of payment. When formulating their claims applicants should, where appropriate, consider the implications of this policy in the light of the effects of converting sums expressed in a different currency into euros or contrariwise.

25. The Court will of its own motion set a time-limit for any payments that may need to be made, which will normally be three months from the date on which its judgment becomes final and binding. The Court will also order default interest to be paid in the event that that time-limit is exceeded, normally at a simple rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Secured electronic filing by Governments¹

I. Scope of application

1. The Governments of the Contracting Parties that have opted for the Court's system of secured electronic filing shall send all their written communications with the Court by uploading them on the secured website set up for that purpose and shall accept written communications sent to them by the Registry of the Court by downloading them from that site, with the following exceptions:

(a) all written communications in relation to a request for interim measures under Rule 39 of the Rules of Court shall be sent simultaneously by two means: through the secured website and by fax;

(b) attachments, such as plans, manuals, etc. that may not be comprehensively viewed in an electronic format may be filed by post;

(c) the Court's Registry may request that a paper document or attachment be submitted by post.

2. If the Government have filed a document by post or fax, they shall, as soon as possible, file electronically a notice of filing by post or fax, describing the document sent, stating the date of dispatch and setting forth the reasons why electronic filing was not possible.

II. Technical requirements

3. The Government shall possess the necessary technical equipment and follow the user manual sent to them by the Court's Registry.

III. Format and naming convention

4. A document filed electronically shall be in PDF format, preferably in searchable PDF.

5. Unsigned letters and written pleadings shall not be accepted. Signed documents to be filed electronically shall be generated by scanning the original paper copy. The Government shall keep the original paper copy in their files.

6. The name of a document filed electronically shall be prefixed by the application number, followed by the name of the applicant as spelled in Latin script by the Registry of the Court, and contain an indication of the contents of the document².

IV. Relevant date with regard to time-limits

7. The date on which the Government have successfully uploaded a document on the secured website shall be considered as the date of dispatch within the meaning of Rule 38 § 2 or the date of filing for the purposes of Rule 73 § 1.

8. To facilitate keeping track of the correspondence exchanged, every day shortly before midnight the secured server generates automatically an electronic mail message listing the documents that have been filed electronically within the past twenty-four hours.

V. Different versions of one and the same document

9. The secured website shall not permit the modification, replacement or deletion of an uploaded document. If the need arises for the Government to modify a document they have uploaded, they

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 September 2008 and amended on 29 September 2014.

2. For example, 65051/01 Karagyzov Observ Adm Merits.

shall create a new document named differently (for example, by adding the word “modified” in the document name). This opportunity should only be used where genuinely necessary and should not be used to correct minor errors.

10. Where the Government have filed more than one version of the same document, only the document filed in time shall be taken into consideration. Where more than one version has been filed in time, the latest version shall be taken into consideration, unless the President of the Chamber decides otherwise.

Requests for anonymity¹

(Rules 33 and 47 of the Rules of Court)

General principles

The parties are reminded that, unless a derogation has been obtained pursuant to Rules 33 or 47 of the Rules of Court, documents in proceedings before the Court are public. Thus, all information that is submitted in connection with an application in both written and oral proceedings, including information about the applicant or third parties, will be accessible to the public.

The parties should also be aware that the statement of facts, decisions and judgments of the Court are usually published in HUDOC² on the Court's website (Rule 78).

Requests in pending cases

Any request for anonymity should be made when completing the application form or as soon as possible thereafter. In both cases the applicant should provide reasons for the request and specify the impact that publication may have for him or her.

Retroactive requests

If an applicant wishes to request anonymity in respect of a case or cases published on HUDOC before 1 January 2010, he or she should send a letter to the Registry setting out the reasons for the request and specifying the impact that this publication has had or may have for him or her. The applicant should also provide an explanation as to why anonymity was not requested while the case was pending before the Court.

In deciding on the request the President shall take into account the explanations provided by the applicant, the level of publicity that the decision or judgment has already received and whether or not it is appropriate or practical to grant the request.

When the President grants the request, he or she shall also decide on the most appropriate steps to be taken to protect the applicant from being identified. For example, the decision or judgment could, *inter alia*, be removed from the Court's website or the personal data deleted from the published document.

Other measures

The President may also take any other measure he or she considers necessary or desirable in respect of any material published by the Court in order to ensure respect for private life.

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 14 January 2010.

2. <http://hudoc.echr.coe.int/>

Electronic filing by applicants¹

I. Scope of application

1. After the communication of a case, applicants who have opted to file pleadings electronically shall send all written communications with the Court by using the Court's Electronic Communications Service (ECS) and shall accept written communications sent to them by the Registry of the Court by means of ECS, with the following exceptions:

(a) all written communications in relation to a request for interim measures under Rule 39 of the Rules of Court shall be sent only by fax or post;

(b) attachments, such as plans, manuals, etc., that may not be comprehensively viewed in an electronic format may be filed by post;

(c) the Court's Registry may request that a paper document or attachment be submitted by post.

2. If an applicant has filed a document by post or fax, he or she shall, as soon as possible, file electronically a notice of filing by post or fax, describing the document sent, stating the date of dispatch and setting forth the reasons why electronic filing was not possible.

II. Technical requirements

3. Applicants shall possess the necessary technical equipment and follow the user manual sent to them by the Court's Registry.

III. Format and naming convention

4. A document filed electronically shall be in PDF format, preferably in searchable PDF.

5. Unsigned letters and written pleadings shall not be accepted. Signed documents to be filed electronically shall be generated by scanning the original paper copy. Applicants shall keep the original paper copy in their files.

6. The name of a document filed electronically shall be prefixed by the application number, followed by the name of the applicant as spelled in Latin script by the Registry of the Court, and contain an indication of the contents of the document².

IV. Relevant date with regard to time limits

7. The date on which an applicant has successfully filed the document electronically with the Court shall be considered as the date, based on Strasbourg time, of dispatch within the meaning of Rule 38 § 2 or the date of filing for the purposes of Rule 73 § 1.

8. To facilitate keeping track of the correspondence exchanged and to ensure compliance with the time limits set by the Court, the applicant should regularly check his or her e-mail account and ECS account.

V. Different versions of one and the same document

9. The ECS shall not permit the modification, replacement or deletion of a filed document. If the need arises for the applicant to modify a document he or she has filed, they shall create a new document named differently (for example, by adding the word "modified" in the document name).

1. Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 29 September 2014. This practice direction will become operational on a date to be decided following a test phase.

2. The following is an example: 65051/01 Karagoyozov Observ Adm Merits.

This opportunity should only be used where genuinely necessary and should not be used to correct minor errors.

10. Where an applicant has filed more than one version of the same document, only the document filed in time shall be taken into consideration. Where more than one version has been filed in time, the latest version shall be taken into consideration, unless the President of the Chamber decides otherwise.

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The International Court
of Justice

Handbook

Foreword

The role of the International Court of Justice (ICJ), which has its seat in The Hague (Netherlands), is to settle in accordance with international law disputes submitted to it by States. In addition, certain international organs and agencies are entitled to call upon it for advisory opinions. Also known as the “World Court”, the ICJ is the principal judicial organ of the United Nations. It was set up in June 1945 under the Charter of the United Nations and began its activities in April 1946.

The ICJ is the highest court in the world and the only one with both general and universal jurisdiction: it is open to all Member States of the United Nations and, subject to the provisions of its Statute, may entertain any question of international law.

The ICJ should not be confused with the other — mostly criminal — international judicial institutions based in The Hague, which were established much more recently, for example the International Criminal Tribunal for the former Yugoslavia (ICTY, an *ad hoc* court created by the Security Council) or the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system). These criminal courts and tribunals have limited jurisdiction and may only try individuals for acts constituting international crimes (genocide, crimes against humanity, war crimes).

The purpose of the present handbook is to provide, without excessive detail, the basis for a better practical understanding of the facts concerning the history, composition, jurisdiction, procedure and decisions of the International Court of Justice. In no way does it commit the Court, nor does it provide any interpretation of the Court’s decisions, the actual texts of which alone are authoritative.

This handbook was first published in 1976, with a second edition in 1979, a third in 1986, a fourth in 1996, on the occasion of the fiftieth anniversary of the Court’s inaugural sitting, and a fifth in 2004. The handbook does not constitute an official publication of the Court and has been prepared by the Registry, which is alone responsible for its content.

*

The International Court of Justice is to be distinguished from its predecessor, the Permanent Court of International Justice (1922-1946, see below pp. 12-15). To avoid confusion in references to cases decided by the two Courts, an asterisk (*) has been placed before the names of cases decided by the Permanent

Court of International Justice. The abbreviations ICJ and PCIJ are used respectively to designate the two Courts.

For statistical purposes, cases which were entered in the Court's General List prior to the adoption of the 1978 Rules of Court (see below p. 17) are included, even when the application recognized that the opposing party declined to accept the jurisdiction of the Court. Since the adoption of the 1978 Rules of Court, such applications are no longer considered as ordinary applications and are no longer entered in the General List; they are therefore disregarded in the statistics, unless the State against which the application was made consented to the Court's jurisdiction in the case.

The information contained in this handbook was last updated on 31 December 2013.

The regions into which the States of the globe are divided in this handbook correspond to the regional groupings in the General Assembly of the United Nations.

For all information concerning the Court, please contact:

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1. History

The creation of the Court represented the culmination of a long development of methods for the pacific settlement of international disputes, the origins of which can be said to go back to classical times.

Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, to which good offices should also be added. Among these methods, certain involve appealing to third parties. For example, mediation places the parties to a dispute in a position in which they can themselves resolve their dispute thanks to the intervention of a third party. Arbitration goes further, in the sense that the dispute is in fact submitted to the decision or award of an impartial third party, so that a binding settlement can be achieved. The same is true of judicial settlement, except that a court is subject to stricter rules than an arbitral tribunal in procedural matters, for example. Historically speaking, mediation and arbitration preceded judicial settlement. The former was known, for example, in ancient India, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes, in the early Islamic world, in maritime customary law in medieval Europe and in Papal practice.

The modern history of international arbitration is, however, generally recognized as dating from the so-called Jay Treaty of 1794 between the United States of America and Great Britain. This Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of American and British nationals in equal numbers, who were tasked with settling a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation. Whilst it is true that these mixed commissions were not strictly speaking organs of third-party adjudication, they were intended to function to some extent as tribunals. They re-awakened interest in the process of arbitration. Throughout the nineteenth century, the United States and the United Kingdom had recourse to them, as did other States in Europe and the Americas.

The *Alabama Claims* arbitration in 1872 between the United Kingdom and the United States marked the start of a second, and still more decisive, phase in the development of international arbitration. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The two countries set out certain rules governing the duties of neutral

governments that were to be applied by the tribunal, which they agreed should consist of five members, to be appointed respectively by the Heads of State of the United States, the United Kingdom, Brazil, Italy and Switzerland, the last three States not being parties to the case. The award of the arbitral tribunal ordered the United Kingdom to pay compensation, and the latter duly complied. The proceedings served as a demonstration of the effectiveness of arbitration in the settlement of a major dispute and it led during the latter years of the nineteenth century to developments in various directions, namely:

- a sharp growth in the practice of inserting clauses in treaties providing for recourse to arbitration in the event of a dispute between the parties;
- the conclusion of general arbitration treaties for the settlement of specified classes of inter-State disputes;
- efforts to construct a general law of arbitration, so that countries wishing to have recourse to this means of settling disputes would not be obliged to agree each time on the procedure to be adopted, the composition of the tribunal, the rules to be followed and the factors to be taken into consideration in rendering the award;
- proposals for the creation of a permanent international arbitral tribunal in order to obviate the need to set up a special *ad hoc* tribunal to decide each dispute.

The Permanent Court of Arbitration was founded in 1899

The Hague Peace Conference of 1899 marked the beginning of a third phase in the modern history of international arbitration. The chief object of the Conference, in which — a remarkable innovation for the time — the smaller States of Europe, some Asian States and Mexico also participated, was to discuss peace and disarmament. It ended by adopting a Convention on the Pacific Settlement of International Disputes, which dealt not only with arbitration but also with other methods of pacific settlement, such as good offices and mediation. With respect to arbitration, the 1899 Convention provided for the creation of permanent machinery which would enable arbitral tribunals to be set up as desired and would facilitate their work. This institution, known as the Permanent Court of Arbitration (PCA), consisted in essence of a panel of jurists designated by each country acceding to the Convention — each such country being entitled to designate up to four — from among whom the members of each arbitral tribunal could be chosen¹. The Convention further created a permanent Bureau, located at The

¹ Countries that have signed the Convention are commonly referred to as “Member States of the Permanent Court of Arbitration” and the jurists appointed by them as “members of the Permanent Court of Arbitration”.

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Hague, with functions corresponding to those of a registry or a secretariat, and it laid down a set of rules of procedure to govern the conduct of arbitrations. It will be seen that the name “Permanent Court of Arbitration” is not a wholly accurate description of the machinery set up by the Convention, which represented only a method or device for facilitating the creation of arbitral tribunals as and when necessary. Nevertheless, the system so established was permanent and the Convention as it were “institutionalized” the law and practice of arbitration, placing it on a more definite and more generally accepted footing.

The PCA was established in 1900 and began operating in 1902. A few years later, in 1907, a second Hague Peace Conference, to which the States of Central and Southern America were also invited, revised the Convention and improved the rules governing arbitral proceedings. Some participants would have preferred the Conference not to confine itself to improving the machinery created in 1899. The United States Secretary of State, Elihu Root, had instructed the United States delegation to work towards the creation of a permanent tribunal composed of judges who were judicial officers and nothing else, who had no other occupation, and who would devote their entire time to the trial and decision of international cases by judicial methods. “These judges”, wrote Secretary Root, “should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented”. The United States, the United Kingdom and Germany submitted a joint proposal for a permanent court, but the Conference was unable to reach agreement upon it. It became apparent in the course of the discussions that one of the major difficulties was that of finding an acceptable way of choosing the judges, none of the proposals made having managed to command general support. The Conference confined itself to recommending that States should adopt a draft convention for the creation of a court of arbitral justice as soon as agreement was reached “respecting the selection of the judges and the constitution of the court”. Although this court never became a reality, the draft convention enshrined certain fundamental ideas that some years later were to serve as a source of inspiration for the drafting of the Statute of the Permanent Court of International Justice (PCIJ). The court of arbitral justice, “composed of judges representing the various judicial systems of the world, and capable of ensuring continuity in arbitral jurisprudence” was to have had its seat at The Hague and to have had jurisdiction to entertain cases submitted to it pursuant to a general treaty or in terms of a special agreement. Provision was made for summary proceedings before a special delegation of three judges elected annually and the convention was to be supplemented by rules to be determined by the court itself.

Notwithstanding the fate of these proposals, the PCA, which in 1913 took up residence in the Peace Palace that had been built for it from 1907 to 1913 thanks to a gift from Andrew Carnegie, has made a positive contribution to the development of international law. Among the classic cases that were decided before the

Second World War through recourse to its machinery, mention may be made of the *Manouba* and *Carthage* cases (1913) and of the *Timor Frontiers* (1914) and *Sovereignty over the Island of Palmas* (1928) cases. For a long while thereafter, the PCA experienced a significant lull in its activity, perhaps due in part to the establishment of the PCIJ and its successor, the ICJ.

In the 1990s, however, the PCA underwent something of a revival. Today, a large number of cases are pending before its machinery, involving a wide variety of disputes between various combinations of States, State entities, international organizations and private parties. Recent inter-State disputes in which the PCA has acted as registry include the case between Eritrea and Yemen concerning questions of territorial sovereignty and maritime delimitation (1998 and 1999); the *Boundary Commission* (2008) and *Claims Commission* (2009) cases between Eritrea and Ethiopia concerning, respectively, the delimitation of their boundary and various claims of compensation following hostilities between them; the arbitration between Ireland and the United Kingdom (2008) under the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR); the *Indus Waters Kishenganga* arbitration between Pakistan and India; and various arbitrations under Annex VII of the 1982 United Nations Convention on the Law of the Sea, including an environmental dispute in the *Mox Plant* case between Ireland and the United Kingdom (2008) and several maritime delimitations: *Barbados/Trinidad and Tobago* (2006), *Guyana/Suriname* (2007) and *Bangladesh/India* (since 2010). The PCA also acted as registry in the boundary dispute between the Government of Sudan and the Sudan People's Liberation Movement/Army (2009).

Disputes between private parties and States or State entities have long been part of the PCA's mandate, starting with the *Radio Corporation of America v. China* arbitration in 1935, the first of its kind. Investment disputes between private parties and host States under bilateral and multilateral investment treaties currently constitute about two-thirds of the PCA's arbitrations.

The PCIJ (1922-1946) was created by the League of Nations

Article 14 of the Covenant of the League of Nations gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice, such a court to be competent not only to entertain any dispute of an international character submitted to it by the parties to the dispute, but also to give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

It remained for the League Council to take the necessary action to give effect to Article 14. At its second session early in 1920, the Council appointed an Advisory Committee of Jurists to submit a report on the establishment of the

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PCIJ. The Committee sat in The Hague, under the chairmanship of Baron Descamps (Belgium), a renowned statesman and academic. In August 1920, a report containing a preliminary draft statute for the future Court was submitted to the Council, which, after making certain amendments, transmitted it to the First Assembly of the League of Nations, which opened at Geneva in November of that year. The Assembly instructed its Third Committee to examine the question of the Court's constitution. In December 1920, after an exhaustive study of the latter by a sub-committee, the Committee submitted a revised draft to the Assembly, which was unanimously adopted and which became the Statute of the PCIJ. The Assembly took the view that a vote alone would not be sufficient to establish the PCIJ and that each State represented in the Assembly would formally have to ratify the Statute. In a resolution of 13 December 1920, it called upon the Council to submit to the members of the League of Nations a protocol adopting the Statute and decided that the Statute should come into force as soon as the protocol had been ratified by a majority of Member States. The protocol was opened for signature on 16 December. By the time of the next meeting of the Assembly, in September 1921, a majority of the members of the League had signed and ratified the protocol. The Statute thus entered into force. It was revised only once, in 1929, the revised version coming into force in 1936.

Among other things, the new Statute resolved the previously insurmountable problem of the election of the members of a permanent international tribunal: it provided that the judges were to be elected concurrently but independently by the Council and the Assembly of the League, and that those elected "should represent the main forms of civilization and the principal legal systems of the world". Simple as this solution may now seem, in 1920 it was a considerable achievement to have devised it. The first elections were held on 14 September 1921. Following steps taken by the Netherlands Government in the spring of 1919, it was decided that the PCIJ should have its permanent seat at the Peace Palace in The Hague. It was accordingly in the Peace Palace that on 30 January 1922 the Court's preliminary session devoted to the elaboration of the Court's Rules opened, and it was there too that its inaugural sitting was held on 15 February 1922, with the Dutch jurist Loder as President.

The PCIJ was thus a working reality. The great advance it represented in the history of international legal proceedings can be appreciated by considering the following:

- Unlike arbitral tribunals, the PCIJ was a permanently constituted body governed by its own Statute and Rules of Procedure, fixed beforehand and binding on all parties having recourse to the Court.
- It had a permanent Registry which, *inter alia*, served as a channel of communication with governments and international bodies.

- Its proceedings were largely public and provision was made for the publication of the written pleadings, of verbatim records of the sittings and of all documentary evidence submitted to it.
- As a permanent tribunal, it was able to develop a constant practice and maintain a certain continuity in its decisions, thereby contributing to both legal certainty and the development of international law.
- In principle the PCIJ was accessible to all States for the judicial settlement of their international disputes and they were able to declare beforehand that, for certain classes of legal disputes, they recognized the Court's jurisdiction as compulsory in relation to other States accepting the same obligation.
- The PCIJ was empowered to give advisory opinions on any dispute or question referred to it by the League of Nations Council or Assembly.
- The Court's Statute specifically listed the sources of law it was to apply in deciding contentious cases and giving advisory opinions, without prejudice to the power of the Court to decide a case *ex aequo et bono* if the parties so agreed.
- The PCIJ was more representative of the international community and of the major legal systems of the world than any previous international tribunal.

Although the PCIJ was brought into being through, and by, the League of Nations, it was nevertheless not formally a part of the League. There was a close association between the two bodies, which found expression *inter alia* in the fact that the League Council and Assembly periodically elected the Members of the Court and that both the Council and Assembly were entitled to seek advisory opinions from the Court. Moreover, the Assembly adopted the Court's budget. But the Court never formed an integral part of the League, just as the Statute never formed part of the Covenant. In particular, a Member State of the League of Nations was not by this fact alone automatically a party to the Court's Statute.

Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions. At the same time, several hundred treaties, conventions and declarations conferred jurisdiction upon it over specified classes of disputes. Thus, any doubts that might have existed as to whether a permanent international judicial tribunal could function in a practical and effective manner were dispelled. The Court's value to the international community was demonstrated in a number of ways. First, it developed a true judicial technique, which found expression in the Rules of Court, drawn up by the PCIJ in 1922 and subsequently revised on three occasions: in 1926, 1931 and 1936. Mention should also be made of the PCIJ's Resolution concerning the Judicial Practice of the Court, adopted in 1931 and revised in 1936, which laid down the internal procedure to be applied during the Court's deliberations on each case. In addition, whilst helping to resolve some serious international disputes, many of them con-

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sequences of the First World War, the decisions of the PCIJ often clarified previously unclear areas of international law or contributed to its development.

The ICJ is the principal judicial organ of the United Nations

The outbreak of war in September 1939 inevitably had serious consequences for the PCIJ, which had already for some years been experiencing a period of diminished activity. After its last public sitting on 4 December 1939, the PCIJ did not deal with any judicial business and no further judicial elections were held. In 1940, the Court removed to Geneva, a single judge remaining at The Hague, together with a few Registry officials of Dutch nationality.

The upheavals of war led to renewed thought about the future of the Court and the creation of a new international legal order. In 1942, the United States Secretary of State and the Foreign Secretary of the United Kingdom declared themselves in favour of the establishment or re-establishment of an international court after the war, and the Inter-American Juridical Committee recommended the extension of the PCIJ's jurisdiction. Early in 1943, the British Government took the initiative of inviting a number of experts to London to constitute an informal Inter-Allied Committee to examine the matter. This Committee, under the chairmanship of Sir William Malkin (United Kingdom), held 19 meetings, which were attended by jurists from 11 countries. In its report, which was published on 10 February 1944, it recommended:

- that the Statute of any new international court created should be based on that of the PCIJ;
- that advisory jurisdiction should be retained in the case of the new Court;
- that acceptance of the jurisdiction of the new Court should not be compulsory;
- that the Court should have no jurisdiction to deal with essentially political matters.

Meanwhile, on 30 October 1943, following a conference between China, the USSR, the United Kingdom and the United States, a joint declaration was issued recognizing the necessity

“of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security”.

This declaration led to exchanges between the Four Powers at Dumbarton Oaks, resulting in the publication on 9 October 1944 of proposals for the establishment of a general international organization, to include an international

court of justice. The next step was the convening of a meeting in Washington, in April 1945, of a committee of jurists representing 44 States. This Committee, under the chairmanship of G. H. Hackworth (United States), was entrusted with the preparation of a draft Statute for the future international court of justice, for submission to the San Francisco Conference, which during the months of April to June 1945 was to draw up the United Nations Charter. The draft Statute prepared by the Committee was based on the Statute of the PCIJ and was thus not a completely fresh text. The Committee nevertheless declined to take a position on a number of points, which it felt should be decided by the Conference: should a new court be created? In what form should the court's mission as the principal judicial organ of the United Nations be stated? Should the court's jurisdiction be compulsory and, if so, to what extent? How should the judges be elected? The final decisions on these points, and on the definitive form of the Statute, were taken at the San Francisco Conference, in which 50 States participated.

That Conference decided against compulsory jurisdiction and in favour of the creation of an entirely new court, which would be a principal organ of the United Nations, on the same footing as the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat, and with its Statute annexed to and forming part of the Charter. The chief reasons that led the Conference to decide to create a new Court were the following:

- As the Court was to be the principal judicial organ of the United Nations, it was considered inappropriate for this role to be filled by the PCIJ, which was linked to the League of Nations, then on the verge of dissolution.
- The creation of a new Court was more logical in light of the fact that several States that were parties to the Statute of the PCIJ were not represented at the San Francisco Conference, and, conversely, several States represented at the Conference were not parties to the Statute.
- There was a feeling in some quarters that the PCIJ formed part of an older order, in which European States had dominated the political and legal affairs of the international community, and that the creation of a new Court would make judicial settlement more accessible to non-European States. This has in fact happened as the membership of the United Nations has grown from 51 States in 1945 to 193 in 2013.

Participants at the San Francisco Conference nevertheless emphasized that all continuity with the past should not be broken, particularly since the Statute of the PCIJ had itself been drawn up on the basis of past experience, and it was considered better not to change something that in general had worked well. The Charter therefore plainly stated that the Statute of the ICJ was based upon that of the PCIJ; moreover, provisions were included in it to ensure that the PCIJ's jurisdiction was transferred as far as possible to the ICJ. The PCIJ met for the last time in October 1945, when it was decided to take all appropriate measures to ensure

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the transfer of its archives and effects to the new ICJ, which, like its predecessor, was to have its seat at the Peace Palace. The judges of the PCIJ still formally in office all resigned on 31 January 1946, and the election of the first Members of the ICJ took place on 5 February 1946, at the First Session of the United Nations General Assembly and Security Council. In April 1946, the PCIJ was formally dissolved, and the ICJ, meeting for the first time, elected as its President Judge Guerrero, the last President of the PCIJ, and appointed the members of its Registry (largely from among former officials of the PCIJ). On 18 April 1946, the new Court held its inaugural public sitting.

The Statute and the Rules of Court

The Statute of the ICJ elaborates certain general principles laid down in Chapter XIV of the Charter. Whilst it forms an integral part of the Charter, it is not incorporated into it, but is simply annexed. This has avoided unbalancing the 111 articles of the Charter by the addition of the 70 articles of the Statute, and has facilitated access to the Court for States that are not members of the United Nations (see below p. 33). The articles of the Statute are divided into five chapters: “Organization of the Court” (Arts. 2-33), “Competence of the Court” (Arts. 34-38), “Procedure” (Arts. 39-64), “Advisory Opinions” (Arts. 65-68) and “Amendment” (Arts. 69-70). The procedure for amending the Statute is the same as that for amending the Charter, i.e., by a two-thirds majority vote in the General Assembly and ratification by two-thirds of the States, including the permanent members of the Security Council — the only difference being that States parties to the Statute without being members of the United Nations are allowed to participate in the vote in the General Assembly. Should the ICJ consider it desirable for its Statute to be amended, it must submit a proposal to this effect to the General Assembly by means of a written communication addressed to the Secretary-General. However, there has hitherto been no amendment of the Statute of the ICJ.

In pursuance of powers conferred upon it by the Statute, the ICJ has drawn up its own Rules of Court. These Rules are intended to supplement the general rules set forth in the Statute and to make detailed provision for the steps to be taken to comply with them; however, the Rules may not contain any provisions that are repugnant to the Statute or which confer upon the Court powers that go beyond those conferred by the Statute.

The Rules of Court refer to the provisions of the Statute concerning the Court’s procedure and the working of the Court and of the Registry, so that on many points it is necessary to consult both documents. The ICJ is competent to amend its Rules of Court, and can thus incorporate into them provisions embodying its practice as this has developed. On 5 May 1946, it adopted Rules largely based on the latest version of the Rules of Court of the PCIJ, which dated from 1936. In 1967, in the light of the experience it had acquired and of the need to adapt the

Rules to changes that had taken place in the world and in the pace of international events, it embarked upon a thorough revision of its Rules and set up a standing committee for the purpose. On 10 May 1972, it adopted certain amendments which came into force on 1 September that year. On 14 April 1978, the Court adopted a thoroughly revised set of Rules which came into force on 1 July 1978. The object of the changes made — at a time when the Court's activity had undeniably fallen off — was to increase the flexibility of proceedings, making them as simple and rapid as possible, and to help reduce the costs to the parties, in so far as these matters depended upon the Court. On 5 December 2000, the Court amended two articles of the 1978 Rules: Article 79 on preliminary objections and Article 80 concerning counter-claims. The purpose of the new amendments was to shorten the duration of these incidental proceedings and to clarify the rules in force so as to reflect more faithfully the Court's practice. The amended versions of Articles 79 and 80 entered into force on 1 February 2001, with the previous versions continuing to govern all phases of cases submitted to the Court before that date. Amended and slightly simplified versions of the Preamble and of Article 52 entered into force on 14 April 2005. On 29 September 2005, a new version of Article 43 came into force, setting out the circumstances in which the Court was required to notify a public international organization that is a party to a convention whose construction may be in question in a case brought before it.

Moreover, since October 2001 the Court has issued Practice Directions for the use of States appearing before it. These Directions involve no amendment of the Rules but are supplemental to them. They are the fruit of the Court's constant review of its working methods, responding to a need to adapt to the considerable growth in its activity over recent years. Reference will be made to certain of these directions later in this handbook.

As at 31 December 2013, 129 contentious cases had been brought before the Court (see below pp. 297-302), which had delivered 114 judgments (some cases having been withdrawn). It had also given 27 advisory opinions (see below pp. 303-304). The small number of cases initially submitted to the Court led to the adoption of a resolution by the General Assembly in 1947 emphasizing the need to make greater use of the Court. Shortly thereafter, the Court's work assumed a tempo comparable to that of the PCIJ. Then, starting in 1962, the States which had created the ICJ appeared to be more reluctant to submit their disputes to it. The number of cases submitted each year, which had averaged two or three during the fifties, fell to none or one in the sixties; from July 1962 to January 1967 no new case was brought, and the situation was the same from February 1967 until August 1971. In the summer of 1970, at a time when the level of the Court's activity was in marked decline, 12 United Nations Member States suggested "that a study should be undertaken . . . of the obstacles to the satisfactory functioning of the International Court of Justice, and ways and means of removing them", including "additional possibilities for use of the Court that have not yet been

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adequately explored". The General Assembly placed on its agenda an examination of the Court's role and, after several rounds of discussion and written observations, on 12 November 1974 adopted a fresh resolution concerning the ICJ, which called upon States "to keep under review the possibility of identifying cases in which use [could] be made of the International Court of Justice" (resolution 3232 (XXIX)). From 1972 the number of new cases brought to the Court accelerated. Between 1972 and 1989, new cases averaged from one to three each year. Between 1990 and 1999 — a period declared the "United Nations Decade of International Law" by the General Assembly in its resolution 44/23 of 17 November 1989 — the Court was asked to deal with 35 contentious cases and three requests for advisory opinions. In his final report on the United Nations Decade of International Law (A/54/362), the Secretary-General pointed out that the "promotion of means and methods for the peaceful settlement of disputes between States, including resort to, and full respect for, the International Court of Justice" had achieved notable success over the period; this was welcomed by all the States which spoke at the Decade's closing session (General Assembly Plenary Session of 17 November 1999 (A/54/PV.55)). The Court's level of judicial activity has remained very high to date. Since 2000, it has rendered 41 judgments and given three advisory opinions. In 2012, the General Assembly recognized "the positive contribution of the International Court of Justice, the principal judicial organ of the United Nations, including in adjudicating disputes among States, and the value of its work for the promotion of the rule of law" (declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, A/RES/67/1).

For the texts of the two resolutions adopted by the General Assembly concerning the use of the ICJ and the resolution relating to the United Nations Decade of International Law, see below, Annexes, pp. 278-283; the text of the resolution adopted by the Assembly on 4 December 2006, on the commemoration of the sixtieth anniversary of the International Court of Justice, is also included as an Annex (pp. 284-285). The Charter of the United Nations and the Statute and Rules of Court are published, together with a number of other basic documents concerning the Court, in the *I.C.J. Acts and Documents* series; they are also available on the Court's website (www.icj-cij.org).

2. The Judges and the Registry

The Court is a body composed of elected independent judges

The Members of the Court are elected by the Member States of the United Nations (193 in total) and other States that are parties to the Statute of the ICJ on an *ad hoc* basis (as in the case of Switzerland, for example, prior to its accession to the United Nations in 2002, see below p. 34). For obvious practical reasons, the number of judges cannot be equal to that of those States. It was fixed at 15 when the revised version of the Statute of the PCIJ that came into force in 1936 was drafted, and has since remained unchanged, despite occasional suggestions that the number be increased. The term of office of the judges is nine years. In order to ensure a certain measure of institutional continuity, one-third of the Court, i.e., five judges, is elected every three years. Judges are eligible for re-election. Should a judge die or resign during his or her term of office, a special election is held as soon as possible to choose a judge to fill the remainder of the term.

The ICJ being the principal judicial organ of the United Nations, it is by that Organization that the elections are conducted. Voting takes place both in the General Assembly and in the Security Council. Representatives of States parties to the Statute without being members of the United Nations are admitted to the Assembly for the occasion, whilst in the Security Council, for the purpose of these elections, no right of veto applies and the required majority is eight. The two bodies concerned vote simultaneously but separately. In order to be elected, a candidate must receive an absolute majority of the votes in both the General Assembly and the Security Council. This often requires multiple rounds of voting. There is a conciliation procedure to cover cases where one or more vacancies remain after three meetings have been held, and a further last-resort option in which the final decision is taken by those judges who have already been elected. Neither of these two possibilities has ever been used in respect of the ICJ; on the other hand, the conciliation procedure was used during the first elections to the PCIJ, having already been provided for in its Statute. The elections are generally held in New York on the occasion of the annual autumn session of the General Assembly. The judges elected at each triennial election (e.g., 2005, 2008, 2011, 2014, etc.) begin their term of office on 6 February of the following year, after which the Court proceeds to elect by secret ballot a President and Vice-President to hold office for three years. As is the case for all other elections by the Court, an absolute majority is necessary and there are no conditions with regard to nationality. After

the President and the Vice-President, the order of seniority of Members of the Court is determined by the date on which their term of office began, and, in the case of judges taking office on the same day, by their age.

The provisions of the Statute concerning the composition of the ICJ, with a view to gaining for the Court the confidence of the greatest possible number of States, are careful to ensure that no State or group of States enjoys or appears to enjoy any advantage over the others.

- All States parties to the Statute have the right to propose candidates. Proposals are made not by the government of the State concerned, but by a group consisting of the members of the Permanent Court of Arbitration (PCA) designated by that State, i.e., by the four jurists who can be called upon to serve as members of an arbitral tribunal under the Hague Conventions of 1899 and 1907 (see above pp. 10-11). In the case of countries not represented on the PCA, nominations are made by a group constituted in the same way. Each group can propose up to four candidates, not more than two of whom may hold its nationality, whilst the others may be from any country whatsoever, whether a party to the Statute or not and whether or not that country has declared that it accepts the compulsory jurisdiction of the ICJ. The names of candidates must be communicated to the Secretary-General of the United Nations within a time-limit laid down by him.
- The Court may not include more than one national of the same State. Should two candidates having the same nationality be elected at the same time, only the elder is considered to have been validly elected. It is possible, however, for a State party to a case before the Court to choose a judge *ad hoc* with the same nationality as an elected judge (see below p. 25). There is nothing to prevent such a choice. Thus, in the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*, both Cambodia and Thailand chose a judge *ad hoc* of French nationality. Since the Court already included on its Bench an elected judge of French nationality, there were three French judges sitting in that case.
- At every election of Members of the Court, the General Assembly and the Security Council are required to bear in mind “that in the body as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured”. In practice this principle has found expression in the distribution of membership of the ICJ among the principal regions of the globe. Today this distribution is as follows: Africa 3, Latin America and the Caribbean 2, Asia 3, Western Europe and other States 5, Eastern Europe 2. This corresponds to the distribution of membership within the Security Council. Although there is no entitlement to membership on the part of any country, the ICJ has generally always included judges of the nationality of the perma-

nent members of the Security Council, with the sole exception of China. There was, in fact, no Chinese Member of the Court from 1967 to 1984.

It should be stressed that, once elected, a Member of the Court is a delegate neither of the government of his or her own country nor of that of any other State. Unlike most other organs of international organizations, the Court is not composed of representatives of governments. Members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously. The Court has itself emphasized that it

“acts only on the basis of the law, independently of all outside influence or interventions whatsoever, in the exercise of the judicial function entrusted to it alone by the Charter and its Statute”.

In order to guarantee his or her independence, no Member of the Court can be dismissed unless, in the unanimous opinion of the other Members, he or she no longer fulfils the required conditions. This has never in fact happened.

The Statute stipulates that Members of the Court are to be elected

“from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law”.

How has this worked out in practice? Of the 103 Members of the Court elected between February 1946 and December 2013, 31 had held judicial office, eight of them having served as chief justice of the supreme court of their respective countries; 41 had been barristers and 75 professors of law; 69 had occupied senior administrative positions, such as legal adviser to the ministry of foreign affairs or ambassador; and 25 had held cabinet rank, two even having been Head of State. Almost all had played a relevant international role, having been, for instance, members of the PCA (42) or of the United Nations International Law Commission (38), participants in major international conferences as plenipotentiaries, etc. Some of those elected had previously played a part in cases before the PCIJ or the ICJ (39), in the role of agent, counsel or judge *ad hoc*. The average length of time that judges have served on the Court is 10 years and 1 month, the longest period being that of Judge Oda, at 27 years, and the shortest that of Judge Golunsky, at 17 months.

The Court is a permanent international institution

Article 22, paragraph 1, of the Statute states that “the seat of the Court shall be established at The Hague”, a city which is also the seat of the Government of the Netherlands. The Court may, if it considers it desirable, hold sittings elsewhere,

but this has never occurred. The Court occupies premises in the Peace Palace, which are placed at its disposal by the Carnegie Foundation of the Netherlands in return for a financial contribution by the United Nations, which in 2012 amounted to €1,264,152. It is assisted by its Registry (see below pp. 29-32) and enjoys the facilities of the Peace Palace Library; the Court has as its neighbours the PCA, which was founded in 1899, and the Hague Academy of International Law, founded in 1923.

Although the ICJ is deemed to be permanently in session, only its President is obliged to reside at The Hague. However, the other Members of the Court are required to be permanently at its disposal except during judicial vacations or leaves of absence, or when they are prevented from attending by illness or other serious reason. In practice, the majority of Court Members reside at The Hague and all will normally spend the greater part of the year there.

No Member of the Court may engage in any other occupation. He or she is not allowed to exercise any political or administrative function, nor to act as agent, counsel or advocate in any case. Any doubts with regard to this question are settled by decision of the Court. The most it will permit — provided that the exigencies of his or her Court duties so allow — is that a judge may investigate, conciliate or arbitrate in certain cases not liable to be submitted to the ICJ, may be a member of learned bodies, and may give lectures or attend meetings of a purely academic nature. Members of the Court are thus subject to particularly strict rules with regard to questions of incompatibility of functions.

The Members of the Court, when engaged on the business of the Court, enjoy privileges and immunities comparable with those of the head of a diplomatic mission. At The Hague, the President takes precedence over the doyen of the diplomatic corps, after which there is an alternation of precedence as between judges and ambassadors. The annual salary of Members of the Court, as well as the annual pension they receive on leaving the Court, are determined by the General Assembly as a special section in the United Nations budget, adopted on the proposal of the Court (the Court's total budget represented less than 2 per cent of the regular budget of the United Nations in 1946, and now accounts for less than 1 per cent of it).

The work of the ICJ is directed and its administration supervised by its President. The Court has set up the following bodies to assist him in his or her tasks: a Budgetary and Administrative Committee, a Rules Committee and a Library Committee, all of them composed of Members of the Court. In addition, other *ad hoc* committees have been formed to deal with issues such as information technology. The Vice-President takes the place of the President if the latter is unable to fulfil his or her duties or if the office of President becomes vacant, for which he receives a special daily allowance. In the absence of the Vice-President, this role falls to the senior judge.

The composition of the Court may vary from one case to another

When a case is submitted to the ICJ, various problems may arise with regard to the Court's composition (see also below pp. 64-65, 70-74 and 89-90). To begin with, no judge may participate in the decision of any case in which he has previously taken part in any capacity. Similarly, if a Member of the Court considers that for any special reason he ought not to participate in a case, that judge must so inform the President. It thus occasionally happens that one or more judges abstain from sitting in a given case. Since there are no deputy-judges in the ICJ, no one else is substituted for them. The President may also take the initiative in indicating to a Member of the Court that in his or her opinion that judge should not sit in a particular case. Any doubt or disagreement on this point is settled by decision of the Court. Since 1978, the Rules have provided in Article 34 that parties may inform the President confidentially in writing of facts which they consider to be of possible relevance to the application of the provisions of the Statute in this regard.

A judge who, without having taken part in a case or having a special reason for refraining from sitting, simply happens to be a national of one of the parties, retains his or her right to sit, though should that judge be the President, his/her functions in the case will be exercised by the Vice-President.

Judges *ad hoc*

Under Article 31, paragraphs 2 and 3, of the Statute, a party not having a judge of its nationality on the Bench may choose a person to sit as judge *ad hoc* in that specific case under the conditions laid down in Articles 35 to 37 of the Rules of Court. Before taking up his duties, a judge *ad hoc* is required to make the same solemn declaration as an elected Member of the Court and takes part in any decision concerning the case on terms of complete equality with his or her colleagues. A judge *ad hoc* receives compensation for every day spent discharging his or her duties, that is to say, every day that the judge *ad hoc* spends in The Hague in order to take part in the Court's work, plus each day devoted to consideration of the case outside The Hague. A party must announce as soon as possible its intention of choosing a judge *ad hoc*. In cases which occur from time to time, where there are more than two parties to the dispute, it is laid down that parties which are in fact acting in the same interest are restricted to a single judge *ad hoc* between them — or, if one of them already has a judge of its nationality on the Bench, they are not entitled to choose a judge *ad hoc* at all. There are accordingly various possibilities, the following of which have actually occurred in practice: two regular judges having the nationality of the parties; two judges *ad hoc*; a regular judge of the nationality of one of the parties and a judge *ad hoc*; neither a regular judge having the nationality of one of the parties nor a judge *ad hoc*. Since 1946, 104 individuals have sat as

judges *ad hoc*², 17 of whom have been elected Members of the Court at another time, 15 others having been proposed as candidates for election to the Court. Since there is no requirement laid down concerning the nationality of a judge *ad hoc* (unlike the situation that obtained prior to 1936), he or she may have the nationality of a country other than the one which chooses him/her (which has been the case in approximately half of all nominations) and even have the same nationality as an elected Member of the Court (which happened twice at the PCIJ and has occurred 21 times at the ICJ).

Commentators tend to be sparing in their criticism of the right of elected judges having the nationality of one of the parties to sit, since purely on the basis of the publicly announced results of the Court's voting and the published texts of separate or dissenting opinions, it is evident that they have often voted against the submissions of their country of origin (e.g., Judge Anzilotti, Judge Basdevant, Lord Finlay, Sir Arnold McNair and Judges Schwebel and Buergenthal). The institution of the judge *ad hoc*, on the other hand, has not received unanimous support. Whilst the Inter-Allied Committee of 1943-1944 (see above p. 15) argued that

“countries will not in fact feel full confidence in the decision of the Court in a case in which they are concerned if the Court includes no judge of their own nationality, particularly if it includes a judge of the nationality of the other party”,

certain members of the Sixth Committee of the General Assembly of the United Nations expressed the view, during the discussions between 1970 and 1974 on the role of the Court,

“that the institution, which was a survival of the old arbitral procedures, was justified only by the novel character of the international judicial jurisdiction and would no doubt disappear as such jurisdiction became more firmly established”.

Nevertheless, numerous writers take the view that it is useful for the Court to have participating in its deliberations a person more familiar with the views of one of the parties than the elected judges may sometimes be. It is furthermore worth pointing out that if the PCIJ and the ICJ had never had judges *ad hoc* and had always excluded Members of the Court having the nationality of one of the parties from sitting, their decisions — having regard to the voting alone — would have been much the same.

It follows from the foregoing that the composition and presidency of the ICJ will vary from one case to another and that the number of judges sitting in a given case will not necessarily be 15. There may be fewer, where one or more elected

² This figure takes account of the fact that a number of judges *ad hoc* have been appointed at different times by different parties (for example, Judges Guillaume and Torres Bernárdez have each served as judge *ad hoc* on six occasions).

judges do not sit, or as many as 16 or 17 where there are judges *ad hoc*; in theory there may even be more than 17 judges on the Bench if there are several parties to a case who are not in the same interest. The composition of the Court and who presides over it also sometimes vary from one phase of a case to another: in other words, the composition and the President of the Court need not necessarily be the same with respect to interim measures of protection, preliminary objections and the merits.

Nevertheless, once the Court has been finally constituted for a given phase of a case, i.e., from the opening of the oral proceedings on that phase until the delivery of judgment with respect thereto, its composition will no longer change. If during this time there is a renewal of the Court, those Members whose terms of office have ended continue to sit in the case and the retiring President continues to preside in respect of that phase of the case until the delivery of the decision bringing that phase to a close. This has occurred so far, in the time of the PCIJ, only in the **Free Zones of Upper Savoy and the District of Gex* case, but in the ICJ on two occasions, in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* and in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*. A permanent judge who resigns or dies after the opening of oral proceedings in a phase of a case is not replaced in respect of that phase. A judge who falls ill during proceedings in principle only resumes his or her participation if he or she has not missed any vital aspect of those proceedings. The quorum required for the Court to be validly constituted is nine judges, excluding judges *ad hoc*.

Assessors

The Statute and the Rules provide for still other possibilities with regard to the composition and organization of the Court. Some of these seemed to have fallen into oblivion, and interest has been expressed in reviving them in the Rules of Court (see above pp. 17-19), thus making use of the freedom of action which the Court's founders conferred upon it. It should be noted that Articles 26 and 27 of the PCIJ's Statute laid down the conditions in which it could hear certain cases relating to labour, transit and communications; the use of assessors by the Permanent Court or by the special chamber in question was mandatory for labour cases but optional for those concerning transit and communications. Neither Article 26 nor Article 27 was applied in practice.

As for the ICJ, Article 30, paragraph 2, of its Statute provides more broadly for assessors to be allowed to sit with the Court or its chambers, whatever the subject-area being dealt with. Thus the Court can, in a given case, sit with assessors, whom it elects by secret ballot, and who participate in its deliberations without, however, having the right to vote. At the present time, when disputes of a highly technical nature may be submitted to the Court, the use of assessors would make it possible for the Court to benefit from the views of proven experts. Although

both a party and the Court itself can take the initiative in this respect, no use has ever been made of this possibility.

Chambers

Another possibility open to the parties is to ask that a dispute be decided not by the full Court but by a chamber composed of certain judges elected by the Court by secret ballot, whose decisions are regarded as emanating from the Court itself. The Court has three types of chambers:

- the Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required by Article 29 of the Statute to form annually with a view to the speedy despatch of business;
- any chamber, comprising at least three judges, that the Court may form pursuant to Article 26, paragraph 1, of the Statute to deal with certain categories of cases, such as labour or communications (echoes of the 1919 peace treaties);
- any chamber that the Court may form pursuant to Article 26, paragraph 2, of the Statute to deal with a particular case, after formally consulting the parties regarding the number of its members — and informally regarding their names — who will then sit in all phases of the case until its final conclusion, even if in the meantime they cease to be Members of the Court.

The provisions of the Rules concerning chambers of the Court are likely to be of interest to States that are required to submit a dispute to the ICJ or have special reasons for doing so but prefer, for reasons of urgency or other reasons, to deal with a smaller body than the full Court. The proceedings before chambers may be simplified (submission of a single written pleading by each party, shortened oral proceedings, etc.). The use of chambers may accordingly prove particularly useful for settling certain disputes pertaining to contemporary problems, such as, to give but one example, questions relating to the environment, which seem to be becoming increasingly critical, giving rise to international disputes of growing frequency and intensity. In this respect, in view of recent developments in the field of environmental law and protection, the Court, in July 1993, decided to establish a Chamber for Environmental Matters, which has been reconstituted periodically. However, no State has ever asked for a case to be heard by the Chamber: thus the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, which raised environmental questions, was submitted to the full Court. Accordingly, in 2006, the Court decided not to hold elections for the reconstitution of the Chamber for Environmental Matters, it being understood that should parties in the future request the formation of such a chamber to rule on a dispute involving environmental law, that chamber would be constituted under Article 26, paragraph 2, of the Statute of the Court.

Despite the advantages that chambers can offer in certain cases, under the terms of the Statute their use remains exceptional (see Article 25, paragraph 1). Their formation requires the consent of the parties. Since chambers make it harder to implement the fundamental principle of equality between the world's "principal legal systems" and "main forms of civilization" (Article 9 of the Statute) when it comes to framing a judgment, cases cannot be divided among chambers at the Court's initiative in order for them to be dealt with more quickly, as is common practice at other courts. While, to date, no case has been heard by either of the first two types of chambers, by contrast there have been six cases dealt with by *ad hoc* chambers. The first of these was formed in 1982 in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* between Canada and the United States, and the second was formed in 1985 in the case concerning the *Frontier Dispute* between Burkina Faso and the Republic of Mali. The third was set up in 1987 in the case concerning *Eletttronica Sicula S.p.A. (ELSI)* between the United States of America and Italy, and the fourth was formed in the same year in the case concerning the *Land, Island and Maritime Frontier Dispute* between El Salvador and Honduras. The year 2002 saw the formation of a fifth chamber to deal with the *Frontier Dispute (Benin/Niger)* case and a sixth to hear the *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (*El Salvador v. Honduras*). On every occasion, the Chamber has comprised five members. The Chamber which sat in the *Gulf of Maine* case comprised four Members of the Court (one of them possessing the nationality of one of the parties) and one judge *ad hoc* chosen by the other party. The Chamber formed in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case comprised three Members of the Court and two judges *ad hoc* chosen by the parties. The Chamber formed in the *Eletttronica Sicula S.p.A. (ELSI)* case comprised five Members of the Court (two of them each possessing the nationality of one of the parties). The Chamber which sat in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* comprised three Members of the Court and two judges *ad hoc* chosen by the parties, and the two Chambers formed in 2002 were similarly composed.

The Registry is the permanent administrative organ of the Court

The ICJ is the only principal organ of the United Nations not to be assisted by the Secretary-General, who has no authority over the Court. The Registry is the permanent administrative organ of the ICJ. It is responsible to the Court alone. Since the ICJ is both a court of justice and an international organ, the Registry's tasks include both helping in the administration of justice — with sovereign States as litigants — and acting as an international secretariat. Its activities are thus on the one hand of a judicial and diplomatic nature, whilst on the other they corre-

spond to those of the legal, administrative and financial departments and of the conference and information services of an international organization. Its officials take an oath of loyalty and discretion on entering upon their duties. In general they enjoy the same privileges and immunities as members of diplomatic missions at The Hague of comparable rank. Their conditions of employment, their emoluments and their pension rights correspond to those of United Nations officials of equivalent category and grade; the costs of the Court's Registry are borne by the United Nations. In recent years Registry staff numbers have been substantially increased, in order to deal with the unprecedented growth in the Court's work. The Registry consists of:

- a Registrar, who has the same rank as an Assistant Secretary-General of the United Nations and enjoys privileges and immunities comparable to those of the head of a diplomatic mission, elected by the Court by secret ballot for a term of seven years. The Registrar, who is required to reside at The Hague, directs the work of the Registry and is responsible for all its departments. He serves as the channel for communication between the ICJ and States or organizations, keeps the General List up to date, attends meetings of the Court, ensures that minutes are drawn up, countersigns the Court's decisions and has custody of its seal;
- a Deputy-Registrar, elected in the same way as the Registrar, who assists the Registrar and acts as Registrar in the latter's absence;
- over 100 officials (either permanent or holding fixed-term contracts) appointed by the Court or the Registrar, consisting of first secretaries, secretaries and staff from the following departments and divisions: Department of Legal Matters, Department of Linguistic Matters, Information Department, Administrative and Personnel Division, Finance Division, Publications Division, Library of the Court, Archives, Indexing and Distribution Division, Text Processing and Reproduction Division, IT Division and General Assistance Division (comprising telephonists/receptionists, messengers and administrative assistants). In addition, there is a Medical Unit and a Security Division;
- additional temporary staff engaged by the Registrar as and when the Court's work may so require: including interpreters, translators, typists, etc.

Over and above the Registry's legal work, a substantial amount of its activity is linguistic. On the grounds that "[t]he permanence of the language must be an outward sign of the permanence of the Court", the 1920 Advisory Committee of Jurists (see above p. 12) had pronounced itself in favour of the Court's employing French alone, but the Council and Assembly of the League of Nations decided that the PCIJ, like the League itself, should have two official languages: French and English. This principle was maintained for the ICJ in 1945, despite the fact that the United Nations itself adopted five official languages (six from 1973). Members of the Court accordingly express themselves in French or English and it is in those

languages that parties file their pleadings with the Court or deliver oral arguments before it, the Registry providing sworn interpreters and translators to put the spoken or written word into the Court's other official language (see below pp. 49-53, 70-76 and 84-86). The parties to a case may agree between themselves to use a single language (as in **Lotus*; **Brazilian Loans*; **Lighthouses case between France and Greece*; **Electricity Company of Sofia and Bulgaria*; *Asylum*; *Frontier Dispute (Burkina Faso/Republic of Mali)*; *Kasikili/Sedudu Island*; *Frontier Dispute (Benin/Niger)* and *Frontier Dispute (Burkina Faso/Niger)*). Parties have the right to employ a language other than French or English, provided they themselves furnish a translation or interpretation into one of the Court's official languages. Registry documents are bilingual and the Registry conducts correspondence in French and/or English. All Registry officials are required to be highly proficient in one of the two languages and to have a very good knowledge of the other.

Among the Registry's duties is that of making the outside world aware of the Court's work. Accordingly it maintains relations with international organizations that deal with legal questions, universities, the press and the general public. It discharges this duty in close collaboration with the United Nations Department of Public Information, whose task it is to provide information concerning the activities of organs of the United Nations. The Registry is also responsible for the Court's publications³, which carry on under different names from the old PCIJ series. These publications comprise:

- documents emanating from the Court or the parties (see below pp. 49-50, 72-74 and 89): *Reports of Judgments, Advisory Opinions and Orders* (cited as *I.C.J. Reports*); *Pleadings, Oral Arguments, Documents* (cited as *I.C.J. Pleadings*); and *Acts and Documents concerning the Organization of the Court* (cited as *I.C.J. Acts and Documents*);
- documents prepared under the responsibility of the Registrar: *Yearbooks* and the *Bibliography of the International Court of Justice* (cited as *I.C.J. Yearbook* and *I.C.J. Bibliography*).

*

It has been seen that the Court is clearly distinct from arbitral tribunals, which by nature are not permanent: not only is it constituted in advance, having its own procedural rules and established case law, it is also a permanent institution with its own premises. Because they contribute to the Organization's regular budget, United Nations Member States which are parties to proceedings before the Court do not have to meet expenses relating to the activities of the judges (emoluments) or to the conduct of the proceedings (administrative and linguistic costs, etc.).

³ ICJ publications are sold by the Sales Section of the United Nations Secretariat in New York. They may be consulted in main libraries with a substantial legal section, and may be purchased from specialized bookshops selling United Nations publications. A *Catalogue* of all publications is issued and regularly updated.

They are only required to bear the cost of presenting their arguments (advocates' fees, production of their written pleadings, etc.). Since 1989, there has been a special fund, set up by the Secretary-General of the United Nations, to provide States with financial assistance in this regard (see below p. 45). Given the range of possibilities described above — judgment *ex aequo et bono*, sittings held away from The Hague, use of a non-official language, the appointment of judges *ad hoc* and assessors and the formation of chambers — parties are able to benefit from all the flexibility which is normally associated with arbitration, but without losing the many advantages inherent in recourse to an institution offering them all the necessary legal security, as is the case with the ICJ.

For a list of present and former Members of the ICJ and judges *ad hoc*, see below, Annexes, pp. 286-288 and 289-296. A list of present Members of the Court and their biographies, the organizational structure of the Registry and the budget of the Court are published each year in the *I.C.J. Yearbook*. Judges' biographies are published in the *I.C.J. Yearbook* corresponding to the year of their election. They are also available on the Court's website (www.icj-cij.org).

3. The Parties

Only States may be parties to cases before the Court

It is the function of the ICJ to decide in accordance with international law disputes of a legal nature that are submitted to it by States. In doing so it is helping to achieve one of the primary aims of the United Nations, which, according to the opening paragraph of Article 1 of the Charter, is to bring about the settlement of disputes by peaceful means and in conformity with the principles of justice and international law.

An international legal dispute is, as the PCIJ put it, “a disagreement on a question of law or fact, a conflict, a clash of legal views or of interests”. Any resultant adversarial proceedings before an international tribunal are known as “contentious” proceedings. It is conceivable that such proceedings could be between a State on the one hand and a corporate body or an individual on the other. Within their respective fields of jurisdiction, institutions such as the Court of Justice of the European Union in Luxembourg, the European Court of Human Rights in Strasbourg, the Inter-American Court of Human Rights in San José, Costa Rica, or the newly-created African Court on Human and Peoples’ Rights in Arusha, Tanzania, would be entitled to hear such disputes. This is not the case, however, with the ICJ, to which no contentious case can be submitted unless both applicant and respondent are States. Private interests can only form the subject of proceedings before the Court if a State, exercising its right of diplomatic protection, takes up the case of one of its nationals and invokes against another State the wrongs which its national claims to have suffered at the latter’s hands; the dispute thus then becomes one between States (see, for example: *Ambatielos*; *Anglo-Iranian Oil Co.*; *Nottebohm*; *Interbandel*; *Barcelona Traction*; *Elettronica Sicula S.p.A. (ELSI)*; *Vienna Convention on Consular Relations (Paraguay v. United States of America)*; *LaGrand (Germany v. United States of America)*; *Avena and Other Mexican Nationals (Mexico v. United States of America)*; *Abmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*). Like any other court, the ICJ can only operate within the constitutional limits that have been laid down for it. Hardly a day passes without the Registry receiving applications from private individuals. However distressing the facts in such applications may be, the ICJ is unable to entertain them, and a standard reply is always sent: “Under Article 34 of the Statute, only States may be parties in cases before the Court.”

The Court is open to:

- Member States of the United Nations, which, by signing the Charter, accepted its obligations and thus at the same time became parties to the Statute of the ICJ, which forms an integral part of the Charter;
- those States which have become parties to the Statute of the ICJ without signing the Charter or becoming members of the United Nations (as in the case of Nauru and Switzerland, for example, before they became UN members); these States must satisfy certain conditions laid down by the General Assembly on the recommendation of the Security Council: acceptance of the provisions of the Statute, an undertaking to comply with the decisions of the ICJ and a regular contribution to the expenses of the Court;
- any other State which, whilst neither a member of the United Nations nor a party to the Statute of the ICJ, has deposited with the Registry of the ICJ a declaration that meets the requirements laid down by the Security Council, whereby it accepts the jurisdiction of the Court and undertakes to comply in good faith with the Court's decisions. Many States have found themselves in this situation before becoming members of the United Nations; having concluded treaties providing for the jurisdiction of the Court, they deposited with the Registry the necessary declaration. When they have been parties to a case, they have been required to contribute to the costs thereof (e.g., the Federal Republic of Germany).

The jurisdiction of the Court so far as concerns the parties entitled to appear before it — jurisdiction *ratione personae* — covers States of the kind described above. In other words, in order for a dispute to be validly submitted to the Court it is necessary that it be between two or more such States (e.g., the cases concerning *Legality of the Use of Force*, brought by Yugoslavia against ten member States of NATO in 1999).

A case can only be submitted to the Court with the consent of the States concerned

While jurisdiction *ratione personae* is a requirement in every case before the Court, it is not in itself enough. A fundamental principle governing the settlement of international disputes is that the jurisdiction of an international tribunal depends in the last resort on the consent of the States concerned to accept that jurisdiction. Accordingly, no sovereign State can be made a party to proceedings before the Court unless it has in some manner or other consented thereto. It must have agreed that the dispute or the class of disputes in question should be dealt with by the Court. It is this agreement that determines the jurisdiction of the Court in respect of that particular dispute — the Court's jurisdiction *ratione materiae*. It is true that Article 36 of the Charter provides that the Security Council, which may at any stage of a dispute recommend appropriate procedures or methods of adjustment, is to “take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice”. In the *Corfu Channel* case, however, the ICJ did not

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consider a recommendation by the Security Council to this effect sufficient to confer jurisdiction on the Court independently of the wishes of the parties to the dispute.

Special agreements

The various ways by which States may consent to have their disputes of a legal nature decided by the ICJ are indicated in Article 36 of the Statute. Paragraph 1 thereof provides:

“The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”

The first possibility envisaged here is where the parties bilaterally agree to submit an already existing dispute to the ICJ and thus to recognize its jurisdiction for purposes of that particular case. Such an agreement conferring jurisdiction on the Court is known as a “special agreement” or “compromis”. Once such a special agreement has been lodged with the Court (whether by one party alone or jointly), the latter can entertain the case. Eleven disputes were referred to the PCIJ in this way, while the ICJ has received seventeen (*Asylum*; *Minquiers and Ecrebos*; *Sovereignty over Certain Frontier Land*; *North Sea Continental Shelf* (two cases); *Continental Shelf (Tunisia/Libyan Arab Jamabiriya)*; *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (heard by a Chamber); *Continental Shelf (Libyan Arab Jamabiriya/Malta)*; *Frontier Dispute (Burkina Faso/Republic of Mali)* (heard by a Chamber); *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* (heard by a Chamber); *Territorial Dispute (Libyan Arab Jamabiriya/Chad)*; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*; *Kasikili/Sedudu Island (Botswana/Namibia)*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*; *Frontier Dispute (Benin/Niger)* (heard by a Chamber); *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*; *Frontier Dispute (Burkina Faso/Niger)*) (see table on p. 36).

It can also happen that the consent of a respondent State may be deduced from its conduct in relation to the Court or in relation to the applicant; this is a fairly rare situation, known as *forum prorogatum* (e.g., **Mavrommatis Jerusalem Concessions*; **Rights of Minorities in Upper Silesia*; *Corfu Channel*). For the Court to exercise jurisdiction on the basis of *forum prorogatum*, the element of consent must be either explicit or clearly to be deduced from the relevant conduct of a State (*Anglo-Iranian Oil Co.*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*). On occasion, a State has tried to bring a case before the ICJ whilst recognizing that the opposing party has not consented to the Court's jurisdiction and inviting it to do so; to date, there have been only two instances where a State against which an application has been filed has accepted such an invitation: *Certain Criminal Proceedings in France (Republic of the Congo v. France)*; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v.*

France). Such acceptance means that the case now exists; it is immediately entered on the Court's General List, and the procedure takes its normal course.

Cases instituted by Special Agreement

Case	Parties	Date of Special Agreement	Date of notification (filing in the Registry)
<i>Asylum</i>	Colombia/Peru	31 August 1949	15 October 1949
<i>Minquiers and Ecrebos</i>	France/ United Kingdom	29 December 1950	6 December 1951
<i>Sovereignty over Certain Frontier Land</i>	Belgium/ Netherlands	7 March 1957	27 November 1957
<i>North Sea Continental Shelf</i>	Federal Republic of Germany/Denmark	2 February 1967	20 February 1967
<i>North Sea Continental Shelf</i>	Federal Republic of Germany/ Netherlands	2 February 1967	20 February 1967
<i>Continental Shelf (Tunisia/Libyan Arab Jamahiriya)</i>	Tunisia/Libyan Arab Jamahiriya	10 June 1977	1 December 1978 and 19 February 1979 ⁴
<i>Delimitation of the Maritime Boundary in the Gulf of Maine Area</i>	Canada/United States of America	29 March 1979	25 November 1981
<i>Continental Shelf (Libyan Arab Jamahiriya/Malta)</i>	Libyan Arab Jamahiriya/Malta	23 May 1976	26 July 1982
<i>Frontier Dispute</i>	Burkina Faso/ Republic of Mali	16 September 1983	14 October 1983
<i>Land, Island and Maritime Frontier Dispute</i>	El Salvador/ Honduras	24 May 1986	11 December 1986
<i>Territorial Dispute</i>	Libyan Arab Jamahiriya/Chad	31 August 1989	31 August 1990 and 3 September 1990 ⁵
<i>Gabčíkovo-Nagymaros Project</i>	Hungary/Slovakia	7 April 1993	2 July 1993
<i>Kasikili/Sedudu Island</i>	Botswana/Namibia	15 February 1996	29 May 1996
<i>Sovereignty over Pulau Ligitan and Pulau Sipadan</i>	Indonesia/Malaysia	31 May 1997	2 November 1998
<i>Frontier Dispute</i>	Benin/Niger	15 June 2001	3 May 2002
<i>Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge</i>	Malaysia/ Singapore	6 February 2003	24 July 2003
<i>Frontier Dispute</i>	Burkina Faso/Niger	24 February 2009	20 July 2010

⁴ The first date relates to the notification by Tunisia and the second to the notification by the Libyan Arab Jamahiriya.

⁵ The first date relates to the notification by the Libyan Arab Jamahiriya and the second to the filing by Chad of an Application instituting proceedings against the Libyan Arab Jamahiriya. The parties subsequently agreed that the proceedings in the case had in effect been instituted by two separate notifications of the same Special Agreement.

Treaties and conventions

The second possibility envisaged in Article 36, paragraph 1, of the Statute is where treaties or conventions in force confer jurisdiction on the Court. It has indeed become a general international practice to include in international agreements — both bilateral and multilateral — provisions, known as *compromissory clauses*, which stipulate that disputes of a given class shall or may be submitted to one or more methods for the pacific settlement of disputes. Numerous clauses of this kind provide for recourse to conciliation, mediation or arbitration; others provide for recourse to the Court, either immediately or after the failure of other means of pacific settlement. Accordingly, the States signatory to such agreements may, if a dispute of the kind envisaged in the compromissory clause arises between them, either bring the matter before the Court by filing a unilateral application, or conclude a special agreement to that end. In practice, the wording of such compromissory clauses varies from one treaty to another. Model clauses have been prepared by learned bodies, such as the Institute of International Law (1956), and by regional organizations (Recommendation CM/Rec 2008/8 of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice, Council of Europe, 2008). Compromissory clauses are to be found in treaties or conventions:

- having as their object the pacific settlement in general of disputes between two or more States and providing in particular for the submission to judicial decision of specified classes of conflicts between States, subject sometimes to certain exceptions (e.g., the 1957 European Convention for the Peaceful Settlement of Disputes);
- having some other specific object, in which case the clause will usually refer to disputes concerning the interpretation or application of the treaty or convention (e.g., the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Punishments (1984), etc.), or to only some of its provisions (for example, in the 1969 Vienna Convention on the Law of Treaties, disputes relating to the application and interpretation of Article 64, which addresses the consequences of the emergence of a new peremptory norm of general international law (*jus cogens*)). Such clauses may be included in the body of the text or in a protocol annexed to the treaty (e.g., the Optional Protocols concerning the Compulsory Settlement of Disputes appended to the Vienna Convention on Diplomatic Relations (1961), or to the Vienna Convention on Consular Relations (1963)). They may be compulsory or optional and may or may not be open to reservations.

Logically, compromissory clauses included in treaties before the creation of the United Nations conferred jurisdiction on the PCIJ, whereas nowadays such clauses confer jurisdiction on the ICJ. In order to prevent those earlier clauses from becom-

ing moot, the present Statute provides that they shall now be taken to confer jurisdiction on the ICJ. Provided that the agreement in which they are contained is still in force and that the States concerned are parties to the Statute of the ICJ, any dispute covered by such clauses can be submitted to the ICJ in the same way as it could have been to the PCIJ. Several hundred treaties or conventions that confer jurisdiction on the Court through a compromissory clause have been registered with the Secretariat of the League of Nations or the United Nations and appear in the collections of treaties published by those two organizations. In addition, the PCIJ and the ICJ have published lists of and extracts from such treaties and conventions.

**Examples of treaties or conventions conferring
jurisdiction on the ICJ**

American Treaty on Pacific Settlement	Bogotá	30 April 1948
Convention on the Prevention and Punishment of the Crime of Genocide	Paris	9 December 1948
Revised Act for the Pacific Settlement of International Disputes	Lake Success	28 April 1949
Convention relating to the Status of Refugees	Geneva	28 July 1951
Treaty of Peace with Japan	San Francisco	8 September 1951
Treaty of Friendship (India/Philippines)	Manila	11 July 1952
Universal Copyright Convention	Geneva	6 September 1952
European Convention for the Peaceful Settlement of Disputes	Strasbourg	29 April 1957
Single Convention on Narcotic Drugs	New York	30 March 1961
Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes	Vienna	18 April 1961
International Convention on the Elimination of All Forms of Racial Discrimination	New York	7 March 1966
Convention on the Law of Treaties	Vienna	23 May 1969
Convention on the Suppression of the Unlawful Seizure of Aircraft	The Hague	16 December 1970
Treaty of Commerce (Benelux/USSR)	Brussels	14 July 1971
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Montreal	23 September 1971
International Convention against the Taking of Hostages	New York	17 December 1979
General Peace Treaty (Honduras/El Salvador)	Lima	30 October 1980
Convention on Treaties Concluded between States and International Organizations or between International Organizations	Vienna	21 March 1986

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United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Vienna	20 December 1988
United Nations Framework Convention on Climate Change	New York	9 May 1992
Convention on Biological Diversity	Rio de Janeiro	5 June 1992
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions	Oslo	14 June 1994
International Convention for the Suppression of the Financing of Terrorism	New York	9 December 1999
United Nations Convention against Transnational Organized Crime	New York/Palermo	15 November 2000
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime	New York	31 May 2001
Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters	Kiev	21 May 2003
United Nations Convention against Corruption	Merida	31 October 2003
International Convention for the Suppression of Acts of Nuclear Terrorism	New York	13 April 2005
Convention on Cluster Munitions	Dublin	30 May 2008

It is not always easy to determine which of those treaties are still in force. They probably number around 400, some being bilateral, involving about 60 States, and others multilateral, involving a greater number of States.

Declarations accepting the compulsory jurisdiction of the Court

A third means of consent to the Court's jurisdiction is set out in paragraphs 2 and 3 of Article 36 of the Statute:

“2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation 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; (d) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.”

This system, based on what has been known since the days of the PCIJ as the “optional clause”, has led to the creation of a group of States whose position in relation to the Court is comparable, in a sense, to that of the inhabitants of a country in relation to the courts of that country. Each State belonging to this group has in principle the right to bring any one or more other States of the group before the Court by filing an application with the latter, and, conversely, it has undertaken to appear before the Court should one or more such other States institute proceedings against it. This is why such declarations, to which reservations may be attached (see below pp. 41-44), are known as “declarations of acceptance of the compulsory jurisdiction of the Court”.

These declarations, which take the form of a unilateral act of the State concerned, are deposited with the Secretary-General of the United Nations and are generally signed by that State’s foreign minister, or by its representative to the United Nations. They are published in the United Nations Treaty Series and in the *I.C.J. Yearbook* for the year in which they were made, as well as on the Court’s website (www.icj-cij.org). Despite solemn appeals by the UN General Assembly (see below pp. 278-281) and by the Secretary-General (see, for example, his reports from 2001, *Prevention of Armed Conflict*⁶, and 2012, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*⁷), as well as by learned bodies such as the Institute of International Law⁸, they remain fewer in number than might have been hoped. As at December 2013 there were only 70, from the following regional groups: Africa 22; Latin America and the Caribbean 13; Asia 7; Europe and other States 28. It should be added that 15 other States that had at one time recognized the compulsory jurisdiction of the ICJ have withdrawn their declarations, nine of them after they had been made respondents in proceedings before the Court. As with treaties or conventions, the Statute provides that declarations that refer to the PCIJ shall be regarded as applying to the ICJ. Six of these were still in force in 2013, but ten countries which had at one time recognized the compulsory jurisdiction of the PCIJ have never done so in respect of the ICJ. The table below shows the relative increase and decrease in declarations over the years.

⁶ A/55/985-S/2001/574 and Corr. 1.

⁷ A/66/749.

⁸ Compulsory Jurisdiction of International Courts and Tribunals, resolution adopted by the Institute of International Law at its Neuchâtel session in 1959.

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Historical growth of States accepting the Court's compulsory jurisdiction and States parties to the Statute of the Court

	States accepting compulsory jurisdiction	States parties to the Statute
1925 (PCIJ)	23	36
1930	29	42
1935	42	49
1940	32	50
1945 (ICJ)	23	51
1950	35	61
1955	32	64
1960	39	85
1965	40	118
1970	46	129
1975	45	147
1980	47	157
1985	46	162
1990	53	162
1995	59	187
2000	63	189
2005	65	191
2010	66	192
2013	70	193

Establishment of the Court's jurisdiction on this basis is often complicated by conditions attached to the acceptances of compulsory jurisdiction, which are intended to limit their scope. The majority of declarations (52 out of the 70 in force as at December 2013) contain such reservations, excluding the Court's jurisdiction in respect of various issues.

Firstly, 42 States have limited their optional clause declarations by stipulating that any other mechanisms of dispute settlement as agreed between the parties will prevail over the general jurisdiction of the Court.

Secondly, 33 States have limited their consent to the Court's jurisdiction *ratione temporis*, specifying that the declaration covers only disputes arising after the date that consent was given or concerning situations arising after that date.

Thirdly, 27 States have limited the scope of their optional clause declarations by excluding matters falling within their domestic jurisdiction. Under Article 2, paragraph 7, of the United Nations Charter, nothing contained in the Charter: "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state".

With regard to this condition, it is indisputable that every sovereign State has, under international law, what is known as its reserved domain, and it would be

inconceivable for the ICJ to decide issues relating thereto. Nevertheless, as the PCIJ made clear in one of its first decisions,

“[t]he question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations”.

This is no doubt one of the reasons why certain States have excluded from their recognition of the compulsory jurisdiction of the ICJ questions falling essentially within their field of domestic jurisdiction as “determined” by the State concerned, or which such State “considers” to fall essentially within its domestic jurisdiction.

**States recognizing the compulsory jurisdiction
of the Court (with or without special conditions)**

December 2013

Australia	Ireland
Austria	Japan
Barbados	Kenya
Belgium	Lesotho
Botswana	Liberia
Bulgaria	Liechtenstein
Cambodia	Lithuania
Cameroon	Luxembourg
Canada	Madagascar
Costa Rica	Malawi
Cote d'Ivoire	Malta
Cyprus	Marshall Islands
Democratic Republic of the Congo	Mauritius
Denmark	Mexico
Djibouti	Netherlands
Dominica, Commonwealth of	New Zealand
Dominican Republic	Nicaragua
Egypt	Nigeria
Estonia	Norway
Finland	Pakistan
Gambia	Panama
Georgia	Paraguay
Germany	Peru
Greece	Philippines
Guinea, Republic of	Poland
Guinea Bissau	Portugal
Haiti	Senegal
Honduras	Slovakia
Hungary	Somalia
India	Spain

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Sudan	Timor Leste
Suriname	Togo
Swaziland	Uganda
Sweden	United Kingdom of Great Britain and Northern Ireland
Switzerland	Uruguay

Ten countries originally employed such reservations in their declarations accepting the compulsory jurisdiction of the Court, and these were invoked in the *Certain Norwegian Loans* and *Interhandel* cases (1957 and 1959). The ICJ upheld the objection based on the reservation in the former case and did not address it in the latter case, since it upheld an objection based on other grounds. In these cases, certain Members of the Court expressed the view that such reservations were contrary to the Statute; for some, the reservation as such was null and void, whereas for others the whole declaration of acceptance of compulsory jurisdiction was a nullity. There were many calls for those governments that had included such reservations in their declarations to withdraw them. Certain States did so. As at December 2013, five declarations included a clause of this kind (Liberia, Malawi, Mexico, Philippines and Sudan).

Fourthly, 18 States have included a condition in their declaration stating that the Court does not have jurisdiction unless all parties to a given treaty who may be affected by the Court's decision are also parties to the case before the Court.

Finally, certain States exclude some specific issues or categories of issues from the jurisdiction of the Court, such as territorial and maritime disputes, disputes concerning their armed forces or "disputes between members of the British Commonwealth of Nations".

The importance of such conditions is increased by the principle of reciprocity, which expressly or by implication attaches to all declarations of acceptance of the Court's compulsory jurisdiction. This means that, where a dispute arises between two or more States that have made a declaration, the reservations made by any one of them can be relied upon against it by all the others. In other words, the Court's jurisdiction over the case is restricted to those classes of dispute that have not been excluded by any of them. If, for instance, there are two States, one of which has accepted the compulsory jurisdiction of the Court only in respect of disputes arising after the date of its acceptance of such compulsory jurisdiction, namely 1 February 2004, and the other State has excluded disputes relating to situations or facts prior to 21 August 2008, the ICJ, irrespective of which State was the applicant, would have jurisdiction only to hear cases arising after this latter date.

Some 86 States have been parties to cases before the ICJ

Since the Court's jurisdiction is founded on the consent of States, it is their will which in the final analysis determines the extent of that jurisdiction and how often

recourse is had to the Court. In practice, since the creation of the ICJ 86 States have been parties to contentious proceedings, distributed as follows: Africa 23, Latin America 16, Asia 13, Europe and other States 34. They have submitted a total of 127 cases to the ICJ, about a third by special agreement, a third on the basis of a declaration accepting the compulsory jurisdiction of the Court and a third under a compromissory clause in a treaty.

In considering whether or not sufficient use has been made of the PCIJ and the ICJ, it is worth recalling that the two Courts were not created in order to resolve all international conflicts, but only certain disputes of a legal nature. While the United Nations Charter requires States to settle their differences by peaceful means, it expressly leaves the choice of means to them (see Articles 33 and 95).

**States that have been parties in cases
between 1946 and December 2013**

Albania	Ecuador ⁹
Argentina	Egypt ⁹
Australia	El Salvador
Bahrain	Ethiopia
Belgium	Finland
Benin	France
Bolivia, Plurinational State of	Georgia
Bosnia and Herzegovina	Germany
Botswana	Greece
Brazil ⁹	Guatemala
Bulgaria	Guinea
Burkina Faso	Guinea-Bissau
Burundi ⁹	Honduras
Cambodia	Hungary
Cameroon	Iceland ¹⁰
Canada	India
Chad	Indonesia
Chile	Iran, Islamic Republic of
Colombia	Israel
Congo, Republic of ⁹	Italy
Costa Rica	Japan
Croatia	Lebanon ⁹
Democratic Republic of the Congo	Liberia
Denmark	Libyan Arab Jamahiriya ¹¹
Djibouti	Liechtenstein
Dominica, Commonwealth of ⁹	Macedonia, the former Yugoslav Republic of

⁹ Only in cases terminated by discontinuance.

¹⁰ These States did not take part in the proceedings.

¹¹ Currently known as Libya.

¹² Previously known as the Federal Republic of Yugoslavia, and then as Serbia and Montenegro.

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Malaysia	Russian Federation
Mali	Rwanda
Malta	Senegal
Mexico	Serbia ¹²
Namibia	Singapore
Nauru	Slovakia
New Zealand	South Africa
Nicaragua	Spain
Niger	Sweden
Nigeria	Switzerland
Netherlands	Thailand
Norway	Tunisia
Pakistan	Turkey ¹⁰
Paraguay ⁹	Uganda
Peru	United Kingdom
Portugal	United States of America
Qatar	Uruguay

The PCIJ had itself pointed out that judicial settlement “is simply an alternative to the direct and friendly settlement of . . . disputes between the parties”. It is open to the latter, moreover, to resolve such conflicts without actually having recourse to the Court but by basing themselves on the Court’s decisions in analogous cases (see below p. 77). What is essential is that the overall purpose — pacific settlement — be achieved. The UN General Assembly took account of these principles when discussing the role of the ICJ in the years 1970 to 1974 (see above p. 26). Concluding that it was desirable that better use be made of the Court, it recalled in its resolutions 3232 (XXIX), 3283 (XXIX) and 37/10 (Declaration of Manila on the Peaceful Settlement of International Disputes, adopted on 15 November 1982) that recourse to judicial settlement in respect of a dispute ought not to be considered an unfriendly act. As stated above (see p. 32), in 1989 the Secretary-General had already set up a Trust Fund to Assist States in the Settlement of Disputes through the Court. This Fund is now open to States not only in cases where the Court is seised by special agreement, but, more generally, in all cases where there is not, or is no longer, any challenge by them to the jurisdiction of the Court (or to the admissibility of the application).

Agents, counsel and advocates

States have no permanent representatives accredited to the ICJ. They normally communicate with the Registrar through their minister for foreign affairs or their ambassador in The Hague. Where they are parties to a case they are represented by an agent. A State filing a special agreement or an application must at the same time notify the Court who is to represent it as its agent, whilst the other party must do so on receipt of notification of the filing of the agreement or application or, failing this, as soon as possible thereafter. Often, the agent of a government is

its ambassador in The Hague or a senior civil servant, such as the legal adviser to the ministry of foreign affairs. Where the agent is not the ambassador, his or her signature must be formally certified. An address for service at The Hague must be given. Parties in the same interest may employ separate agents or a common agent. The function of an agent, and his or her rights and obligations, are analogous to those of a solicitor or *avoué* with respect to a municipal court. In international terms, his or her role may be likened to that of the head of a special diplomatic mission, with power to bind a sovereign State. The agent receives communications from the Registrar relating to the case and transmits to the Registrar all correspondence and written pleadings, duly signed or certified. At public hearings, it is the agent who opens the argument, files the submissions and executes any formal act required of his or her government. The agent may also deliver a substantial part of the oral argument, although he is not bound to do so.

The agent is sometimes assisted by a co-agent, a deputy-agent or an additional agent, and he always has counsel or advocates to assist in the preparation of the written pleadings and the delivery of oral argument. The Court must be informed of their names, which may be done at any time in the course of the proceedings. Since there is no special ICJ Bar, there are no conditions that have to be fulfilled for counsel or advocates to enjoy the right of appearing before it, except only that they must have been appointed by a government to do so. Counsel are not required to possess the nationality of the State on behalf of which they appear, and are chosen from among those practitioners, professors of international law and jurists of all countries who appear most qualified to present the views of the parties. In practice, they form a group of specialists which was once fairly limited, but which is now tending to expand. From 1946 to 2010 some 200 individuals appeared as counsel before the Court, of which a group of around 30 appeared in several cases. Their fees normally constitute the chief expense of a State appearing before the ICJ. In order to contribute towards the reduction of such costs, the 1978 Rules (see p. 18 above) authorize the Court, if necessary, to determine “the number of counsel and advocates to be heard on behalf of each party”. Experience has shown that an agent need not necessarily be assisted by a large team. The Court has further adopted two Practice Directions (see p. 18 above) for use by States appearing before it, in order to guide them in their choice of individuals qualified to represent them before the Court. In particular, the Court invites the parties to refrain from designating as agent, counsel or advocate in a case before it a person who is sitting as judge *ad hoc* in another case before the Court (Practice Direction VII), or any person who has served as a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the Court in the three years preceding the date of the designation (Practice Direction VIII).

Agents, counsel and advocates enjoy the privileges and immunities necessary to the independent exercise of their functions. They must be able to communicate

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and travel freely, and for this purpose the ministry of foreign affairs of the country where the Court is sitting is informed of their names.

A list of States to which the ICJ is open is published each year in the *I.C.J. Yearbook*, while the list of instruments governing the Court's jurisdiction, as well as the texts of declarations of acceptance of the Court's compulsory jurisdiction, are published on the Court's website (www.icj-cij.org). The texts of compromissory clauses are to be found in the relevant treaties or conventions in the *United Nations Treaty Series*.

4. The Proceedings

Since the very existence of an international arbitral tribunal results from the will of the parties, it is those parties who necessarily have a large say in the drawing up of its rules of procedure. The PCIJ, by contrast, was established as a permanent court, and hence its founders felt it proper to establish a predetermined body of rules, known in advance to all concerned, to govern its proceedings. They had available to them for this purpose a limited number of precedents culled from the practice of arbitral tribunals, but they also to a large extent had to break new ground. They had to devise a procedure capable of satisfying the sense of justice of the greatest possible number of potential litigants and of placing them on a footing of strict equality. The Court needed both to be trusted and to trust. Accordingly, the first Members of the PCIJ opted for rules which combined simplicity and an absence of formalism and which were flexible in their application. By successive adjustments, the Court managed to achieve a rough balance between these requirements. This balance has been preserved by the ICJ, which has been extremely cautious in changing the rules laid down by its predecessor.

Proceedings are instituted by the parties to the case or by one of them

At the ICJ, a distinction must be drawn between proceedings instituted through the notification of a special agreement and those instituted by means of a unilateral application (see above pp. 35-39):

- A special agreement is of a bilateral (or multilateral) nature and can be lodged with the Court by either or both (or all) of the States parties to the proceedings. The special agreement must indicate the subject of the dispute and the parties thereto. Since there is neither an “applicant” State nor a “respondent” State, in the Court’s publications their names are separated by an oblique stroke at the end of the official title of the case (e.g., *Benin/Niger*).
- An application, which is of a unilateral nature, is submitted by an applicant State against a respondent State. It is intended to be communicated to the latter State, and the Rules of Court contain stricter requirements with respect to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis — a treaty or convention, or declaration of acceptance of compulsory jurisdiction — it claims the Court

has jurisdiction, and must succinctly state the facts and grounds on which it founds its claim. At the end of the official title of the case the names of the two parties are separated by the abbreviation *v.* (for the Latin *versus*) — e.g., *Nicaragua v. Colombia*.

The special agreement or application is normally signed by the agent (see pp. 45-47 above) and is generally accompanied by a covering letter from the minister for foreign affairs or the ambassador to the Netherlands. It may be drafted in English or French. A person authorized by the government concerned, usually the ambassador to The Hague or the agent, sends the document to the Registrar or hands it to him personally. The Registrar, after verifying that the formal requirements of the Statute and of the Rules have been complied with, transmits it to the other party and to the Members of the Court, has it entered in the Court's General List, and informs the press by means of a brief press release. After being duly registered, translated and printed, a bilingual version of the agreement or application is then sent to the Secretary-General of the United Nations and to all States to which the Court is open, as well as to any person who requests it. The institution of proceedings is thus well publicized. The date thereof, which is that of the receipt by the Registry of the special agreement or application, marks the opening of proceedings before the Court.

It is often some time after a dispute arises between the States concerned that it is submitted to the Court. This pre-litigation phase, during which the States concerned discuss and consider the issue, may last for years. Nevertheless, many disputes — which must of their very nature be extremely complex, since otherwise they would have been settled between the parties — have not yet been fully clarified, at least in terms of the points of law at issue, when the dispute is brought before the Court, and continue to require lengthy study by the parties themselves throughout the course of the proceedings. It is particularly noteworthy in these circumstances that the average duration of cases argued before the ICJ, from the institution of proceedings to the delivery of final judgment, is only four years. Many cases have in fact been decided far more rapidly, some even within a year (*Appeal Relating to the Jurisdiction of the ICAO Council*; *Aerial Incident of 10 August 1999 (Pakistan v. India)*; *Request for Interpretation of the Judgment of 11 June 1998*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)* (*Mexico v. United States of America*)). Factors specific to certain cases, such as the number of written pleadings and the time requested by the parties for their preparation, or the frequency of incidental proceedings, mainly account for their length. The Court's control over such factors is relatively limited, but it has as far as possible had regard to them when revising its Rules or reviewing its procedures (resulting, for example, in the issue of Practice Directions; see above p. 18).

The proceedings are first written and then oral

Combining the two types of procedure that are traditionally used to varying degrees around the world, the Statute of the Court provides that proceedings before the Court shall be in two phases: a written phase and an oral phase. The Court has applied this division flexibly, allowing for greater or lesser emphasis on each phase according to the case and taking account of the parties' wishes. Whilst each of the phases of the proceedings has sometimes been subject to criticism, there has never been any agreement as to which might be eliminated. In point of fact, the combination of a relatively lengthy written phase followed by a quite short oral one, as required by the Statute, is highly desirable if the Court is to reach its decision on a fully informed basis. It provides both the parties and the Court with the safeguards required for the sound administration of international justice.

The written proceedings

The first stage of the proceedings involves the submission to the Court of written pleadings containing detailed, adversarial statements of fact and law. One of the reasons why cases tend to be very fully pleaded is the need to satisfy the Court as a whole and each of its Members individually, in other words, to satisfy 15 judges coming from different legal backgrounds. Normally the parties' arguments must be supported by documents annexed to the pleadings, but if these are too lengthy, only extracts need be attached. Two copies of the full text of any document not already in the public domain are deposited in the Registry, where they are available to Members of the Court and the other party for consultation. The Court may itself call for documents or explanations during the written proceedings (see, for example: *Corfu Channel*; *Rights of Nationals of the United States of America in Morocco*; *Monetary Gold Removed from Rome in 1943*; *United States Diplomatic and Consular Staff in Tehran*; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Provisional Measures); *Ahmadou Sadio Diallo*).

When proceedings are instituted by means of an application, the President meets the agents of the parties as soon as possible after their appointment in order to ascertain their views with respect to the number and the order of filing of the written pleadings and the time-limits within which they are to be filed. A decision thereon is then taken by the Court, or by the President himself if the Court is not sitting, having regard to the parties' views in so far as this would not cause unjustified delay. That decision is embodied in an Order, which is made on average about a month after the institution of proceedings. In principle, two pleadings are filed: "a Memorial by the applicant [and] a Counter-Memorial by the respondent". If the parties so request, or if the Court deems it necessary, there

may also be a Reply and Rejoinder, which “shall not merely repeat the parties’ contentions, but shall be directed to bringing out the issues that still divide them”. It has become increasingly common for authorization to be given for the filing of a Reply and Rejoinder, although it is not granted in all cases (see *Fisheries Jurisdiction (Spain v. Canada)*; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*). The time-limits fixed for the filing of written pleadings, which “shall be as short as the character of the case permits”, are normally the same for each party. The Court may extend those time-limits at the request of one of the parties, but only if it “is satisfied that there is adequate justification for the request”.

The words between inverted commas in the preceding paragraph are taken from the 1978 Rules (as amended in 2000; see p. 18 above), which take account of the views of numerous commentators. Previously the number of pleadings had normally been four instead of two (the *Haya de la Torre* case was an exception) and they had become extremely voluminous. Even where relatively long time-limits were requested (in general from three to six months for each pleading, but sometimes as much as a year or more), the Court felt it difficult not to take account of the wishes expressed by the representatives of sovereign States, who were concerned to set forth their case at proper length and with due and proper care. The Court had also felt itself obliged to agree to requests for extensions that in some cases amounted to as much as a year or 18 months, thereby nearly doubling the originally estimated time for the written proceedings. The latitude thus granted to parties gradually contributed to an excessive increase in the duration of cases, something which the Court noted with regret in an Order made by it in 1968. The time-limits requested by the parties are still often quite long.

When a case is brought before the Court or a Chamber of the Court by notification of a special agreement, the parties themselves usually fix in the special agreement the number and order of filing of the pleadings — although that is not binding on the Court. In recent cases, the parties have agreed to each submit a Memorial and a Counter-Memorial, followed by a further pleading if necessary. They have also agreed upon certain time-limits. The Court, as far as possible, takes account of the wishes of the parties on these points (see Articles 46 and 92 of the Rules). Hence Replies were filed in the cases concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, the *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, the *Land, Island and Maritime Frontier Dispute*, the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, the *Gabčíkovo-Nagymaros Project*, *Kasikili/Sedudu Island*, *Sovereignty over Pulau Ligitan and Pulau Sipadan*, and *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, but only Memorials and Counter-Memorials were submitted in the two *Frontier Dispute* cases (*Burkina Faso/Republic of Mali* and *Burkina Faso/Niger*). With respect to the order in which pleadings are filed in cases

brought by special agreement, the Court “wishes to discourage the practice of simultaneous deposit of pleadings” (Practice Direction I), the practice of consecutive filings favouring a direct and more in-depth exchange between the parties from the outset of the written phase. However, parties frequently prefer a simultaneous exchange of pleadings, given that there is neither applicant nor respondent.

Two signed originals of each pleading are delivered by the agent to the Registrar, together with 123 copies for the use of the other party, Members of the Court and the Registry. Whether filed in printed form (which is generally no longer the case) or in a digital version, pleadings must as far as possible conform to the format recommended by the Court. The parties may now choose either to file all the additional copies of their pleadings in paper form or to file 75 copies on paper and 50 on CD-ROM. The pleadings and their annexes may be filed in either English or French, or in a combination of these two languages. They may also be wholly or partly in a third language, provided that a certified translation into English or French is attached. The Registry makes an unofficial translation into the other official language of the Court for use by the judges. After the views of the parties have been ascertained, the Court may communicate the pleadings to the government of any State that is entitled to appear before it. It is usual, after consultation with the parties, for the pleadings to be made available to the press and the public as from the opening of the oral proceedings or subsequently, *inter alia* by being posted on the Court’s website.

Faced with an increase in the volume of the pleadings filed by the parties and a proliferation in the number of documents annexed thereto, the Court has issued a Practice Direction for the use of States appearing before it, in which, *inter alia*, it urges the parties “to keep the written pleadings as concise as possible” and to “append to their pleadings only strictly selected documents” (Practice Direction III).

In each of the pleadings that it files, a party indicates its “submissions” (French: *conclusions*) at that stage of the case. These “submissions”, a concept borrowed by international arbitral and judicial practice from the legal systems of Civil Law countries and unknown in this form in Common Law countries, are a concise statement of precisely what the party in question is asking the Court to adjudge and declare on the basis of the facts it has alleged and the legal grounds it has adduced, in respect not only of the original claim but also of any counter-claim. In principle they do not include any recital, however brief, of the aforesaid facts and arguments. They define the scope of the claim and the framework within which the Court will have to reach its decision. The Court’s task is thus:

“not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions” (*Right of Asylum, Judgment, I.C.J. Reports 1950*, p. 402).

The oral proceedings

Once all the written pleadings have been filed, the case is ready for hearing, that is to say, for oral argument. In principle there is an interval of a few months before the oral proceedings begin. The date for their opening is decided by the Court, taking account of its schedule and, as far as possible, the scheduling requests of the parties, their representatives, agents, counsel and advocates, who need a certain amount of time to prepare their oral presentations.

Unlike arbitral tribunals, the sittings of the ICJ are open to the public unless the parties ask for the proceedings to be *in camera*, or the Court so decides of its own motion. Press releases are issued announcing that public sittings are to be held and these generally take place each morning from 10 a.m. to 1 p.m., or in the afternoon from 3 p.m. to 6 p.m., in the Great Hall of Justice on the ground floor of the Peace Palace. Judges wear a black gown and a white jabot, as does the Registrar, who sits with the judges. Agents and counsel for the parties, who are traditionally dressed in accordance with the practice of the courts in their own countries, face the Court. In proceedings instituted by an application, the applicant State is on the President's left and the respondent State on his or her right; in proceedings instituted by the notification of a special agreement, the party which is to speak first is on the President's left and the other on his or her right. Arrangements are made to enable press and television to follow the proceedings.

The parties address the Court in the order in which they have filed their pleadings or, in cases submitted under a special agreement, in the order fixed by the Court after consulting the agents of the parties. Normally each party has two rounds of oral argument. The Court may be addressed in either of its official languages; it is not required that all argument be in a single language nor that all of a party's representatives use the same language. Everything spoken in English is interpreted into French and vice versa. Interpretation was consecutive until 1965 and since then has been simultaneous. Should counsel wish to use a language other than the Court's two official languages (e.g., *S.S. "Wimbledon" and *Rights of Minorities in Upper Silesia cases: German; *Borchgrave and Barcelona Traction cases: Spanish; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie: Arabic), the party concerned is required to inform the Registrar in advance and must itself make provision, under the supervision of the Registrar, for consecutive interpretation into English or French. It is that interpretation which is reproduced in the verbatim record of the hearing. As frequently happens in the principal organs of the United Nations, those addressing the Court, many of whom are not using their mother tongue, often read from a prepared text, giving the Registry a copy before each hearing so as to ensure that the speakers are interpreted as accurately as possible and to facilitate the conduct of the hearings. Oral argument is recorded in the original official language and a transcript is issued by the Registry in the form of a provisional verbatim record of the proceedings, which is distributed a few hours

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afterwards. After those who have spoken have checked it for accuracy (under the supervision of the Court), this corrected verbatim record then constitutes the authentic record of the proceedings. The Registry prepares an unofficial translation of the provisional verbatim record in the Court's other language, which is distributed several days after the sitting.

Hearings generally last for two or three weeks, though in the *Barcelona Traction* case there were 64 sittings, in the *South West Africa* case 102, in the case concerning the *Land, Island and Maritime Frontier Dispute* there were 50 and in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* there were 56 sittings. The sittings are under the control of the Court and, in particular, of the President. He consults his or her colleagues and ascertains the views of the parties' agents, whom he will meet, if necessary, before the opening of the hearings, or during them. Where required, Orders are made concerning the conduct of the proceedings. So far as the actual content of what is said is concerned, the ICJ has up to the present felt it better to refrain as far as possible from giving instructions to the representatives of sovereign parties. However, under Article 61 (1) of the Rules,

“[t]he 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”.

Article 61 (2) authorizes the Court to put questions during the hearing on points that seem to it to require explanation, while under Article 62 (1) it may at any time call upon the parties to produce further information or documentation; but in practice the Court has seldom availed itself of this possibility (cases where it has done so include: *Corfu Channel*; *Ambatielos*; *United States Diplomatic and Consular Staff in Tebran*; *Military and Paramilitary Activities in and against Nicaragua*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Ahmadou Sadio Diallo*).

By contrast, the right of individual judges under the third paragraph of Article 61 to put question to the parties at the hearing is often used (see, for example, *Gabčíkovo-Nagymaros Project*; *Kasikili/Sedudu Island*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *LaGrand*; *Oil Platforms*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge*; *Dispute regarding Navigational and Related Rights*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals*; *Application of the International Convention on the Elimination of All Forms of*

Racial Discrimination; Questions relating to the Obligation to Prosecute or Extradite; Certain Activities Carried Out by Nicaragua in the Border Area; Whaling in the Antarctic). However, the judges do not put their questions until after they have informed the President and their colleagues of their intention to do so, which can often give rise to a brief internal debate. In general, those addressing the Court have practically no guidance other than the dual need to answer the other side and to leave nothing out that might serve to support their own case.

This conception of the oral proceedings that has been developed by the Court and the parties has been criticized, even by governments, as tending towards a reiteration of what has already been set forth in the written pleadings. For this reason, the Rules of 1978, as amended in 2000, provide:

“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.” (Art. 60, para. 1.)

In its Practice Direction VI, the Court, citing the first paragraph reproduced above, “requires full compliance [by the parties] with these provisions and observation of the requisite degree of brevity”. The Court explains, in that context, that it “will find it very helpful if the parties focus in the first round of the oral proceedings on those points which have been raised by one party at the stage of the written proceedings but which have not so far been adequately addressed by the other, as well as on those which each party wishes to emphasize by way of winding up its arguments”.

So far as the examination of evidence is concerned, the ICJ, which has power to make all necessary arrangements for this, tries to avoid a formalistic approach, co-operating with the parties and taking account of the different conceptions they may have of this matter. It is consequently more flexible in the admission of evidence than certain domestic courts, though reserving its right to reconsider the issue during its deliberations in the case. The Court’s judgments often contain detailed explanations of the way it has handled the evidence presented by the parties, having regard to the nature of this evidence and to the circumstances of the case (see, for example, *Military and Paramilitary Activities in and against Nicaragua*; *Land, Island and Maritime Frontier Dispute*; *Gabčíkovo-Nagymaros Project*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Pulp Mills on the River Uruguay*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*).

— Matters of fact, which frequently are not in issue as between the parties, are in general proved by documentary evidence, such evidence normally forming

part of the written pleadings. The Court's current approach to evidence places the major emphasis on documentary material. Once the written proceedings have concluded, new documents can only be submitted in exceptional circumstances and provided this will not delay the proceedings. On this point, the Court has explained in Practice Direction IX that, where a party wishes to submit a new document after the closure of the written proceedings, "it shall explain why it considers it necessary to include the document in the case file and shall indicate the reasons preventing the production of the document at an earlier stage". New documents must normally be filed in 125 copies. The Registrar then forwards the new documents to the other party and asks for its views. If there is no objection, the Court will normally admit the new documents. Should there be an objection to them, the Court itself will decide the matter and will only accept a document "if it considers the document necessary". During the oral proceedings, no reference may be made by the parties to the contents of any new document which neither forms part of a readily available publication nor has been submitted to the Court in accordance with the above provisions.

- In the practice of the PCIJ and the ICJ there have been relatively few examples of oral testimony by witnesses or experts. Cases where such testimony has been given include: **Certain German Interests in Polish Upper Silesia*; *Temple of Preah Vihear*; *South West Africa*; *Continental Shelf (Tunisia/Libyan Arab Jamabiriya)*; *Delimitation of the Maritime Boundary in the Gulf of Maine Area*; *Continental Shelf (Libyan Arab Jamabiriya/Malta)*; *Military and Paramilitary Activities in and against Nicaragua*; *Elettronica Sicula S.p.A. (ELSI)*; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Whaling in the Antarctic*. In hearing witnesses or experts called by either of the parties, without necessarily considering itself bound by any particular practice the Court has so far followed a procedure akin to that used in many Common Law jurisdictions: an examination-in-chief by the representatives of the party calling the witness, followed by a cross-examination by the representatives of the other party, a re-examination by the former and replies to any question put by the President or Members of the Court. Evidence may be given in a language other than English or French, in which case the same conditions apply as for oral argument (see, for example, *Corfu Channel*; *Land, Island and Maritime Frontier Dispute*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*). In such cases it is the statement signed by the witness or expert, as translated into one of the Court's official languages, which is reproduced in the verbatim report of the hearing. The Court is itself empowered to call witnesses but has never done so. It can also

appoint experts to prepare a report for it (**Factory at Chorzów; Corfu Channel*), order an investigation *in loco* (*Corfu Channel*) or itself make an inspection *in loco* (**Diversion of Water from the Meuse; Gabčíkovo-Nagymaros Project*). In the **Free Zones of Upper Savoy and the District of Gex* and *South West Africa* cases, the Court declined requests that it carry out such an inspection. The Chambers constituted by the Court also have this power; for example, an expert was appointed by the Chamber formed in the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* case, to assist it in examining the technical aspects¹³, whereas the Chamber formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute* did not consider it necessary to visit the disputed areas, or to order an investigation or call upon expert assistance.

- Parties have always made use, under the appropriate control of the Court, of the latest techniques for the purposes of supporting or illustrating their arguments at the hearings, ranging from the production of maps, photographs and models (**Diversion of Water from the Meuse*) to the presentation of videos and other audio-visual material (*Temple of Preah Vihear; Continental Shelf (Tunisia/Libyan Arab Jamahiriya); Gabčíkovo-Nagymaros Project (Hungary/Slovakia); Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*). With respect to material not produced during the written phase, the Court's practice is that a party wishing to present a film or other audio-visual material at the hearings must inform the Court sufficiently in advance, allowing the other party the opportunity to view the material in question beforehand and to express an opinion with regard to its presentation. In order to enable it to take a decision on the presentation of such material, the Court recently stipulated, in Practice Direction IX *quater*, that the party concerned must explain why it wishes to present the material in question and provide a variety of information as to the source of the material, the circumstances and date of its making, the extent to which it is available to the public and, wherever relevant, the geographical co-ordinates of the location where it was taken.

After the conclusion of oral argument on behalf of each party, each agent reads out his or her final submissions, handing a signed text thereof to the Registrar. At the close of the last public sitting, the President asks the agents to hold themselves at the disposal of the Court. If need be, replies to questions put by the Court, or by individual judges, may subsequently be forwarded in writing to the Registry, and may then be the subject of written comments by the other party. The Court may put further written questions to the parties after the closure of the hearings. The replies, as well as any written observations thereon, are duly communicated to the Members of the Court and to each party.

¹³ In this case, however, the appointment of an expert and his duties were provided for in the special agreement. His report was appended to the Chamber's judgment.

A case may involve preliminary objections or other incidental proceedings

The procedure described above is the normal procedure that is followed before a full Bench of the Court or its Chamber. We must, however, now consider incidental proceedings, which, just as in municipal courts, can affect the course of the main proceedings.

Preliminary objections

The most common incidental proceeding is where preliminary objections are raised, generally by the respondent State in the case of proceedings instituted by an application. Such objections seek to suspend any consideration by the Court of the merits of the case, on the ground that:

- the Court lacks jurisdiction *ratione personae*, because one of the parties lacks capacity to appear before the Court, for example where the respondent State is not a party to the Statute of the Court or otherwise bound by a special provision contained in treaties in force as provided in paragraphs 1 and 2 of Article 35 of the Statute¹⁴;
- the Court lacks jurisdiction *ratione materiae* under the terms of the compulsory clause of a treaty or convention, or the declaration of acceptance of the Court's compulsory jurisdiction, pursuant to which the applicant State has brought the case before the Court. The respondent State may, for example, contend that the treaty or declaration of acceptance is null and void or no longer in force; that the dispute predates the time to which the treaty or declaration applies; or that the dispute is not covered for some other reason (for example, because a reservation attached to the declaration excludes the dispute in question);
- that, even if the Court did have jurisdiction, it could not exercise it because the application is inadmissible on more general grounds. It may be contended that certain essential provisions of the Statute or of the Rules have not been complied with; that the dispute does not exist, has become moot, relates to a non-existent right or is not of a legal nature within the meaning of the Statute; that the judgment would be without practical effect or would be incompatible with the role of a court; that the applicant State lacks capacity to act, has no legal interest in the case or has not exhausted the possibility of negotiations or other preliminary procedures; that the applicant is alleging facts which come within the province of a political organ of the United Nations; or, indeed, that the private party whom the applicant State is seeking to protect does not

¹⁴ "1. The Court shall be open to the States parties to the present Statute.

2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court."

hold the nationality of that State or has not exhausted the local remedies available to him in the respondent country¹⁵; or

- that there is some other ground for putting an end to the proceedings. It may be argued that the dispute brought before the Court involves other aspects of which it is not seised; that the applicant has failed to bring proceedings against certain parties whose presence is essential; or that certain negotiating procedures have not been exhausted, etc.¹⁶.

The matter is one for the Court itself to decide, since it has jurisdiction to determine its own jurisdiction. According to Article 36, paragraph 6, of the Statute: “In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.” The procedure to be followed is laid down in Article 79 of the Rules. Where a respondent State wishes to raise one or more preliminary objections, it must do so in writing as soon as possible, and not later than three months after the delivery of the Memorial. The written proceedings on the merits are then suspended and written and oral proceedings on the preliminary objection(s) are initiated. They constitute a distinct phase of the case, a sort of proceeding within the proceedings. An Order is made fixing a time-limit within which the applicant State must submit its written observations and submissions, in other words, its answer to the objection(s). In Practice Direction V, the Court states that, with a view to expediting proceedings, that period shall generally not exceed four months. A series of public sittings is then held similar to those described above, although shorter, since, as Practice Direction VI makes clear, they are strictly limited to the issues raised by the preliminary objection(s).

Mention should be made here of the provision in the second paragraph of Article 79 of the Rules, whereby, following submission of the application and after the President has consulted the parties, the Court may decide that questions of jurisdiction and admissibility shall be determined separately. In that case, which occurs quite often (most recent examples: *Aerial Incident of 10 August 1999 (Pakistan v. India)*; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*), the Court rules *in limine* on the issue, that is to say, before any proceedings on the merits.

The Court then deliberates and delivers a judgment in the usual way (see below pp. 69-76). There are three possible outcomes, and three only:

¹⁵ Some of these grounds may, in some cases, or according to some views, also support objections to jurisdiction or some other form of claim for dismissal. International tribunals have always adopted a pragmatic approach to the matter.

¹⁶ Some of these grounds may, in some cases, or according to some views, also support objections to jurisdiction or admissibility.

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- the Court upholds at least one of the preliminary objections and the case will then come to an end, leaving open the possibility that it may be resumed one day if the ground on which the preliminary objection was upheld no longer applies (e.g., domestic remedies are finally exhausted);
- the Court rejects all the preliminary objections and the proceedings on the merits will resume at the point at which they were suspended; the respondent will then be called upon to deliver its Counter-Memorial within a certain time;
- the Court declares that the objections do not possess an exclusively preliminary character and the proceedings will be resumed in order to enable the Court to rule on all the issues put before it.

While this represents the general picture, certain variants are possible:

- The respondent State withdraws its preliminary objection(s) (e.g., *Rights of Nationals of the United States of America in Morocco*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*).
- The respondent State contests the jurisdiction of the Court or the admissibility of the claim in its written pleadings or in oral argument but does not do so by means of a formal preliminary objection; the Court will then deal with this issue at the merits stage if necessary (e.g., **Rights of Minorities in Upper Silesia*; *Nottebohm*; *Appeal Relating to the Jurisdiction of the ICAO Council*; *LaGrand, Arrest Warrant of 11 April 2000*; *Avena and Other Mexican Nationals*; *Certain Questions of Mutual Assistance in Criminal Matters*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals*; *Application of the Interim Accord of 13 September 1995*; *Questions relating to the Obligation to Prosecute or Extradite*; *Whaling in the Antarctic*).
- The Court on its own initiative considers a preliminary issue that has not formed the subject of a formal objection (e.g., **Serbian Loans*; **Prince von Pless Administration*; *South West Africa*; *Nuclear Tests*; *United States Diplomatic and Consular Staff in Tehran*).
- The parties by agreement ask the Court to rule on preliminary objections, or other issues raised regarding jurisdiction and/or admissibility, at the same time as the merits, which the Court is then bound to do (see, for example, *Certain Norwegian Loans*; *Elettronica Sicula S.p.A. (ELSI)*; *Eastern Timor*). Before the 1972 revision of the Rules, the Court could itself decide that preliminary objections should be joined to the merits (**Prince von Pless Administration*; **Pajzs, Csáky, Esterházy*; **Losinger*; **Panevezys-Saldutiskis Railway*; *Right of Passage over Indian Territory*; *Barcelona Traction*). In 1972, it was decided to limit this possibility. The new provision stipulates that only those objections that do not possess an exclusively preliminary character may now be decided

at the merits stage (e.g., *Military and Paramilitary Activities in and against Nicaragua*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*; *Land and Maritime Boundary between Cameroon and Nigeria*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*).

- The applicant State itself raises a preliminary objection within the time-limit laid down for the delivery of its Memorial: such preliminary objection will then be dealt with in exactly the same way as if it had been raised by the respondent State (e.g., *Monetary Gold Removed from Rome in 1943*).
- In a case brought under a special agreement, where there is no applicant or respondent, either party may raise preliminary objections (see **Borchgrave*).

Since the dissolution of the PCIJ, preliminary objections have become more frequent, and proportionately more of them have been successful. Some critics have even gone so far as to speak in this connection of formalism and timidity, but this is to forget, first, that the ICJ, whose jurisdiction is not compulsory, has to be particularly careful not to go beyond the limits laid down for it by governments and, secondly, that preliminary objections are an essential safeguard available to litigants in all procedural systems. Since 1946, preliminary objections have been formally raised in 42 cases and have been successful in about two-thirds of them. Even where rejected, they have ultimately delayed the final decision of the case by more than a year.

Non-appearance

The Statute also makes provision for cases where the respondent State does not appear before the Court, either because it totally rejects the Court's jurisdiction or for any other reason (Art. 53). Hence failure by one party to appear does not prevent proceedings in a case from taking their course, in keeping with the principle of the equality of the parties, which requires that neither party should be penalized through the attitude adopted by the other. But in a case of this nature, the Court must satisfy itself that it has jurisdiction, taking all relevant matters into account. If it concludes that it does have jurisdiction, it must determine whether the claim of the applicant State is well-founded in fact and law, while having regard to the fact that, in proceedings which are of a largely adversarial nature, it does not have available to it the factual and legal matters normally relied on by the respondent to dispute the applicant's claims. The Court then organizes written and oral proceedings, in which the applicant State participates, and delivers a judgment. In some cases the respondent has failed to appear at every stage of the proceedings (*Fisheries Jurisdiction*; *Nuclear Tests*; *Aegean Sea Continental Shelf*; *United States Diplomatic and Consular Staff in Tehran*). In others, only during certain phases (*Corfu Channel* (Assessment of Amount of Compensation); *Anglo-Iranian Oil Co.*; *Interim Protection*; *Nottebohm*, (Preliminary Objection); *Military and Paramilitary Activities in and against Nicaragua*, Merits (Form and

Amount of Reparation). Sometimes, following the respondent's non-appearance the applicant State has decided, for various reasons, to discontinue the proceedings (**Denunciation of the Treaty of 2 November 1865 between China and Belgium*; **Polish Agrarian Reform and German Minority*; **Electricity Company of Sofia and Bulgaria*; *Trial of Pakistani Prisoners of War*).

Provisional measures

If at any time it considers that the rights which form the subject of its application are in immediate danger, the applicant State may request the Court to indicate provisional measures to protect its rights. The respondent also has a similar right, although it is less often used (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Pulp Mills on the River Uruguay*; etc.), as do also the parties to proceedings instituted by special agreement (see *Frontier Dispute (Burkina Faso/Republic of Mali)*; etc.). Where appropriate, the President may then call upon the parties to refrain from any acts that might jeopardize the effectiveness of any decision the Court may take on the request (see, for example: **Prince von Pless Administration*; **Electricity Company of Sofia and Bulgaria*; *Anglo-Iranian Oil Co.*; *United States Diplomatic and Consular Staff in Tehran*; *Military and Paramilitary Activities in and against Nicaragua*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Vienna Convention on Consular Relations; LaGrand*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*). In any event, urgent proceedings (generally oral) are held, taking priority over all others, in order to ascertain the views of the parties. These constitute a separate phase of the case and in general lead to a decision within three to four weeks, though this can also be much more rapid (e.g., *LaGrand*: 24 hours). The decision of the Court is embodied in an Order, which is read out by the President at a public sitting.

The Court may decline to indicate provisional measures (e.g., **Factory at Chorzów*; **Legal Status of the South-Eastern Territory of Greenland*; **Polish Agrarian Reform and German Minority*; *Interhandel*; *Trial of Pakistani Prisoners of War*; *Aegean Sea Continental Shelf*; *Arbitral Award of 31 July 1989*; *Passage through the Great Belt*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* (*Libyan Arab Jamahiriya v. United States of America*); *Arrest Warrant of 11 April 2000*; *Certain Criminal Proceedings in France*; *Legality of Use of Force*; *Armed Activities on the Territory of the Congo (New Application: 2002)* (*Democratic Republic of the Congo v. Rwanda*); *Pulp Mills on the River Uruguay*). Already at this phase of the proceedings the respondent State may contest the Court's jurisdiction or may fail to appear. The Court will

indicate provisional measures only if it finds that it has *prima facie* jurisdiction, that the rights claimed by the applicant State appear to be at least plausible, that there exists a link between the rights whose protection is being sought and the measures requested, that there is a risk of irreparable prejudice and that there is an element of urgency. The Court can indicate measures different from those requested or on its own initiative; it may modify the measures requested if the situation so requires.

Chambers constituted by the Court may also indicate provisional measures, and this was done with particular rapidity in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*.

In its Judgment of 27 June 2001 in the *LaGrand* case, the Court expressly stated that Orders indicating provisional measures have binding force.

Counter-claims

In its Counter-Memorial, in addition to defending its position with regard to the claims brought against it by the applicant State, a respondent State may make one or more counter-claims. This procedure enables the respondent to submit a new claim to the Court as a counter to the other party's principal claim. Thus a State against which a violation of international law is alleged can not only deny this, but claim, further, that the applicant is itself responsible for violations in the context of the same case (for recent practice, see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (counter-claims subsequently withdrawn); *Oil Platforms (Islamic Republic of Iran v. United States of America)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*).

Under Article 80 of the 1978 Rules of Court (as amended on 5 December 2000), in order to be admissible and to be eligible to be dealt with at the same time as the relevant principal claim, the counter-claim must come within the Court's jurisdiction and be directly connected with the subject-matter of the principal claim.

Where the counter-claims presented by a party in its Counter-Memorial are declared admissible, the Court normally orders the filing of a Reply and a Rejoinder. To ensure strict equality between the parties, a right is generally reserved for the party replying to the counter-claims to express itself a second time in writing on those claims in an additional pleading (see *Oil Platforms (Islamic Republic of Iran v. United States of America)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*).

Joinder of proceedings

The Court may at any time direct that the proceedings in two or more cases be joined, where such a joinder appears, in the light of the specific circumstances of each case, to be consonant with the requirements of the sound administration of justice and the need for judicial economy. The PCIJ joined the proceedings in the cases concerning **Certain German Interests in Polish Upper Silesia*; **Legal Status of the South-Eastern Territory of Greenland* and **Appeals from Certain Judgments of the Hungaro/Czechoslovak Mixed Arbitral Tribunal*. The ICJ joined the proceedings in the *South West Africa* and *North Sea Continental Shelf* cases and in the cases concerning *Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*) and the *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua v. Costa Rica*).

For example, cases have been joined where they had the same applicants and respondents (**Certain German Interests in Polish Upper Silesia*; **Appeals from Certain Judgments of the Hungaro/Czechoslovak Mixed Arbitral Tribunal*), where they included cross-claims (*Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*) and the *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua v. Costa Rica*)), or where the Court found that parties to separate proceedings were acting in the same interest, that is to say, that they were submitting the same arguments and submissions against a common opponent in relation to the same issue. The Court may then issue an order for the proceedings to be joined. The parties, if so entitled, will be allowed to appoint only a single judge *ad hoc* (see above pp. 25-27), and will submit joint pleadings and oral argument. Only a single judgment will be delivered. The Court may also, without effecting any formal joinder, direct common action in respect of any aspect of the proceedings. Thus, in the cases concerning *Fisheries Jurisdiction*; *Nuclear Tests*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* and *Legality of Use of Force*, the cases proceeded in parallel and similar judgments were delivered on the same day, although the proceedings had not been formally joined. In the *Fisheries Jurisdiction* cases one of the applicant States had a judge of its nationality on the Bench whilst the other had neither a judge of its nationality nor a judge *ad hoc*; in the *Nuclear Tests* cases the two applicant States appointed the same judge *ad hoc*. In one of the Lockerbie cases, the British Member of the Court considered that he should not take part in the case, and the United Kingdom appointed a judge *ad hoc*, who sat in the phase regarding the jurisdiction of the Court and the admissibility of the application; in both cases, the American Member of the Court continued to sit, but passed the presidency to the Vice-President. In the *Legality of Use of Force* cases, judges *ad hoc* appointed by those respondents which did not have a judge of their nationality on the Bench sat in the phase of the cases devoted to provisional measures but not in the subsequent phase on preliminary objections.

Intervention

The Statute of the Court (Art. 62) makes it possible for a State to intervene in a dispute between other States so as to protect itself against the possible effects of a decision in which it has not been involved, when it considers that it has an interest of a legal nature which may be affected by the decision in the dispute between those States. Any third State seeking to intervene in the case must normally file its request for permission to do so before the closure of the written proceedings in the principal case. Fiji sought permission to intervene in the *Nuclear Tests* cases, as did Malta in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. Italy requested permission to intervene in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*; Nicaragua filed an Application for permission to intervene in the case concerning the *Land, Island and Maritime Frontier Dispute*; and Australia, Samoa, the Solomon Islands, the Marshall Islands and the Federated States of Micronesia requested permission to intervene in the *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*. The Philippines sought to intervene in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* and Equatorial Guinea filed a request for permission to intervene in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*. Honduras and El Salvador requested permission to intervene in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* and Greece sought to intervene in the case concerning *Jurisdictional Immunities of the State (Germany v. Italy)*. Only Nicaragua, Equatorial Guinea and Greece were successful in their applications. When permission to intervene is granted, the intervening State, having received copies of the pleadings, may submit a written statement and participate in the oral proceedings. However, it does not by that fact alone become a party to the case, and cannot ask the Court to recognize its own rights. On the other hand, the Court has accepted that a State may intervene as a party, but only if it has shown that it has an interest of a legal nature in the dispute and only if there exists a valid basis of jurisdiction between all the States concerned (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Application by Honduras for Permission to Intervene*). In such a case, which has yet to occur in practice, the decision of the Court will be binding on the intervening State, as it is on the other parties, in respect of any aspects of the case on which basis the intervention was allowed.

The Court's Statute (Art. 63) also stipulates that, where a case appears to involve the interpretation of a multilateral convention to which States other than the applicant and respondent States are parties, the Registrar is required to notify all such States forthwith, and any State so notified has the right to intervene in the proceedings. A declaration of intervention may be made even though the Registrar

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has not given such notification, and should normally be filed before the date fixed for the opening of the oral proceedings relating to the principal case. A number of States have presented declarations of intervention: Poland in the case concerning the *S.S. "Wimbledon"; Cuba in the *Haya de la Torre* case; El Salvador in the case concerning *Military and Paramilitary Activities in and against Nicaragua*; Samoa, the Solomon Islands, the Marshall Islands and the Federated States of Micronesia with respect to the *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case* and New Zealand in the case concerning *Whaling in the Antarctic (Australia v. Japan)*. The intervention was admitted in the first two cases and in the last case. The interpretation of the multilateral treaty that is given by the Court in its judgment will be binding upon any party that has intervened.

Finally, in accordance with an amendment to Article 43 of the Rules, which entered into force in 2005, the Court may direct the Registrar to notify any public international organization that is party to a convention the construction of which is at issue in a case. Any public international organization so notified may then submit written observations on the particular provisions of the convention the construction of which is in question and supplement these orally should the Court consider it necessary.

Examples of a special agreement, an application instituting proceedings, a memorial, preliminary objections, orders and a press release may be found on the Court's website (www.icj-cij.org). The official titles of cases as decided on by the ICJ are also published on the website. Written pleadings and oral arguments are published in the *I.C.J. Pleadings* series and are also found on the Court's website. The Court's decisions involving the application of its Statute and Rules are published each year in the *I.C.J. Yearbook*.

5. The Decision

There are two ways in which a case may be brought to a conclusion.

- Discontinuance: at any stage of the proceedings the parties may inform the Court, jointly or separately, that they have agreed to withdraw the case. The Court, or its President if the Court is not sitting, then makes an Order for the removal of the case from the Court's List, which may mention or quote from any friendly settlement that the parties have reached (**Delimitation of the Territorial Waters between the Island of Castellorizo and the Coasts of Anatolia*; **Losinger*; **Borchgrave*; *Certain Phosphate Lands in Nauru*; *Aerial Incident of 3 July 1988*). Discontinuance may also be unilateral: the applicant may at any time state that it is not going on with the proceedings. If the respondent has already carried out any procedural act, the discontinuance will only take effect if the respondent makes no objection. The Court or the President will then make an order for the removal of the case from the Court's List (see, for example: **Denunciation of the Treaty of 2 November 1865 between China and Belgium*; **Prince von Pless Administration*; **Appeals from Certain Judgments of the Hungaro/Czechoslovak Mixed Arbitral Tribunal*; **Polish Agrarian Reform and German Minority*; *Protection of French Nationals and Protected Persons in Egypt*; *Electricité de Beyrouth Company*; *Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient*; *Trial of Pakistani Prisoners of War*; *Border and Transborder Armed Actions (Nicaragua v. Costa Rica)*; *Border and Transborder Armed Actions (Nicaragua v. Honduras)*; *Passage through the Great Belt (Finland v. Denmark)*; *Maritime Delimitation between Guinea-Bissau and Senegal*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*; *Vienna Convention on Consular Relations (Paraguay v. United States of America)*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Burundi) (Democratic Republic of the Congo v. Rwanda)*; *Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations*; *Certain Criminal Proceedings in France*; *Aerial Herbicide Spraying*). If the Court is not sitting the Order is made by the President. Two cases before the PCIJ ended in an express or tacit withdrawal as a consequence of the Second World War (**Electricity Company of Sofia and Bulgaria*; **Gerliczy*). Occasionally, the discontinuance may relate to only a part of the dispute which was not resolved in a previous phase of the case and remains outstanding. This occurred, for example, in the determination of the amount of compensation in the cases concerning *United States Diplomatic and Consular Staff in*

Tebran and *Military and Paramilitary Activities in and against Nicaragua*. Finally, it should be noted that the term “discontinuance of proceedings” (“désistement d’instance”) will be used where the applicant abandons — even if only temporarily — its pursuit of proceedings before the Court, without necessarily giving up its right to reinstitute the proceedings subsequently (see, for example, *Barcelona Traction, Light and Power Company, Limited*, where Belgium withdrew its proceedings in 1961 and filed a new application in 1962; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, where proceedings were thus withdrawn in 2001, while in 2002 the Democratic Republic of the Congo instituted new proceedings against Rwanda with a similar subject-matter); as opposed to “discontinuance of right of action” (“désistement d’action”), where the applicant definitively renounces any right to seek to enforce before the Court its claims in respect of the issues which form the subject-matter of the proceedings (examples: *Vienna Convention on Consular Relations*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*).

- Judgment: the Court delivers a judgment that terminates the proceedings by upholding a preliminary point or objection, or by a decision on the merits. Conclusion of the proceedings by a judgment, which is the most usual solution, will now be considered in detail.

The Court’s deliberations are secret

After the parties have completed the statement of their case, it remains for the Court to proceed to its judgment in circumstances consistent with the sound administration of international justice. Given the diverse composition of the Court, which must ensure the representation of the main forms of civilization and the principal legal systems of the world (Article 9 of the Statute), its deliberations are organized in such a way as to afford all judges an equal opportunity to participate in the decision. In order to achieve as large a consensus as possible between judges from different backgrounds, the process of gradually reaching a decision must be a joint one. Accordingly, the system of designating a given judge to act as Rapporteur, responsible for studying the case file and drawing up a draft decision, which was envisaged in the early days of the PCIJ, was quickly abandoned. A procedure favouring collective reflection gradually developed, before the Court considered it useful to codify this and make it public. To this end it adopted a resolution concerning the internal judicial practice of the Court, the first version of which was adopted in 1931, the second in 1936 (and continued in force in 1946), the third in 1968 and the fourth, the most recent, in 1976. It should however be noted that the Court has reserved the right to depart from the provisions of the resolution where necessary, and has indeed decided to do so in certain cases in order to expedite its deliberations. While the procedure adopted by the Court for its deliberations is

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thus in the public domain, the actual deliberations are secret. This principle, which is generally accepted in judicial systems and applied in all international arbitrations, ensures that the Court's deliberations are conducted freely and effectively. Deliberations are held in a private room in the new wing of the Peace Palace. No one else is allowed to be present except the Registrar, interpreters and a small number of sworn Registry officials to service the meeting. The minutes of these meetings, which are not intended to be published, simply state the date, those present, and the subject discussed, without any additional comment.

Under the 1976 resolution, the deliberations normally have six phases¹⁷ and last between three and nine months, depending on the complexity of the case in question and on how many other cases the Court may have to deliberate on at the same time.

- Once the public hearings are over, Members of the Court engage in a brief exchange of their preliminary views at a private meeting. The President circulates in writing a list of the issues that in his or her opinion require to be addressed in the case; Members of the Court are free to make comments on that list and suggest amendments.
- Each judge then has several weeks in which to prepare a written note giving his or her tentative views on the way in which he considers the case should be decided. The notes, which are drafted in English or French, are translated by the Registry and duly distributed to all judges composing the Court for the case in question. They enable Members of the Court to gain an initial impression of where the majority opinion may lie. The notes are strictly for the use of Members of the Court only.
- After reading the notes, Members of the Court resume their deliberations, which may extend over several meetings. At these, the judges express their views orally in inverse order of seniority, i.e., beginning with any judges *ad hoc* and ending with the Vice-President and President. After each judge has spoken, questions may be put. The substance of the future majority decision thus becomes more clearly discernible, but normally no vote is yet taken on any specific point. On the conclusion of this discussion, a drafting committee, generally consisting of three Members of the Court (sometimes more), is constituted. Two of its Members are elected by secret ballot from among those judges whose personal views most closely reflect the opinion of the apparent majority, whilst the third is the President *ex officio*, unless it seems that his or her views are in the minority, in which case the Vice-President fulfils this role; should both of them hold minority views, there is a further election for the third Member of the drafting committee.

¹⁷ It should be noted that the resolution further provides that, after the close of the written proceedings and before or during the oral phase, the Court may meet in order for the judges to exchange views on the case and highlight any points which might require further explanation at the hearings.

- The drafting committee then prepares a preliminary draft judgment in English and French, with the assistance of the Registry. The preliminary draft — which, like the judges' notes is confidential — is circulated to Members of the Court. They then have a short time in which to make written suggestions for stylistic or substantive amendments relating to either language text, or to point out any discrepancies between the two languages. The drafting committee considers whether or not to accept these amendments and circulates another draft.
- The Court then gives this draft a first reading, during which it is discussed at several private meetings. Each paragraph is considered, and the most important are read aloud in both languages and, after discussion, is either left unchanged, amended or sent back to the drafting committee.
- An amended draft judgment is then distributed to Members of the Court and examined in the same way and given a second reading, which is shorter than the first, where it is adopted, with or without amendments.
- At the end of the second reading a final vote is taken on the operative part of the judgment, i.e., the response or responses of the Court to the parties' submissions. Any judge may request a separate vote on a specific point. On each point Members of the Court vote "yes" or "no" orally, in inverse order of seniority. Each decision is taken by an absolute majority of those judges present. No abstentions are allowed on any of the points on which a vote is taken. A judge who has not attended the entirety of the oral proceedings or the deliberations, but who has nevertheless not missed anything essential, may participate in the vote. If a judge is in a position to vote and wishes to do so, but is prevented from attending the meeting in person, measures may be taken to enable him to vote by other means. Should the votes be equally divided, which may happen where there is one judge *ad hoc*, or a regular Member of the Court is not sitting, the President or the Member of the Court acting as President casts the deciding vote (e.g., **Lotus**; *South West Africa*). The results of the vote are recorded in the minutes.

The judgment is delivered in public

Judgments are issued as bilingual documents, with the English and French versions on opposite pages. They vary greatly in length (from a minimum of ten to a maximum of 271 pages to date). In accordance with international legal practice, the Court endeavours when drafting to avoid employing legal terminology that would be too specific to any particular legal system. While refraining from going as far as using recitals (as it does in its Orders), the Court has followed the practice of most Civil Law countries in dividing its judgment into three main parts:

- an introduction (the *qualités*), which gives the names of the participating judges and the representatives of the parties, summarizes the course of the proceedings, and sets out the parties' submissions;

THE DECISION

- the grounds for the Court's decision, where those matters of fact and law that have led the Court to its decision are set forth in detail and the arguments of the parties are given careful and balanced consideration;
- the operative part, which, after the words "For these reasons"¹⁸, contains the Court's actual decision on the requests made to it by the parties in their submissions.

The operative provisions are followed by a further paragraph, embodying two decisions taken immediately after the final vote: which of the two language versions, English and French, on which the Court has worked is to be the authentic text, and the date when the judgment is to be delivered. The authentic text will be printed on the left-hand pages. If the entire proceedings, whether by agreement between the parties or for some other reason, have been conducted in only one of the Court's two official languages, the version in that language will become the authentic version of the judgment; where this is not the case the Court decides the matter. In any event, both texts are considered official versions emanating from the Court (exceptions: **Lotus*"; **Brazilian Loans*).

The judgment bears the official date of the day on which it is to be delivered, which is a short while after the final vote, so as to enable the Registry to notify the agents of the parties, to invite journalists and the public to attend the public reading, and to have a provisional printed copy of the judgment produced. During this brief interval the Court's decision is not communicated to anyone. The PCIJ refused a request in a special agreement to inform the parties unofficially of its decision between the end of its deliberations and the delivery of judgment (**Free Zones of Upper Savoy and the District of Gex*). The ICJ for its part has felt it necessary to point out that it would be incompatible with the sound administration of justice to make, circulate or publish any statements anticipating what its decision would be (see *Nuclear Tests*).

In contrast to the practice of international arbitral tribunals, the delivery of a judgment by the ICJ is given maximum publicity. It takes place at a public sitting, normally held in the Great Hall of Justice of the Peace Palace. Those judges who participated in the vote are present unless prevented from attending for important reasons; a quorum of nine judges must be present. The President reads the judgment, with the exception of the *qualités*, in one of the Court's two official languages. On occasion, because of the length of the judgment, the President does not read it in its entirety. In such cases, he indicates which passages have been omitted and gives a brief summary of them. When the President has concluded, the Registrar reads out the operative provisions in the other official language of

¹⁸ With two exceptions: the operative provisions of the Judgment delivered in 1970 in the *Barcelona Traction* case began with the word "Accordingly", and those of the Judgment of 1992 in the case concerning the *Land, Island and Maritime Frontier Dispute* referred, in each of the eight paragraphs of its operative part, to the paragraphs containing the directly relevant grounds.

the Court. At the close of the reading, the agents of the parties are each handed a copy of the provisional print-out signed by the President and Registrar and sealed with the Court's seal; these two copies, together with a third copy, also signed and sealed, that is retained in the Court's archives, constitute the official copies of the judgment. The text of the judgment is also distributed to journalists and placed on the Court's website. The Registry prepares a brief press release for the press and public and a detailed summary of the decision. These two latter documents, which are not binding on the Court, are sent to the Department of Public Information of the United Nations Secretariat and other interested parties. The Secretary-General is informed of the decision by an official communication from the Registrar.

Generally within a few months, the judgment is printed and published in a volume of the *Reports of Judgments, Advisory Opinions and Orders*, which is sent by the Registry to the governments of those States that are entitled to appear before the Court, and also placed on sale¹⁹. Subsequently, in order that those who are particularly interested in the case may be fully informed as to the material on which the Court based its decision, the documents in the case are printed and published in the *Pleadings, Oral Arguments, Documents* series. These volumes contain, in the original language only, the parties' written pleadings and the verbatim records of the public hearings, together with such further documents, annexes and correspondence as are considered essential in order to illustrate the Court's decision.

Separate and dissenting opinions

The 1978 Rules (see p. 18 above) stipulate that the operative provisions of each judgment shall indicate the number and names of the judges constituting the majority. Until 1978 judgments gave only the number voting for and against each point, without stating who had voted which way. It has always been recognized in the Statute that individual judges are entitled to append their own opinions and declarations if they so wish. Some judges have preferred never to do so. In only a very few cases, however, has the Court rendered a judgment to which no separate or dissenting opinions were attached (e.g., *Haya de la Torre; Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case; Maritime Delimitation in the Black Sea*).

Judges' opinions may take various forms:

- A dissenting opinion states the reason why a judge disagrees, on one or more points, with the Court's decision, i.e., with the operative provisions and the reasoning of the judgment, and has in consequence voted against either the

¹⁹ The Secretariat publishes summaries, in all of the Organization's official languages, of the Court's judgments, advisory opinions and orders prepared in English and French by the Registry.

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judgment as a whole or what that judge sees as vital aspects of the operative provisions.

- A separate opinion is written by a judge who has voted in favour of the Court's decision as a whole, but on the basis of different or additional reasoning; there can thus be separate opinions even in those cases where the Court's decision is unanimous (e.g., *Minquiers and Ecrebos*; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*Tunisia v. Libyan Arab Jamahiriya*); *Border and Transborder Armed Actions (Nicaragua v. Honduras)*; *Land, Island and Maritime Frontier Dispute*; *Aerial Incident of 3 July 1988*; *LaGrand*; *Legality of Use of Force*).
- A declaration enables a judge to record his or her concurrence or dissent, and give a succinct explanation of the underlying reasoning.

Since an opinion may be a dissenting opinion in some respects and a concordant, and hence separate, opinion in others, it is left to its author to decide what it should be called. The matter is of some importance, particularly when the operative part of the judgment consists of several paragraphs on which separate votes have been taken. Two or more Members of the Court may join together to write a joint opinion. Those Members of the Court who wish to file opinions are given an opportunity to do so between the end of the first reading and the beginning of the second, so that the drafting committee can take account of them in drafting its final version of the judgment, which must be submitted to the Court for final adoption. The original texts of declarations and opinions are printed after the text of each judgment. They can represent an addition of several hundreds of pages (e.g., *South West Africa* cases, 454 pages or ten times the length of the judgment itself; *Military and Paramilitary Activities in and against Nicaragua*, 396 pages or almost three times the length of the judgment; *Legality of the Threat or Use of Nuclear Weapons*, 325 pages or eight times the length of the advisory opinion; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, 343 pages or almost three times the length of the judgment; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 680 pages or almost four times the length of the judgment). The declarations and separate or dissenting opinions appended to the Court's decisions are presented according to the seniority of their authors, irrespective of the title given to them. The authors of opinions and declarations sign their opinions in the original copies of the judgment. It is generally considered that opinions and declarations should be confined to the points addressed in the text of the decision as adopted by the majority, and should be restrained in tone. The desirability of employing at an international level a system which is unknown in the legal procedures of some countries has been disputed. It has been questioned whether this is more likely to strengthen or weaken the authority and cohesion

of the Court, and the way in which the system operates has sometimes attracted criticism. The fact remains that many consider it an essential safeguard of freedom of expression and the sound administration of justice²⁰. As the Court itself has had occasion to stress:

“an indissoluble relationship exists between [its] decisions and any separate opinions, whether concurring or dissenting, appended to them by individual judges. The statutory institution of the separate opinion . . . afford[s] an opportunity for judges to explain their votes. In cases as complex as those generally dealt with by the Court, with operative paragraphs sometimes divided into several interlinked issues upon each of which a vote is taken, the bare affirmative or negative vote of a judge may prompt erroneous conjecture which his statutory right of appending an opinion can enable him to forestall or dispel . . . Not only do the appended opinions elaborate or challenge the decision, but the reasoning of the decision itself, reviewed as it finally is with knowledge of the opinions, cannot be fully appreciated in isolation from them.” (General Assembly doc. A/41/591/Add.1 of 5 December 1986, Ann. II.)

A judgment is binding on the parties

So far as the parties to the case are concerned, a judgment of the Court is binding, final and without appeal. This principle applies to all the Court's judgments, whether delivered by a full Bench of the Court or by a Chamber, whether delivered by the ICJ when hearing a case brought directly to it or on appeal from

²⁰ Sometimes judges also append declarations or separate or dissenting opinions to Orders of the Court, in particular those indicating provisional measures, recording a discontinuance of the proceedings, relating to the constitution of a Chamber, deciding whether to grant an application for permission to intervene and other procedural matters, such as the joinder of proceedings (e.g., *Fisheries Jurisdiction*; *Nuclear Tests*; *Delimitation of the Maritime Boundary in the Gulf of Maine Area*; *Military and Paramilitary Activities in and against Nicaragua*; *Land, Island and Maritime Frontier Dispute*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Fisheries Jurisdiction (Spain v. Canada)*; *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*; *Vienna Convention on Consular Relations*; *LaGrand*; *Legality of Use of Force*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Arrest Warrant of 11 April 2000*; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*; *Frontier Dispute (Benin/Niger)*; *Certain Criminal Proceedings in France (Republic of the Congo v. France)*; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)* (*Mexico v. United States of America*); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*; *Whaling in the Antarctic (Australia v. Japan)*; *Declaration of Intervention of New Zealand*; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* joined with *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*).

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another tribunal (**Peter Pazmany University*; **Pajzs, Czáky, Esterházy*; *Appeal relating to the Jurisdiction of the ICAO Council*), whether the judgment actually states how the dispute is to be resolved or merely states the principles applicable (*North Sea Continental Shelf*) and whether or not it makes any award of damages (**S.S. "Wimbledon"*; **Treaty of Neuilly*; *Corfu Channel*; *Abmadou Sadio Diallo*). Both the PCIJ and the ICJ have always taken the view that it would be incompatible with the letter and spirit of the Statute and with judicial propriety to deliver a judgment the validity of which would be subject to the subsequent approval of the parties, or which would have no practical consequences so far as their legal rights and obligations were concerned (**Free Zones of Upper Savoy and the District of Gex*; *Northern Cameroons*).

By ratifying the Charter, each Member State of the United Nations undertakes to comply with any decision of the ICJ in cases to which it is a party. Other States entitled to appear before the Court undertake the same obligation either by acceding to the Statute or by lodging a declaration to this effect with the Registry (see above p. 34). Furthermore, in consenting to the Court's jurisdiction over their disputes, States accept that its decisions are binding and final, in accordance with the Statute of the Court. It is exceptional in practice for a decision to remain unimplemented.

A State — whether a Member of the United Nations or not — which contends that the other party has failed to perform the obligations incumbent upon it under a judgment rendered by the Court, may submit the matter to the Security Council, which is empowered to recommend or decide upon the measures to be taken to give effect to the judgment (Article 94 of the Charter).

Since a decision of the Court affects the legal rights and interests solely of the parties to the case and only in that particular case, it follows that the principle of *stare decisis* (the binding nature of precedents) as it exists in common law countries does not apply to the decisions of the ICJ. The Court may therefore decide to depart from a solution or line of reasoning adopted in a previous case, but will of course only do so on serious grounds, for example in light of subsequent developments in international law. Moreover, in support of its reasoning, the Court often cites its previous rulings, or those of its predecessor, thus maintaining a certain consistency in its decisions in the interests of legal security, although there is never any suggestion that it is bound in all circumstances to follow them. A judgment of the Court does not simply decide a particular dispute, but inevitably also contributes to the development of international law. Fully aware of this, the Court takes account of these two objectives in preparing and drafting its judgments.

The ultimate aim of the Court is to contribute to the maintenance of peace and international security. The mere submission of a dispute to the Court, or at least its legal aspects, already constitutes a step towards pacific settlement. The passage of time, and the confidentiality and protocol surrounding the proceedings, as well

as the need for the parties to adopt the objective language of the law, are all factors that have a calming influence. Governments are entitled to hope that the Court's decision, whichever way it may go, will enable them to bring their dispute to an honourable conclusion, but the mere fact that the dispute has been submitted to the Court means that good arguments exist on both sides. Naturally each side is convinced of the justice of its case and hopes that the Court will enable it to achieve that justice.

A judgment is binding only as between the parties

A decision of the Court can have no binding force as between States other than the parties to the case, or with respect to any dispute other than the one that has been decided (Article 59 of the Statute). However, it may be that a judgment, while not binding on another State, may be capable of affecting its interests. For example, the Court's determination of a territorial régime has an "objective" character, which has certain legal effects vis-à-vis States other than those to whom the decision is addressed. Moreover, the interpretation by the Court of a multilateral convention cannot be completely ignored by signatory States other than the parties to the proceedings before the Court. It is because of these various effects that the Court's decisions may have on third States that the Statute makes provision for the latter to request the right to intervene in the proceedings (see above, pp. 66-67). The Court has, moreover, held that it must refuse to rule on the merits where its decision would in practice have affected the legal interests of another State not party to the proceedings (*Monetary Gold Removed from Rome in 1943*; *East Timor*).

Interpretation and revision of a judgment

Interpretation and revision of a judgment are proceedings formally distinct from the initial case. However, where the Court has had jurisdiction to deliver a judgment it will also, *ipso facto*, have jurisdiction to interpret or revise that judgment.

- The Court may, at the request of either party, interpret one of its judgments where there is a dispute between them as to the meaning or scope of what the Court has decided with binding force (Article 60 of the Statute). In some cases the Court has refused such a request (e.g., **Treaty of Neuilly*; *Asylum*; *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals*). In other cases it has acted on the request — at least in part (**Factory at Chorzów*; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*Tunisia v. Libyan Arab Jamahiriya*); *Request for Interpretation of the Judgment of*

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15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)).

- Should a matter come to light of which the Court was until then unaware, and which is of such a nature as to be a decisive factor, either party may request that the judgment be revised (e.g., *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)*; *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections (*Yugoslavia v. Bosnia and Herzegovina*); *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)*). This new fact must have been unknown to the party claiming revision, always provided that such ignorance was not due to negligence. The request for revision must be submitted within six months of the discovery of the new fact and within ten years of the delivery of the judgment (Article 61 of the Statute). To date, no such application for revision has ever been upheld.

6. Advisory Opinions

Since States alone have the capacity to appear before the Court, public international organizations cannot as such be parties to any contentious proceedings. It has been proposed that they be afforded this possibility, but nothing so far has come of this. If a question arises concerning the interpretation or implementation of their constitutions or of conventions adopted in pursuance thereof, it is for their constituent Member States to bring contentious proceedings in the ICJ; in such a case the organization concerned is informed of the proceedings by the Registrar and receives copies of the written pleadings (e.g., *Appeal Relating to the Jurisdiction of the ICAO Council*; *Border and Transborder Armed Actions*; *Aerial Incident of 3 July 1988*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*; *Legality of Use of Force*; *Armed Activities on the Territory of the Congo*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*; *Dispute regarding Navigational and Related Rights*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*; *Territorial and Maritime Dispute*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*). All that the organization can then do is to furnish the Court with relevant information. Public international organizations may also furnish information or present observations in other circumstances, either on their own initiative or at the request of the parties or of the Court itself. The constitutions of some organizations (e.g., FAO, UNESCO, WHO, ICAO, ITU), or agreements between them and the United Nations, stipulate that when they are requested to furnish information they are obliged to do so. The Rules of Court provide that time-limits for doing so may be imposed and that the parties to the case may comment on the information furnished. To date, only one international organization, the ICAO, has furnished the Court with such written observations, in the case concerning the *Aerial Incident of 3 July 1988*.

Advisory opinions are given to public international organizations

However, there is a special procedure, the advisory procedure, available to public international organizations, and to them alone. Certain organs and agencies, at present 21 in number, have the right to ask the Court for an advisory opinion on a legal question.

- Under Article 96 of the Charter of the United Nations, the General Assembly and Security Council have the power to request an advisory opinion on “any

legal question”; furthermore, the General Assembly may authorize any other organ of the Organization or specialized agency to ask the Court for an advisory opinion on “legal questions arising within the scope of their activities”. During the League of Nations era the power to request an opinion extended, more broadly, to “any dispute or question”, but was confined to the Assembly and the Council. In practice, only the Council availed itself of this power, whereas since 1947 it is above all the UN General Assembly that has made use of it, the Security Council having only once requested an advisory opinion.

- Four other United Nations organs have been authorized by General Assembly resolutions to request advisory opinions of the Court with respect to “legal questions arising within the scope of their activities” (namely, the Economic and Social Council, the Trusteeship Council, the Interim Committee of the General Assembly and, until its abolition in 1995, the Committee on Applications for Review of Administrative Tribunal Judgements). Two of those organs have availed themselves of the opportunity to do so (the Economic and Social Council and the Committee on Applications for Review of Administrative Tribunal Judgements).
- Furthermore, 16 specialized agencies and related organizations are authorized by the General Assembly, in pursuance of agreements governing their relationship with the United Nations, to ask the ICJ for advisory opinions. Up to the present, however, only four of these have availed themselves of this opportunity to ask the Court for an advisory opinion (UNESCO, IMO, WHO and IFAD).

The precise circumstances in which each organization may avail itself of the Court’s advisory jurisdiction are specified either in its constitutive act, constitution or statute (Constitution of the ILO, 9 October 1946; Constitution of the FAO, 16 October 1945; Constitution of the United Nations Educational, Scientific and Cultural Organization, 16 November 1945; Constitution of the WHO, 22 July 1946; Convention on the Inter-Governmental Maritime Consultative Organization, 6 March 1948, entered into force on 17 March 1958 and amended with effect from 22 May 1982; Statute of the IAEA, 26 October 1956, etc.), or in specific instruments such as its headquarters agreement or the convention governing its privileges and immunities. Advisory opinions may be requested relating to the interpretation of these texts or of the Charter of the United Nations, and may concern disagreements between, for example:

- two or more organizations *inter se*;
- an organization and one or more of its staff members;
- an organization and one or more of its Member States;
- two or more States Members of the same organization *inter se*.

ADVISORY OPINIONS

In general these texts do not provide for a request to the Court for an advisory opinion on a dispute between the UN and a specialized agency.

Organs and agencies entitled to ask the ICJ for an advisory opinion²¹

United Nations organs

- *General Assembly
- *Security Council
- *Economic and Social Council
- Trusteeship Council

Subsidiary organs of the General Assembly

- Interim Committee of the General Assembly

Specialized agencies and related organizations

- International Labour Organization (ILO)
- Food and Agriculture Organization of the United Nations (FAO)
- *United Nations Educational, Scientific and Cultural Organization (UNESCO)
- *World Health Organization (WHO)
- International Bank for Reconstruction and Development (IBRD)
- International Finance Corporation (IFC)
- International Development Association (IDA)
- International Monetary Fund (IMF)
- International Civil Aviation Organization (ICAO)
- International Telecommunication Union (ITU)
- *International Fund for Agricultural Development (IFAD)
- World Meteorological Organization (WMO)
- *International Maritime Organization (IMO)²²
- World Intellectual Property Organization (WIPO)
- United Nations Industrial Development Organization (UNIDO)
- International Atomic Energy Agency (IAEA)

Although in the final analysis any decision taken by an international entity emanates from its Member States, it is always through the intermediary of an organ of the entity, the task of which is to safeguard the collective interest of its Member States, that a request for an advisory opinion must be made. It has been proposed that States should be given the right to ask for advisory opinions, but this considerable extension of the Court's jurisdiction has not so far won acceptance²³;

²¹ Those organs and agencies that have asked for advisory opinions since 1946 are indicated by an asterisk.

²² Previously known as the Inter-Governmental Maritime Consultative Organization (IMCO).

²³ It may be noted that the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, dated 21 March 1986 (not yet in force), takes account of this limitation, providing that, in the event of disputes concerning certain articles of that Convention arising between an international organization and a State party, the State may ask a competent organ or institution to request an advisory opinion from the Court.

neither have suggestions that the United Nations Secretary-General should be empowered to ask for advisory opinions.

Relatively limited use has been made of the system of advisory opinions. The ICJ has delivered proportionately fewer opinions than its predecessor: whereas the PCIJ delivered 27 advisory opinions in the space of 17 years, from 1922 to 1939, the ICJ has rendered only 27 opinions throughout its entire existence, from 1948 to 2013.

The procedure in advisory opinions is based on that in contentious proceedings

The Court's procedure in advisory proceedings, although having distinctive features resulting from the special nature and object of the Court's advisory function, as just described, is based on the provisions in the Statute and Rules relating to contentious proceedings.

Request for advisory opinion

Advisory proceedings begin with the filing of a written request for an advisory opinion. After suitable discussion, the organ or agency seeking the opinion will have embodied the question or questions to be submitted in a resolution or decision. An annex to the Rules of Procedure of the United Nations General Assembly recommends that the Sixth (Legal) Committee, or a joint committee containing some of its members, be consulted for advice. Similarly, when faced with the task of drawing up a request for an advisory opinion, the UNESCO Executive Board has been assisted by the Secretariat, the IMCO Assembly has turned to its Legal Committee, and the World Health Assembly has referred the matter to one of its main committees. Within an average of two weeks (although in the case concerning the *Constitution of the Maritime Safety Committee of the IMCO* it took two months, and three months in the case concerning the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*), the request is communicated to the Court under cover of a letter from the United Nations Secretary-General or from the Director or Secretary-General of the entity requesting the opinion. That communication constitutes the request for advisory opinion. The Registrar then immediately informs those States to which the Court is open. In urgent cases the Court will do all it can to speed up the proceedings.

Written and oral proceedings

In order to be as fully informed as possible in giving its opinion on the question submitted to it, the Court is empowered to conduct written and oral proceedings, certain aspects of which resemble the proceedings in contentious cases. In theory, the Court may do without such proceedings, but it has never dispensed with them entirely. A few days after the filing of the request, the

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Court draws up a list of those States and international organizations likely to be able to furnish information on the question²⁴ and notifies them by means of a special direct communication that it is prepared to receive, within a specified time-limit, written statements relating to the question, or to hear oral statements at a public sitting held for the purpose. These States are not in the same position as the parties to contentious proceedings, nor will any participation by them in the advisory proceedings render the Court's opinion binding upon them. In general, they are the Member States of the organization requesting the opinion, while sometimes the other States to which the Court is open in contentious proceedings are also included. Any State not consulted by the Court may request that it be included. It is rare, however, for the ICJ to allow international organizations other than the one that has asked for the opinion to participate in advisory proceedings (e.g., *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*). In the cases concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* and *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court decided to accede to the requests to participate made by intergovernmental regional organizations because it considered that they were likely to furnish relevant information. With respect to non-governmental international organizations, in 2004 the Court adopted a Practice Direction (No. XII), which provides *inter alia* that, where an NGO submits a written statement and/or document in advisory proceedings on its own initiative, such statement and/or document is to be treated as a publication readily available, and may be referred to by the States and intergovernmental organizations participating in the proceedings.

The written proceedings are generally shorter than in contentious proceedings between States, and the rules governing them are quite flexible: in case of urgency they may even be omitted entirely. In general, the Court or its President makes an Order laying down a time-limit within which the States and organizations selected may file written statements if they so wish. This time-limit, which on average is two months, may be extended at the request of any State or organization concerned (e.g., *Legal Consequences for States of the Continued Presence of South Africa in Namibia; Legality of the Use by a State of Nuclear Weapons in Armed Conflict; Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for*

²⁴ In the special circumstances of the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court decided that Palestine might also file a written statement and participate in the oral proceedings. Similarly, in the case concerning *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, the Court decided that the authors of the unilateral declaration of independence could file a written contribution, followed by a second written contribution containing their comments on the written statements received from States, and participate in the oral proceedings.

Agricultural Development). These statements have varied in both number and length. They must be in English or French. They may sometimes be quite lengthy (e.g., the written statement of South Africa in the case concerning *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (472 pages) or those of Serbia and the United Kingdom in the case concerning *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, each exceeding 1,000 pages with annexes). The Court may allow authors of statements to submit written observations on other statements. Statements and observations are normally forwarded to all recipients of the direct official communication whereby they were invited to provide information on the question posed. The statements and observations are regarded as confidential, but are generally made available to the public on or after the opening of the oral proceedings.

All recipients of the direct official communication are usually invited to make an oral statement at public sittings on dates to be fixed by the Court, whether or not they have participated in the written phase. However, oral proceedings are not always held; for example, in the cases concerning the **Polish Postal Service in Danzig* and the *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*, none of the invited States asked to make an oral statement. Where there are oral proceedings, in general the number of sittings is small, though in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* case there were 24 sittings, in the *Western Sahara* case 27; in the cases concerning the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* and the *Legality of the Threat or Use of Nuclear Weapons*, there were 13 sittings, while in the case concerning *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* there were ten. The hearings are conducted in much the same manner as in contentious proceedings (see above pp. 54-58), with certain notable exceptions. In particular, the representatives of States before the ICJ are not known as agents and the President normally calls only once on each organization, and then on each State, either in alphabetical order or in the order laid down by the Court in response to suggestions by the participants.

The entity requesting the advisory opinion has a twofold role to play in the proceedings, one aspect being compulsory and the other optional:

- The Director or Secretary-General of the requesting entity is required to send the Court at the same time as the request, or as soon as possible thereafter, all documents likely to throw light upon the question. The documents thus forwarded to the Court are generally quite bulky, consisting as they do not only of documents of the organization itself relating to the origin of the request for an advisory opinion, but also of introductory or explanatory notes.

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States and organizations²⁵ which have submitted written or oral statements in connection with advisory proceedings before the ICJ (1946 to 2013)

States	
Albania	Greece
Algeria	Guatemala
Argentina	Guinea
Australia	Honduras
Austria	Hungary
Azerbaijan	India
Bangladesh	Indonesia
Belarus	Iraq
Belgium	Ireland
Belize	Islamic Republic of Iran
Bolivia	Israel
Bosnia and Herzegovina	Italy
Brazil	Japan
Bulgaria	Jordan
Burkina Faso	Kazakhstan
Burundi	Kuwait
Cameroon	Latvia
Canada	Lebanon
Chile	Lesotho
China	Liberia
Colombia	Libyan Arab Jamahiriya
Costa Rica	Lithuania
Croatia	Luxembourg
Cuba	Madagascar
Cyprus	Malaysia
Czechoslovakia	Maldives
Czech Republic	Malta
Denmark	Marshall Islands
Democratic People's Republic of Korea	Mauritania
Dominican Republic	Mexico
Ecuador	Morocco
Egypt	Namibia
El Salvador	Nauru
Estonia	Netherlands
Federal Republic of Germany	New Zealand
Federated States of Micronesia	Nicaragua
Finland	Nigeria
France	Norway
German Democratic Republic	Pakistan

²⁵ Also Palestine and the authors of the declaration of independence in respect of Kosovo (see note 24 on p. 85, and pp. 269-273).

States	
Palau	Spain
Panama	Sri Lanka
Papua New Guinea	Sudan
Philippines	Sweden
Poland	Switzerland
Portugal	Syrian Arab Republic
Qatar	Thailand
Republic of Moldova	Tunisia
Romania	Turkey
Russian Federation	Uganda
Rwanda	Ukraine
Samoa	United Arab Emirates
San Marino	United Kingdom
Saudi Arabia	United States of America
Senegal	Venezuela
Serbia	Vietnam
Sierra Leone	Yemen
Slovakia	Yugoslavia
Slovenia	Zaire
Solomon Islands	Zimbabwe
South Africa	
Organizations	
UNO	OAU
ILO	WHO
IFAD	European Union ²⁶
UNESCO	League of Arab States
OAS	Organization of Islamic Co-operation

- On occasion, the Director or Secretary-General of the requesting entity has been invited to supplement the documents referred to above with a statement. This was done, for example, by the Director-General of UNESCO (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*), but not by the Secretary-General of IMCO (*Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization*). An oral statement was made on behalf of the Director-General of the WHO during the hearings on one of the requests submitted by that organization (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict*), and in another request emanating from the same organization, the Director of the Legal Division of the WHO responded to questions put orally by Members of the Court; the WHO also submitted certain

²⁶ Presented by Ireland on behalf of the European Union.

additional documents requested by the Court (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*). The Secretary-General of the United Nations has also sometimes submitted written and/or oral statements (e.g., *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*; *Legal Consequences for States of the Continued Presence of South Africa in Namibia*; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*; *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*). Furthermore, the Secretary-General has sometimes replied to written questions from Members of the Court (e.g., *Western Sahara*).

Following delivery of the advisory opinion, the written and oral statements of States and international organizations are published in full in their original language in the *Pleadings, Oral Arguments, Documents* series, normally also together with the documents lodged by the Director or Secretary-General of the entity that requested the opinion.

Composition of the Court

By the opening of the oral proceedings at the latest, decisions must be taken with respect to the composition of the Court (see above pp. 25-29):

- In several advisory proceedings, Members of the Court have refrained from sitting.
- In the cases concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, and the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, a State raised objections to the presence on the Bench of one or more Members of the Court, but these objections were dismissed by Orders made by the Court before the opening of the oral proceedings.
- The Rules of Court provide that if an “advisory opinion is requested upon a legal question actually pending between two or more States” (Art. 102, para. 3), the latter may be allowed to appoint judges *ad hoc*, the final decision on the matter resting with the Court. Whereas the PCIJ agreed to the appointment of judges *ad hoc* in six advisory cases between 1928 and 1932, only two requests of this kind have been received by the ICJ, namely in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* and *Western Sahara* cases. In the former case, after hearing observations on the question *in camera*, the Court made an Order declining to accept the appointment of a judge *ad hoc*. In the latter case, in which two States

- Mauritania and Morocco — asked to be allowed to appoint judges *ad hoc*, the Court heard observations on this question at public sittings and made an Order accepting one request and rejecting the other. The Court found that there appeared to be a legal dispute between Morocco and Spain relating to the territory of Western Sahara, so that the advisory opinion requested appeared to bear “upon a legal question actually pending between two or more States”, and thus to warrant the appointment of a judge *ad hoc* by Morocco. On the other hand, there did not appear to be any legal dispute between Mauritania and Spain, so that the appointment of a judge *ad hoc* by Mauritania was not justified. At that time the membership of the Court included a judge of Spanish nationality.
- The 1978 Rules of Court (see p. 18 above) make it plain that it is possible to appoint assessors in advisory proceedings.
- No specific provision is made for recourse to a chamber of the Court in respect of advisory proceedings.

Delivery of the advisory opinion

Advisory proceedings are concluded by the delivery of the advisory opinion. Advisory opinions are drawn up after the same kind of deliberations as precede judgments, and are divided in the same way into a summary of the proceedings (“qualités”), the Court’s reasoning and the operative provisions. On average they are slightly shorter. Declarations and separate or dissenting opinions may be appended to them. Advisory opinions are delivered in a manner similar to judgments (see above pp. 72-76). A signed and sealed copy of each opinion is kept in the Court’s archives and a second is despatched to the Secretary-General of the United Nations; if the request for an advisory opinion comes from another entity, a third signed and sealed copy is sent to its Director or Secretary-General. The opinion is printed in the two official languages of the Court in the *Reports of Judgments, Advisory Opinions and Orders* series and copies are sent *inter alia* to those States to which the Court is open.

In the exercise of its advisory function, the ICJ has to remain faithful to the requirements of its judicial character and cannot depart from the essential rules that govern its activity as a court. It thus always has to begin by considering whether it has jurisdiction to give the requested opinion (Has it been seised by an authorized organ or agency? Is there a legal question and, if so, does that legal question arise within the scope of the organ or agency’s activity?). In only one case, that of the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, did the Court decide that it lacked jurisdiction to answer the question submitted by the WHO.

Once it has established that it has jurisdiction, the Court must consider whether, in its view, there is any reason why it should not exercise such jurisdiction.

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Although the ICJ has stated that “[a] reply to a request for an opinion should not, in principle, be refused”, it may decide not to respond for “compelling reasons”. Thus, the Court has considered *inter alia*, either *proprio motu* or at a State’s request, whether certain features of the previous treatment of the subject-matter rendered it undesirable for the Court to pronounce upon it, whether the question really called for a reply, whether the request concerned a contentious matter and a State involved in that matter had not consented to the exercise of the Court’s jurisdiction, whether the organ requesting the advisory opinion, by its request, was interfering in the activities of another United Nations organ, whether the request concerned matters essentially within the domestic jurisdiction of a State, whether the request was being used primarily to further the interests of one State, whether the Court should decline to render an advisory opinion on the ground that that opinion could have no real legal effect, whether the advisory opinion could have a detrimental effect on international peace and security, and whether the Court lacked the factual evidence necessary to render the requested advisory opinion. No separate phase is devoted to such issues, but they are usually dealt with at the beginning of the reasoning of each advisory opinion. Despite the many possible reasons considered by the Court for declining a request for an advisory opinion, it has never done so. Its predecessor, the PCIJ, only once, in the **Status of Eastern Carelia* case, declined to give an advisory opinion; the question put to it at that time directly concerned a controversy between two States, one of which, not a member of the League and not a party to the Statute of the Court, objected to the proceedings and refused to take part; hence, to answer the question would have been tantamount to deciding the dispute without the consent of one of the States involved.

The requesting entity may itself withdraw its request before any advisory opinion is delivered, but here again there has only been one instance, and that in the time of the PCIJ (**Expulsion of the Ecumenical Patriarch*).

The special case of advisory opinions on applications for the review of judgments of administrative tribunals

The task of administrative tribunals is to decide disputes between international organizations and members of their staff with respect to the latter’s contracts of employment and conditions of appointment and employment. The Administrative Tribunal of the ILO has jurisdiction over applications brought by staff members of 58 organizations, including 11 specialized agencies and four related organizations. Its statute provides that, in certain cases where the validity of a judgment is contested, an advisory opinion may be requested from the ICJ, and will then be binding. This was also the case for decisions of the United Nations Administrative Tribunal, until, by a resolution adopted on 11 December 1995, the General Assembly decided to delete, with effect from 1 January 1996, Article 11 of the Tribunal’s statute, which provided for the review procedure. The United Nations

Administrative Tribunal was replaced by the United Nations Dispute Tribunal and the United Nations Appeals Tribunal in July 2009²⁷.

A request for an advisory opinion on the validity of a judgment of the ILO Administrative Tribunal may emanate either from the Governing Body of the ILO or from the Executive Board of the organization wishing to contest the judgment. The advisory procedure before the Court entails the submission of written statements, as in other cases, but has certain special features, which derive from the need to ensure that the proceedings are fair and just, and that the interests of the staff member affected by the judgment are properly respected. Thus, since the staff member concerned has no standing to appear in person before the Court, he or she is allowed to prepare written observations and submit them to the Court through the chief administrative officer of the organization concerned. The Court has not so far held any oral proceedings in such cases.

The Court has given five advisory opinions under this procedure: once on the application of the Executive Board of UNESCO (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*), three times on the application of the Committee on Applications for Review of Judgements of the Administrative Tribunal of the United Nations (*Application for Review of Judgement No. 158 of the Administrative Tribunal of the United Nations*; *Application for Review of Judgement No. 273 of the Administrative Tribunal of the United Nations*; *Application for Review of Judgement No. 333 of the Administrative Tribunal of the United Nations*) and once on the application of the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, in respect of a judgment rendered by the Administrative Tribunal of the ILO (*Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*).

Characteristics of advisory opinions

It is of the essence of the Court's advisory opinions that they are advisory, i.e., unlike the Court's judgments, by their nature they have no binding effect. The requesting international organ or agency remains free to give effect to the opinion by any means open to it, or not to do so. In practice, however, parties to a specific instrument may agree that, as between themselves, an opinion shall have binding force, for example:

- in the case of advisory opinions on the validity of a judgment of the Administrative Tribunal of the ILO, as discussed above;

²⁷ Under the terms of its statute, the United Nations Dispute Tribunal has jurisdiction over applications brought by "[a]ny staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes". The United Nations Appeals Tribunal has appellate jurisdiction over the decisions of the Dispute Tribunal.

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- in the case of opinions relating to disputes between an organization and one of its Member States regarding conventions on the privileges and immunities of the United Nations, its specialized agencies and the IAEA (see *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*); and
- in the case of opinions relating to disputes concerning the interpretation or application of the Headquarters Agreement of 1947 between the United Nations and the United States.

The Court's advisory function is thus different from its function in contentious cases, and is also to be distinguished from the role played by the supreme court of certain countries as an interpreter of those countries' constitutions. The fact remains that the authority and prestige of the Court also attach to its advisory opinions, and that where the organ or agency concerned endorses that opinion, the latter, as it were, receives the sanction of international law. Moreover, if the Court has ruled on a legal question in an advisory opinion, it becomes more difficult to justify any argument to the contrary.

Chapter 8 contains a brief summary of the requests for advisory opinions that have been brought to the Court.

For a list of the advisory opinions rendered by the Court, see below, Annexes, pp. 303-304. The names of the organs and agencies authorized to request advisory opinions, a list of the instruments by virtue of which such requests may be submitted, the official titles of advisory opinions and a summary of such opinions are published each year in the *I.C.J. Yearbook*. Written and oral statements and observations are published in the *I.C.J. Pleadings* series; they are also published on the Court's website.

7. International Law

The Court is the organ of international law

The Court, principal judicial organ of the United Nations, has described itself as “the organ of international law”. It dispenses justice within the limits that have been assigned to it by its Statute. There is today no other judicial organ in the world which has the same capacity to examine legal questions concerning the international community as a whole, and which offers States so wide a range of opportunities for promoting the rule of law. It is thus the only international court with both general and universal jurisdiction.

The disputes that have come before the Court have covered the most varied aspects of public and private law, have concerned all parts of the globe and have necessitated an examination of multiple legal systems and of wide-ranging State practice. The Court has also been called upon to address a number of questions relating to the law of international organizations. Irrespective of the nature of the issues brought before it, the Court has contributed to their resolution, and thus to the maintenance of peace, and to the development of friendly relations between States.

The Court applies international law

Article 38, paragraph 1, of the Statute of the Court declares that the Court’s “function is to decide in accordance with international law such disputes as are submitted to it”. In every case, after determining which rules of international law are applicable, it is the Court’s duty to give its decision based on those rules.

Article 38, paragraph 1, goes on to provide that the international law to be applied by the Court is to be derived from the following sources:

- “(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;

- (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law”.

The above is not an exhaustive statement of the foundations on which the Court can construct its decision. Some are listed, but not all. For instance, the paragraph does not mention unilateral acts of States, nor does it make reference to the decisions and resolutions of international organs, which very often contribute to the development of international law and may also be sources of rights and obligations.

Whether the Court is deciding a case of a contentious nature or is engaged in advisory proceedings, it applies the same sources of international law, and its decisions hold the same high level of authority, since, in both instances, it is “laying down” the law, even though the consequences of a particular decision may be different. It is only with the consent of the parties that the Court is authorized to move away from the sources listed in Article 38, paragraph 1, of the Statute, and rule according to what is reasonable and fair (*ex aequo et bono*) (see below, p. 98).

Treaties and conventions

The expression “international conventions” in Article 38, paragraph 1, is a broad one, covering not only bilateral and multilateral treaties and conventions formally so called, but also all other international understandings and agreements, even of an informal nature, provided that they establish rules recognized and accepted by the States parties to the dispute. The ICJ has emphasized that manifest acceptance or recognition by a State of a convention is necessary before the convention can be applied to that State. It often happens, however, that the language of a treaty or international agreement which is relied on before the ICJ as containing rules recognized by the States parties to the dispute is not so plain and precise as to make it clear that such treaty or agreement is applicable to the circumstances of the case in question. As the decisions of the Court show, it will then be for the Court to interpret the instrument and to determine its scope and effect, with a view to applying it. In practice, it falls to the Court to interpret a treaty or agreement in at least three cases out of four. In doing so, it seeks in the first place to determine the ordinary meaning of the words in their context, in light of the object and purpose of the instrument in question, without, however, sticking too closely to the particular rules applicable under the procedural law of any legal system. In that regard, it frequently refers to Article 31 of the 1969 Vienna Convention on the Law of Treaties, which it has recognized as having customary scope. In its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court stated that “an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation”.

Custom

The Court's practice shows that a State which relies on an alleged international custom practised by States must, generally speaking, demonstrate to the Court's satisfaction that this custom has become so established as to be legally binding on the other party.

In the *North Sea Continental Shelf* cases the ICJ stated, with respect to customary international law :

“Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.”

Similarly, in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, it recalled that “the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States”.

In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court found that while it could not deal with complaints based on certain multilateral treaties owing to a reservation accompanying the declaration recognizing the compulsory jurisdiction of the Court, that reservation did not prevent it from applying the corresponding principles of customary international law. It explained that the fact that these principles

“have been codified or embodied in multilateral conventions does not mean they cease to exist and to apply as principles of customary law, even as regards countries that are parties to such conventions”.

Furthermore, such principles

“continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated”.

Judicial decisions

Judicial decisions and the teachings of publicists do not have the same status as other sources of law. They merely constitute a “subsidiary means for the determination of rules of law”.

Judicial decisions are subject to the provisions of Article 59 of the Statute, which stipulates that a decision of the Court has no binding force except between the parties and in respect of that particular case (see above pp. 76-78). Nevertheless, both the ICJ and the PCIJ have made frequent reference to their own jurisprudence in the reasoning of their decisions. Moreover, the ICJ often cites its predecessor. The Court also sometimes cites decisions of other international courts and tribunals. In the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia*

and Montenegro), the Court accepted as “highly persuasive” relevant findings of fact made by the International Criminal Tribunal for the former Yugoslavia (ICTY) at trial, and found that any evaluation by the Tribunal as to the existence of the required criminal intent was “also entitled to due weight”. It cited a number of decisions of the ICTY in its Judgment. The Court has also referred on a number of occasions to decisions of the International Tribunal for the Law of the Sea (e.g., *Territorial and Maritime Dispute (Nicaragua v. Colombia)*), as well as to decisions of various arbitral tribunals (see, for example, *Maritime Delimitation in the Area between Greenland and Jan Mayen*; *Gabčíkovo-Nagymaros Project*; *Kasikili/Sedudu Island*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *Dispute regarding Navigational and Related Rights*; *Maritime Delimitation in the Black Sea*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*). The Court also takes account of relevant decisions of regional courts and tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights, and of the interpretation given by certain independent organs set up to monitor the implementation of treaties, such as the Human Rights Committee and the African Commission on Human and Peoples’ Rights (see, for example, *Abmadou Sadio Diallo*; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*), as well as the advisory opinions in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*).

The decisions of domestic courts can also be relevant in establishing widespread State practice in a particular area. Thus, in the case concerning *Jurisdictional Immunities of the State*, the Court examined the domestic jurisprudence of various States in order to establish State practice concerning the immunity of the State in respect of the acts of its armed forces.

Ex aequo et bono

Paragraph 2 of Article 38 of the Statute provides that paragraph 1 of that Article “shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto”. Although this provision has never been applied, it calls for comment. Its effect is to allow the Court, in the specified circumstances, to settle a dispute without strict regard for the existing rules of international law, but according to what is fair and just. Absent the consent of the Parties to the case, the Court cannot follow this course, but must apply the law, in accordance with the provisions of paragraph 1 of Article 38. The decision of a case *ex aequo et bono* must be distinguished from cases where the Court applies the general principles of law recognized by States, or the equitable principles of international law, or interprets existing law in an equitable manner (equity *infra legem*). In such

cases, the Court is bound to keep within the limits of the existing law, whereas in the case of an exercise of its *ex aequo et bono* power with the consent of the parties, the Court is not required to have strict regard to existing rules of law, and may even disregard them altogether. The distinction has occasionally been mentioned by the Court in its decisions (e.g., *North Sea Continental Shelf*; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*; *Frontier Dispute (Burkina Faso/Republic of Mali)*). Nevertheless, the exercise of the *ex aequo et bono* power with consent is subject to certain limits. The Court remains under a duty to act solely in a judicial capacity, and must be careful not to overstep the norms of justice, or other accepted standards of equity and reasonableness prevailing in the international community.

The Court contributes to the development of the international law which it applies

In fulfilling its task of resolving legal disputes among States and assisting international organizations to function effectively in their various fields of activity, the ICJ helps to affirm and strengthen the role of international law in international relations. It also contributes to the development of that law.

The confidence placed in the Court by States at any given historical period is undoubtedly bound up with the nature of the international law which it is its task to apply. However, that law is continually evolving, and this evolution has taken on a new dimension in recent decades. Moreover, alongside the development of the rules of international law and their adaptation to present-day circumstances, the actual field of application of this law is constantly being extended by States in line with the increasing needs of the international community. The Court has always been aware of the importance of the evolving nature of the international law which it interprets and applies. Thus, as early as 1949, the Court recognized that the influence exercised by the Charter of the United Nations represented a “new situation”; in its Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, it commented:

“The Court is here faced with a new situation. The questions to which it gives rise can only be solved by realizing that the situation is dominated by the provisions of the Charter considered in the light of the principles of international law.”

Since then, the Court has rendered many decisions which expressly recognize the evolution of international law and the importance of this evolution in the determination of the law applicable to the case in question. By interpreting the international law in force and applying it to specific cases, the Court’s decisions clarify both the substance of that law and the particular authority and legitimacy conferred upon it by the Charter of the United Nations. In so doing, the Court often presages developments in international law by States.

Indeed the Court's decisions are in themselves legal acts and are known both to States and to the international agencies entrusted with the continuing task of codification and progressive development of international law, in particular under the auspices of the United Nations. This task owes an immense debt to the Court's jurisprudence. The Court's role is effectively institutionalized in the Statute of the United Nations International Law Commission, which provides for the Commission to submit its draft articles to the Assembly together with a commentary containing an adequate presentation of precedents and other relevant data, including "judicial decisions". As can be seen from the Commission's drafts, decisions of the ICJ take pride of place in its presentation of relevant judicial decisions.

The cases marking the Court's particular contribution to the development of international law cover the widest possible spectrum, ranging from the most traditional aspects of international law to the most novel.

In regard to the traditional aspects of international law, the ICJ has contributed not only to strengthening the various basic rules and principles, but also to the development of certain of its principal branches.

The contributions made by the Court's jurisprudence with regard to the *prohibition on the use of force* and to *self-defence* are particularly significant. In its very first contentious case, the Court affirmed that a policy of force "such as has, in the past, given rise to most serious abuses . . . cannot, whatever be the present defects in international organization, find a place in international law" (*Corfu Channel*). In its 1986 Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court had the opportunity to examine in detail the international rules on the subject, confirming that they were customary in nature and explaining the conditions for the exercise of self-defence. It confirmed those rules ten years later in the context of its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*. This subject remains at the heart of the Court's concerns: the Court has, for example, had occasion to examine questions of self-defence in the *Oil Platforms* case, as well as in its Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court emphasized that the prohibition of the use of force was a "cornerstone of the UN Charter", and recognized the customary character of the relevant provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV), adopted by the General Assembly on 24 October 1970), which provide that

"[e]very State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or

acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force”,

and that

“no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State”.

Several judgments of the ICJ have also had an impact on the development of the *law of the sea* and on the work of the conferences convened by the United Nations to deal with this subject. Thus since 1951, when the International Law Commission undertook the codification of this subject, the Court has identified a number of basic criteria governing the delimitation of the territorial sea: since this is closely dependent on the land domain, the baseline from which its breadth is measured must not depart to any appreciable degree from the general direction of the coast; certain waters are intimately linked with the land features that separate or surround them; there may be occasion to take account of the specific economic interests of a region where their reality and significance is clearly attested by long-standing usage. Moreover, at a time when the Third United Nations Conference on the Law of the Sea had barely begun its work, the Court made the following statement regarding the determination of the boundaries of the fisheries jurisdiction of States:

“It is one of the advances in maritime international law, resulting from the intensification of fishing, that the former laissez-faire treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to the rights of other States and the needs of conservation for the benefit of all.” (*Fisheries Jurisdiction*.)

The Court has also taken an active part in the development of the principles and rules of international law which apply to maritime expanses under State jurisdiction. Before the conclusion of the Montego Bay Convention of 10 December 1982, for example, it had already affirmed that the concept of the “exclusive economic zone” had become part of international law (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*). In defining maritime boundaries between States with adjacent or opposite coasts, the Court has applied new principles in regard both to the definition and delimitation of the continental shelf (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*) and to the delimitation of the continental shelf and exclusive fisheries zones (*Delimitation of the Maritime Boundary in the Gulf of Maine Area*; *Maritime Delimitation in the Area between Greenland and Jan Mayen*).

In a number of more recent cases (e.g., *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *Land and Maritime Boundary between*

Cameroon and Nigeria) the Court has continued to apply the rules and methods of maritime delimitation developed by it, thereby helping to clarify them. While the contemporary law of the sea distinguishes between the delimitation of territorial seas on the one hand, and the delimitation of the continental shelf and fishery zones or exclusive economic zones on the other, the Court's jurisprudence shows that comparable rules apply in all cases. In practice, the Court is increasingly called upon by States to determine a single maritime boundary delimiting their respective territorial seas, continental shelves and exclusive economic zones. In 2009 and in 2012, in its judgments in the cases concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* and the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, the Court summarized the present state of the law governing maritime delimitation, stating that it should follow a three-stage approach: first selecting base-points and establishing a provisional equidistance line, then, secondly, examining any factors which might call for an adjustment of that line and adjusting it accordingly so as to achieve an equitable result and, finally, verifying that the line as adjusted does not give rise to an inequitable result by comparing factors such as the ratio between maritime areas and respective coastal lengths.

In regard more generally to *territorial sovereignty*, the Court has enshrined the principle of the intangibility of frontiers inherited from the decolonization, as well as that of *uti possidetis juris*, whereby the legal title enjoys priority over effective possession as the basis of sovereignty, possession being decisive only in the absence of such title (*Frontier Dispute (Burkina Faso/Mali)*; *Land and Maritime Boundary between Cameroon and Nigeria*; *Sovereignty over Pulau Ligitan and Pulau Sipadan*; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*).

In the area of *decolonization*, the Court has had occasion to stress the primordial role of the principle of self-determination, viewed as an ongoing process (see, for example, the advisory proceedings in the case concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* and in the *Western Sahara* case). In the case concerning *East Timor (Portugal v. Australia)*, the Court recognized that "the right of peoples to self-determination, as it has evolved from the Charter and from United Nations practice, has an *erga omnes* character" and that the corresponding principle is "one of the essential principles of contemporary international law" (see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*).

The *law of treaties* is one of the many other fields in which the Court's continuing awareness of developing legal trends has found expression. As early as 1951, after referring to the traditional views concerning the validity of reservations to multilateral treaties, the Court noted the emergence of new trends constituting a "manifestation of a new need for flexibility in the operation of multilateral conventions" (*Reservations to the Convention on the Prevention and Punishment of*

the Crime of Genocide). The ICJ has also rejected rigid approaches to the interpretation of treaties. As mentioned above (p. 96), it has emphasized that “an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation”. Indeed, well before the entry into force of the Vienna Convention on the Law of Treaties, the Court unhesitatingly described it as an instrument which, in many respects, represented a codification of customary law (for example, in the *Fisheries Jurisdiction* cases (*jurisdiction phase*) with respect to Article 62 of the Vienna Convention concerning a fundamental change of circumstances). More recently, in the *Gabčíkovo-Nagymaros Project*, the Court reaffirmed that the rules codified in Articles 60 to 62 of the Vienna Convention are customary in nature.

On many occasions the ICJ, like its predecessor the PCIJ, has contributed to the definition of the principles governing *State responsibility* by establishing the conditions and consequences of the engagement of State responsibility. The Court has frequently been called upon to determine the imputability of a wrongful act to a State: *United States Diplomatic and Consular Staff in Tebran*; *Military and Paramilitary Activities in and against Nicaragua*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. The Court has also been called upon to rule on various other issues concerning State responsibility, including: a state of necessity as a ground for precluding the wrongfulness of an act (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*; *Gabčíkovo-Nagymaros Project*) and the conditions governing the taking of countermeasures (*Gabčíkovo-Nagymaros Project*), as well as reparation for injury and assurances and guarantees of non-repetition (*Gabčíkovo-Nagymaros Project*; *LaGrand*; *Arrest Warrant of 11 April 2000*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*; *Abmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*). Moreover, in its Judgment in the *Gabčíkovo-Nagymaros Project* the Court provided some elucidation of the relationship between the law of treaties and the law of State responsibility:

“[T]hose two branches of international law obviously have a scope that is distinct. A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, is to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility.”

More recently, in 2007, the Court for the first time considered the question of State responsibility in respect of genocide (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*). The Court clearly stated that “if an organ of the State, or a person or group whose acts are legally attributable to the State, commits any of the acts proscribed by Article III of the [Genocide] Convention, the international responsibility of that State is incurred”. It found in the case in question that genocide had been committed in Srebrenica in July 1995, but that proof had not been shown to the Court that legal responsibility was directly attributable to the Respondent. However, it did conclude that the State in question had violated its obligations under the Convention to prevent the genocide at Srebrenica and to transfer to the International Criminal Tribunal for the former Yugoslavia for trial any individuals finding themselves in its territory and indicted for genocide by that Tribunal in relation to the Srebrenica massacres.

The Court has also made a notable contribution in the development of other classic areas of international law, such as *asylum*, where it held that asylum cannot be an obstacle to proceedings instituted by legal authorities in accordance with the law (*Asylum (Colombia/Peru)*), and diplomatic and consular relations. In the case concerning *United States Diplomatic and Consular Staff in Tehran* the Court emphasized the fundamental importance in the conduct of international relations of the inviolability of diplomatic staff and embassy premises. The Court has also played a significant role in the development of the right of jurisdictional immunity of States and their representatives: in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, it clearly recognized the right of immunity from suit, both civil and criminal, enjoyed in other States by diplomatic and consular staff, as well as by certain holders of high-ranking office, such as the Head of State or Government and the Minister for Foreign Affairs. In the case concerning *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, the Court expressly recognized that such immunity extended to the States themselves.

In the field of *consular relations*, the Court has had to interpret and apply the relevant provisions of Article 36 of the Vienna Convention on Consular Relations, which requires States parties to notify the consular authorities of another State party without delay upon the arrest or detention of any of the latter's nationals, and must inform those individuals without delay of their right to consular assistance (*LaGrand; Avena and other Mexican Nationals; Ahmadou Sadio Diallo*). In the case concerning *Avena and other Mexican Nationals (Mexico v. United States of America)*, the Court asked the United States to review and reconsider the convictions and sentences of 51 individuals because their consular rights had not been respected.

As regards the Court's contribution to contemporary developments in international law, in its 1970 Judgment in the *Barcelona Traction* case (*Second Phase*) it recognized the existence of obligations incumbent upon States towards the international community as a whole ("obligations *erga omnes*") which it described as follows:

"Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."

More recently, the Court has recognized the peremptory (*jus cogens*) character of certain norms of fundamental importance for the international community as a whole and from which derogation is never permitted, such as the prohibition of genocide (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*) and the prohibition of torture (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*).

On numerous occasions, the ICJ has also been called upon to decide questions relating to basic human rights, both in times of peace and during an armed conflict. Thus in its 1971 Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court had occasion to emphasize that "to establish . . . and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights" is a flagrant violation of the purposes and principles of the United Nations Charter. More recently, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court recalled the importance of respecting the rules of international humanitarian law. In particular, it emphasized that the rules in question incorporate obligations which are essentially of an *erga omnes* character "[g]iven the character and importance of the rights and obligations involved [deriving from the four Geneva Conventions]", and that all States are under an obligation not to recognize the illegal situation resulting from their violation. The Court had previously recognized that a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and "elementary considerations of humanity" (*Corfu Channel*) that they are to be observed by all States because they constitute "intransgressible principles of international customary law" (*Legality of the Threat or Use of Nuclear Weapons*).

In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court found that, as a result of killings, torture and other forms of inhumane treatment committed by Ugandan

armed forces against the Congolese civilian population, the Republic of Uganda had violated its obligations under international human rights law and international humanitarian law.

Over the last twenty years the Court has addressed a growing number of questions of *environmental law*. For example, while noting that existing norms relating to the safeguarding and protection of the environment did not specifically prohibit the use of nuclear weapons, the Court nonetheless emphasized that international law indicates important environmental factors that are relevant to the implementation of the rules of law governing armed conflicts or to an assessment of the lawfulness of self-defence. In this regard, it stated that

“the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.” (*Legality of the Threat or Use of Nuclear Weapons*.)

Barely a year later, citing this passage, the Court reaffirmed “the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind”, and made the following observation:

“[I]n the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind — for present and future generations — of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.” (*Gabčíkovo-Nagymaros Project*.)

In its 2010 Judgment in the case concerning *Pulp Mills on the River Uruguay*, the Court stated that the practice of undertaking an environmental impact assessment where there is a risk that a proposed industrial activity may have a significant

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adverse effect in a transboundary context “has gained so much acceptance among States that it may now be considered a requirement under general international law”.

Summaries of decisions of the Court are published each year in the *I.C.J. Yearbook*, which is available on the Court's website (www.icj-cij.org), where their official modes of citation can also be found.

8. Cases Brought Before the Court

Between 18 April 1946 and 31 December 2013, the Court was called upon to deal with 129 contentious cases in which it delivered 114 Judgments and made 463 Orders. During the same period, it dealt with 26 advisory proceedings, in which it gave 27 Advisory Opinions and made 37 Orders. Brief summaries of these cases and of the decisions reached with regard to each one are given below²⁸.

Contentious cases

1.1. *Corfu Channel (United Kingdom v. Albania)*

This dispute gave rise to three Judgments by the Court. It arose out of the explosions of mines by which some British warships suffered damage while passing through the Corfu Channel in 1946, in a part of the Albanian waters which had been previously swept. The ships were severely damaged and members of the crew were killed. The United Kingdom seised the Court of the dispute by an Application filed on 22 May 1947 and accused Albania of having laid or allowed a third State to lay the mines after mine-clearing operations had been carried out by the Allied naval authorities. The case had previously been brought before the United Nations and, in consequence of a recommendation by the Security Council, had been referred to the Court.

In a first Judgment, rendered on 25 March 1948, the Court dealt with the question of its jurisdiction and the admissibility of the Application, which Albania had raised. The Court found, *inter alia*, that a communication dated 2 July 1947, addressed to it by the Government of Albania, constituted a voluntary acceptance of its jurisdiction. It recalled on that occasion that the consent of the parties to the exercise of its jurisdiction was not subject to any particular conditions of form and stated that, at that juncture, it could not hold to be irregular a proceeding not precluded by any provision in those texts.

A second Judgment, rendered on 9 April 1949, related to the merits of the dispute. The Court found that Albania was responsible under international law for the explosions that had taken place in Albanian waters and for the damage and loss of life which had ensued. It did not accept the view that Albania had itself laid the mines or the purported connivance of Albania with a mine-laying oper-

²⁸ These summaries in no way involve the responsibility of the Court and cannot be quoted against the texts of the relevant decisions, of which they do not constitute an interpretation.

ation carried out by the Yugoslav Navy at the request of Albania. On the other hand, it held that the mines could not have been laid without the knowledge of the Albanian Government. On that occasion, it indicated in particular that the exclusive control exercised by a State within its frontiers might make it impossible to furnish direct proof of facts incurring its international responsibility. The State which is the victim must, in that case, be allowed a more liberal recourse to inferences of fact and circumstantial evidence; such indirect evidence must be regarded as of especial weight when based on a series of facts, linked together and leading logically to a single conclusion. Albania, for its part, had submitted a counter-claim against the United Kingdom. It accused the latter of having violated Albanian sovereignty by sending warships into Albanian territorial waters and of carrying out minesweeping operations in Albanian waters after the explosions. The Court did not accept the first of these complaints but found that the United Kingdom had exercised the right of innocent passage through international straits. On the other hand, it found that the minesweeping had violated Albanian sovereignty, because it had been carried out against the will of the Albanian Government. In particular, it did not accept the notion of “self-help” asserted by the United Kingdom to justify its intervention.

In a third Judgment, rendered on 15 December 1949, the Court assessed the amount of reparation owed to the United Kingdom and ordered Albania to pay £844,000 (see also No. 1.12 below).

1.2. *Fisheries (United Kingdom v. Norway)*

The Judgment delivered by the Court in this case ended a long controversy between the United Kingdom and Norway which had aroused considerable interest in other maritime States. In 1935 Norway enacted a decree by which it reserved certain fishing grounds situated off its northern coast for the exclusive use of its own fishermen. The question at issue was whether this decree, which laid down a method for drawing the baselines from which the width of the Norwegian territorial waters had to be calculated, was valid international law. This question was rendered particularly delicate by the intricacies of the Norwegian coastal zone, with its many fjords, bays, islands, islets and reefs. The United Kingdom contended, *inter alia*, that some of the baselines fixed by the decree did not accord with the general direction of the coast and were not drawn in a reasonable manner. In its Judgment of 18 December 1951, the Court found that, contrary to the submissions of the United Kingdom, neither the method nor the actual baselines stipulated by the 1935 Decree were contrary to international law.

1.3. *Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)*

As a consequence of certain measures adopted by the Egyptian Government against the property and persons of various French nationals and protected persons in Egypt, France instituted proceedings in which it invoked the Montreux

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Convention of 1935, concerning the abrogation of the capitulations in Egypt. However, the case was not proceeded with, as the Egyptian Government desisted from the measures in question. As France decided not to press its suit and as Egypt had no objection, the case was removed from the Court's List (Order of 29 March 1950).

1.4. Asylum (Colombia/Peru)

The granting of diplomatic asylum in the Colombian Embassy at Lima, on 3 January 1949, to a Peruvian national, Victor Raúl Haya de la Torre, a political leader accused of having instigated a military rebellion, was the subject of a dispute between Peru and Colombia which the Parties agreed to submit to the Court. The Pan-American Havana Convention on Asylum (1928) laid down that, subject to certain conditions, asylum could be granted in a foreign embassy to a political refugee who was a national of the territorial State. The question in dispute was whether Colombia, as the State granting the asylum, was entitled unilaterally to "qualify" the offence committed by the refugee in a manner binding on the territorial State — that is, to decide whether it was a political offence or a common crime. Furthermore, the Court was asked to decide whether the territorial State was bound to afford the necessary guarantees to enable the refugee to leave the country in safety. In its Judgment of 20 November 1950, the Court answered both these questions in the negative, but at the same time it specified that Peru had not proved that Mr. Haya de la Torre was a common criminal. Lastly, it found in favour of a counter-claim submitted by Peru that Mr. Haya de la Torre had been granted asylum in violation of the Havana Convention.

1.5. Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)

On the very day on which the Court delivered the Judgment on the *Asylum* case (see No. 1.4 above), Colombia filed a Request for interpretation, seeking a reply to the question of whether the Judgment implied an obligation to surrender the refugee to the Peruvian authorities. In a Judgment delivered on 27 November 1950, the Court declared the request inadmissible.

1.6. Haya de la Torre (Colombia v. Peru)

This case, a sequel to the earlier proceedings (see Nos. 1.4-1.5 above), was instituted by Colombia by means of a fresh Application. Immediately after the Judgment of 20 November 1950, Peru had called upon Colombia to surrender Mr. Haya de la Torre. Colombia refused to do so, maintaining that neither the applicable legal provisions nor the Court's Judgment placed it under an obligation to surrender the refugee to the Peruvian authorities. The Court confirmed this view in its Judgment of 13 June 1951. It declared that the question was a new one, and that although the Havana Convention expressly prescribed the surrender of common criminals to the local authorities, no obligation of the kind existed in

regard to political offenders. While confirming that diplomatic asylum had been irregularly granted and that on this ground Peru was entitled to demand its termination, the Court declared that Colombia was not bound to surrender the refugee; these two conclusions, it stated, were not contradictory because there were other ways in which the asylum could be terminated besides the surrender of the refugee.

*1.7. Rights of Nationals of the United States of America in Morocco
(France v. United States of America)*

By a decree of 30 December 1948, the French authorities in the Moroccan Protectorate imposed a system of licence control in respect of imports not involving an official allocation of currency, and limited these imports to a number of products indispensable to the Moroccan economy. The United States maintained that this measure affected its rights under treaties with Morocco and contended that, in accordance with these treaties and with the General Act of Algeciras of 1906, no Moroccan law or regulation could be applied to its nationals in Morocco without its previous consent. In its Judgment of 27 August 1952, the Court held that the import controls were contrary to the Treaty between the United States and Morocco of 1836 and the General Act of Algeciras since they involved discrimination in favour of France against the United States. The Court then considered the extent of the consular jurisdiction of the United States in Morocco and held that the United States was entitled to exercise such jurisdiction in the French Zone in all disputes, civil or criminal, between United States citizens or persons protected by the United States. It was also entitled to exercise such jurisdiction to the extent required by the relevant provisions of the General Act of Algeciras. The Court rejected the contention of the United States that its consular jurisdiction included cases in which only the defendant was a citizen or protégé of the United States. It also rejected the claim by the United States that the application to United States citizens of laws and regulations in the French Zone of Morocco required the prior assent of the United States Government. Such assent was required only in so far as the intervention of the consular courts of the United States was necessary for the effective enforcement of such laws or regulations with respect to United States citizens. The Court rejected a counter-claim by the United States that its nationals in Morocco were entitled to immunity from taxation. It also dealt with the question of the valuation of imports by the Moroccan customs authorities.

1.8. Ambatielos (Greece v. United Kingdom)

In 1919, Nicolas Ambatielos, a Greek shipowner, entered into a contract for the purchase of ships with the Government of the United Kingdom. He claimed he had suffered damage through the failure of that Government to carry out the terms of the contract and as a result of certain judgments given against him by the English courts in circumstances said to involve the violation of international

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law. The Greek Government took up the case of its national and claimed that the United Kingdom was under a duty to submit the dispute to arbitration in accordance with Treaties between the United Kingdom and Greece of 1886 and 1926. The United Kingdom objected to the Court's jurisdiction. In a Judgment of 1 July 1952, the Court held that it had jurisdiction to decide whether the United Kingdom was under a duty to submit the dispute to arbitration but, on the other hand, that it had no jurisdiction to deal with the merits of the *Ambatielos* claim. In a further Judgment of 19 May 1953, the Court decided that the dispute was one which the United Kingdom was under a duty to submit to arbitration in accordance with the Treaties of 1886 and 1926.

1.9. Anglo-Iranian Oil Co. (United Kingdom v. Iran)

In 1933 an oil concession agreement was concluded between the Government of Iran and the Anglo-Iranian Oil Company. In 1951, laws were passed in Iran for the nationalization of the oil industry. These laws resulted in a dispute between Iran and the company. The United Kingdom took up the company's case and instituted proceedings before the Court. Iran disputed the Court's jurisdiction. In its Judgment of 22 July 1952, the Court decided that it had no jurisdiction to deal with the dispute. Its jurisdiction depended on the declarations by Iran and the United Kingdom accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Court's Statute. The Court held that the declaration by Iran, which was ratified in 1932, covered only disputes based on treaties concluded by Iran after that date, whereas the claim of the United Kingdom was directly or indirectly based on treaties concluded prior to 1932. The Court also rejected the view that the agreement of 1933 was both a concessionary contract between Iran and the company and an international treaty between Iran and the United Kingdom, since the United Kingdom was not a party to the contract. The position was not altered by the fact that the concessionary contract was negotiated through the good offices of the Council of the League of Nations. By an Order of 5 July 1951, the Court had indicated interim measures of protection, that is, provisional measures for protecting the rights alleged by either party, in proceedings already instituted, until a final judgment was given. In its Judgment, the Court declared that the Order had ceased to be operative.

1.10. Minquiers and Ecrehos (France/United Kingdom)

The Minquiers and Ecrehos are two groups of islets situated between the British island of Jersey and the coast of France. Under a Special Agreement between France and the United Kingdom, the Court was asked to determine which of the Parties had produced the more convincing proof of title to these groups of islets. After the conquest of England by William, Duke of Normandy, in 1066, the islands had formed part of the Union between England and Normandy which lasted until 1204, when Philip Augustus of France conquered Normandy but failed to occupy the islands. The United Kingdom submitted that the islands then remained united

with England and that this situation was placed on a legal basis by subsequent treaties between the two countries. France contended that the Minquiers and Ecrehos were held by France after 1204, and referred to the same medieval treaties as those relied on by the United Kingdom. In its Judgment of 17 November 1953, the Court considered that none of those treaties stated specifically which islands were held by the King of England or by the King of France. Moreover, what was of decisive importance was not indirect presumptions based on matters in the Middle Ages, but direct evidence of possession and the actual exercise of sovereignty. After considering this evidence, the Court arrived at the conclusion that the sovereignty over the Minquiers and Ecrehos belonged to the United Kingdom.

1.11. Nottebohm (Liechtenstein v. Guatemala)

In this case, Liechtenstein claimed restitution and compensation from the Government of Guatemala on the ground that the latter had acted towards Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law. Guatemala objected to the Court's jurisdiction but the Court overruled this objection in a Judgment of 18 November 1953. In a second Judgment, of 6 April 1955, the Court held that Liechtenstein's claim was inadmissible on grounds relating to Mr. Nottebohm's nationality. It was the bond of nationality between a State and an individual which alone conferred upon the State the right to put forward an international claim on his behalf. Mr. Nottebohm, who was then a German national, had settled in Guatemala in 1905 and continued to reside there. In October 1939 — after the beginning of the Second World War — while on a visit to Europe, he obtained Liechtenstein nationality and returned to Guatemala in 1940, where he resumed his former business activities until his removal as a result of war measures in 1943. On the international plane, the grant of nationality is entitled to recognition by other States only if it represents a genuine connection between the individual and the State granting its nationality. Mr. Nottebohm's nationality, however, was not based on any genuine prior link with Liechtenstein and the sole object of his naturalization was to enable him to acquire the status of a neutral national in time of war. For these reasons, Liechtenstein was not entitled to take up his case and put forward an international claim on his behalf against Guatemala.

*1.12. Monetary Gold Removed from Rome in 1943
(Italy v. France, United Kingdom and United States of America)*

A certain quantity of monetary gold was removed by the Germans from Rome in 1943. It was later recovered in Germany and found to belong to Albania. The 1946 Agreement on Reparation from Germany provided that monetary gold found in Germany should be pooled for distribution among the countries entitled to receive a share of it. The United Kingdom claimed that the gold should be delivered to it in partial satisfaction of the Court's Judgment of 1949 in the *Corfu Channel*

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case (see above, p. 109). Italy claimed that the gold should be delivered to it in partial satisfaction for the damage which it alleged it had suffered as a result of an Albanian law of 13 January 1945. In the Washington statement of 25 April 1951, the Governments of France, the United Kingdom and the United States, to whom the implementation of the reparations agreement had been entrusted, decided that the gold should be delivered to the United Kingdom unless, within a certain time-limit, Italy or Albania applied to the Court requesting it to adjudicate on their respective rights. Albania took no action, but Italy made an Application to the Court. Later, however, Italy raised the preliminary question as to whether the Court had jurisdiction to adjudicate upon the validity of its claim against Albania. In its Judgment of 15 June 1954, the Court found that, without the consent of Albania, it could not deal with a dispute between that country and Italy and that it was therefore unable to decide the questions submitted.

1.13. Electricité de Beyrouth Company (France v. Lebanon)

This case arose out of certain measures taken by the Lebanese Government which a French company regarded as contrary to undertakings that that Government had given in 1948 as part of an agreement with France. The French Government referred the dispute to the Court, but the Lebanese Government and the company entered into an agreement for the settlement of the dispute and the case was removed from the List by an Order of 29 July 1954.

1.14-1.15. Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America v. Hungary; United States of America v. USSR)

1.16. Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia)

1.17. Aerial Incident of 7 October 1952 (United States of America v. USSR)

1.18. Aerial Incident of 4 September 1954 (United States of America v. USSR)

1.19. Aerial Incident of 7 November 1954 (United States of America v. USSR)

In these six cases the United States did not claim that the States against which the Applications were made had given any consent to jurisdiction, but relied on Article 36, paragraph 1, of the Court's Statute, which provides that the jurisdiction of the Court comprises all cases which the parties refer to it. The United States stated that it submitted to the Court's jurisdiction for the purpose of the above-mentioned cases and indicated that it was open to the other Governments concerned to do likewise. These Governments having stated in each case that they were unable to submit to the Court's jurisdiction in the matter, the Court found that it did not have jurisdiction to deal with the cases, and removed them respectively from its List by Orders dated 12 July 1954 (Nos. 1.14-1.15),

14 March 1956 (Nos. 1.16 and 1.17), 9 December 1958 (No. 1.18) and 7 October 1959 (No. 1.19).

*1.20-1.21. Antarctica (United Kingdom v. Argentina;
United Kingdom v. Chile)*

On 4 May 1955, the United Kingdom instituted proceedings before the Court against Argentina and Chile concerning disputes as to the sovereignty over certain lands and islands in the Antarctic. In its Applications to the Court, the United Kingdom stated that it submitted to the Court's jurisdiction for the purposes of the case, and although, as far as it was aware, Argentina and Chile had not yet accepted the Court's jurisdiction, they were legally qualified to do so. Moreover, the United Kingdom relied on Article 36, paragraph 1, of the Court's Statute. In a letter of 15 July 1955, Chile informed the Court that in its view the Application was unfounded and that it was not open to the Court to exercise jurisdiction. In a Note of 1 August 1955, Argentina informed the Court of its refusal to accept the Court's jurisdiction to deal with the case. In these circumstances, the Court found that neither Chile nor Argentina had accepted its jurisdiction to deal with the cases, and, on 16 March 1956, Orders were made removing them from its List.

1.22. Certain Norwegian Loans (France v. Norway)

Certain Norwegian loans had been floated in France between 1885 and 1909. The bonds securing them stated the amount of the obligation in gold, or in currency convertible into gold, as well as in various national currencies. From the time when Norway suspended the convertibility of its currency into gold — on several occasions after 1914 — the loans had been serviced in Norwegian kroner. The French Government, espousing the cause of the French bondholders, filed an Application requesting the Court to declare that the debt should be discharged by payment of the gold value of the coupons of the bonds on the date of payment and of the gold value of the redeemed bonds on the date of repayment. The Norwegian Government raised a number of preliminary objections to the jurisdiction of the Court and, in the Judgment it delivered on 6 July 1957, the Court found that it was without jurisdiction to adjudicate on the dispute. Indeed, the Court held that, since its jurisdiction depended upon the two unilateral declarations made by the Parties, jurisdiction was conferred upon the Court only to the extent to which those declarations coincided in conferring it. The Norwegian Government, which had considered the dispute to fall entirely within its national jurisdiction, was therefore entitled, by virtue of the condition of reciprocity, to invoke in its own favour, and under the same conditions, the reservation contained in the French declaration which excluded from the jurisdiction of the Court differences relating to matters which were “essentially within the national jurisdiction as understood by the Government of the French Republic”.

1.23. Right of Passage over Indian Territory (Portugal v. India)

The Portuguese possessions in India included the two enclaves of Dadra and Nagar-Aveli which, in mid-1954, had passed under an autonomous local administration. Portugal claimed that it had a right of passage to those enclaves and between one enclave and the other to the extent necessary for the exercise of its sovereignty and subject to the regulation and control of India; it also claimed that, in July 1954, contrary to the practice previously followed, India had prevented it from exercising that right and that that situation should be redressed. A first Judgment, delivered on 26 November 1957, related to the jurisdiction of the Court, which had been challenged by India. The Court rejected four of the preliminary objections raised by India and joined the other two to the merits. In a second Judgment, delivered on 12 April 1960, after rejecting the two remaining preliminary objections, the Court gave its decision on the claims of Portugal, which India maintained were unfounded. The Court found that Portugal had in 1954 the right of passage claimed by it but that such right did not extend to armed forces, armed police, arms and ammunition, and that India had not acted contrary to the obligations imposed on it by the existence of that right.

1.24. Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)

The Swedish authorities had placed an infant of Netherlands nationality residing in Sweden under the régime of protective upbringing instituted by Swedish law for the protection of children and young persons. The father of the child, jointly with the deputy-guardian appointed by a Netherlands court, appealed against the action of the Swedish authorities. The measure of protective upbringing was, however, maintained. The Netherlands claimed that the decisions which instituted and maintained the protective upbringing were not in conformity with Sweden's obligations under the Hague Convention of 1902 governing the guardianship of infants, the provisions of which were based on the principle that the national law of the infant was applicable. In its Judgment of 28 November 1958, the Court held that the 1902 Convention did not include within its scope the matter of the protection of children as understood by the Swedish law on the protection of children and young persons and that the Convention could not have given rise to obligations in a field outside the matter with which it was concerned. Accordingly, the Court did not, in this case, find any failure to observe the Convention on the part of Sweden.

1.25. Interhandel (Switzerland v. United States of America)

In 1942 the Government of the United States vested almost all the shares of the General Aniline and Film Corporation (GAF), a company incorporated in the United States, on the ground that those shares, which were owned by Interhandel, a company registered in Basel, belonged in reality to I.G. Farbenindustrie of Frankfurt, or that GAF was in one way or another controlled by the German company. On 1 October 1957, Switzerland applied to the Court for a declaration that

the United States was under an obligation to restore the vested assets to Interhandel or, alternatively, that the dispute on the matter between Switzerland and the United States was one fit for submission for judicial settlement, arbitration or conciliation. Two days later Switzerland filed a request for the indication of provisional measures to the effect that the Court should call upon the United States not to part with the assets in question so long as proceedings were pending before the Court. On 24 October 1957, the Court made an Order noting that, in the light of the information furnished, there appeared to be no need for provisional measures. The United States raised preliminary objections to the Court's jurisdiction, and in a Judgment delivered on 21 March 1959 the Court found the Swiss application inadmissible, because Interhandel had not exhausted the remedies available to it in the United States courts.

1.26. Aerial Incident of 27 July 1955 (Israel v. Bulgaria)

This case arose out of the destruction by Bulgarian anti-aircraft defence forces of an aircraft belonging to an Israeli airline. Israel instituted proceedings before the Court by means of an Application in October 1957. Bulgaria having challenged the Court's jurisdiction to deal with the claim, Israel contended that, since Bulgaria had in 1921 accepted the compulsory jurisdiction of the Permanent Court of International Justice for an unlimited period, that acceptance became applicable, when Bulgaria was admitted to the United Nations in 1955, to the jurisdiction of the International Court of Justice by virtue of Article 36, paragraph 5, of the present Court's Statute, which provides that declarations made under the Statute of the PCIJ and which are still in force shall be deemed, as between the parties to the present Court's Statute, to be acceptances applicable to the International Court of Justice for the period which they still have to run and in accordance with their terms. In its Judgment on the preliminary objections, delivered on 26 May 1959, the Court found that it was without jurisdiction on the ground that Article 36, paragraph 5, was intended to preserve only declarations in force as between States signatories of the United Nations Charter, and not subsequently to revive undertakings which had lapsed on the dissolution of the PCIJ.

*1.27. Aerial Incident of 27 July 1955
(United States of America v. Bulgaria)*

This case arose out of the incident which was the subject of the proceedings mentioned above (see No. 1.26 above). The aircraft destroyed by Bulgarian anti-aircraft defence forces was carrying several United States nationals, who all lost their lives. Their Government asked the Court to find Bulgaria liable for the losses thereby caused and to award damages. Bulgaria filed preliminary objections to the Court's jurisdiction, but, before hearings were due to open, the United States informed the Court of its decision, after further consideration, not to proceed with its application. Accordingly, the case was removed from the List by an Order of 30 May 1960.

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1.28. Aerial Incident of 27 July 1955 (United Kingdom v. Bulgaria)

This case arose out of the same incident as that mentioned above (see Nos. 1.26 and 1.27 above). The aircraft destroyed by Bulgarian anti-aircraft defence forces was carrying several nationals of the United Kingdom and colonies, who all lost their lives. The United Kingdom asked the Court to find Bulgaria liable for the losses thereby caused and to award damages. After filing a Memorial, however, the United Kingdom informed the Court that it wished to discontinue the proceedings in view of the decision of 26 May 1959 whereby the Court found that it lacked jurisdiction in the case brought by Israel. Accordingly, the case was removed from the List by an Order of 3 August 1959.

1.29. Sovereignty over Certain Frontier Land (Belgium/Netherlands)

The Court was asked to settle a dispute as to sovereignty over two plots of land situated in an area where the Belgo-Dutch frontier presented certain unusual features, as there had long been a number of enclaves formed by the Belgian commune of Baerle-Duc and the Netherlands commune of Baarle-Nassau. A Communal Minute drawn up between 1836 and 1841 attributed the plots to Baarle-Nassau, whereas a Descriptive Minute and map annexed to the Boundary Convention of 1843 attributed them to Baerle-Duc. The Netherlands maintained that the Boundary Convention recognized the existence of the status quo as determined by the Communal Minute, that the provision by which the two plots were attributed to Belgium was vitiated by an error, and that Netherlands sovereignty over the disputed plots had been established by the exercise of various acts of sovereignty since 1843. After considering the evidence produced, the Court, in a Judgment delivered on 20 June 1959, found that sovereignty over the two disputed plots belonged to Belgium.

1.30. Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)

On 7 October 1894, Honduras and Nicaragua signed a treaty on the delimitation of the frontier between the two countries, one of the Articles of which provided that, in certain circumstances, any points of the boundary line which were left unsettled should be submitted to the decision of the Government of Spain. In October 1904, the King of Spain was asked to determine that part of the frontier line on which the Mixed Boundary Commission appointed by the two countries had been unable to reach agreement. The King gave his arbitral award on 23 December 1906. Nicaragua contested the validity of the award and, in accordance with a resolution of the Organization of American States, the two countries agreed in July 1957 on the procedure to be followed for submitting the dispute on this matter to the Court. In the Application by which the case was brought before the Court on 1 July 1958, Honduras claimed that failure by Nicaragua to give effect to the arbitral award constituted a breach of an international obligation and asked

the Court to declare that Nicaragua was under an obligation to give effect to the award. After considering the evidence produced, the Court found that Nicaragua had in fact freely accepted the designation of the King of Spain as arbitrator, had fully participated in the arbitral proceedings, and had thereafter accepted the award. Consequently the Court found in its Judgment delivered on 18 November 1960 that the award was binding and that Nicaragua was under an obligation to give effect to it.

*1.31. Barcelona Traction, Light and Power Company, Limited
(Belgium v. Spain)*

On 23 September 1958, Belgium instituted proceedings against Spain in connection with the adjudication in bankruptcy in Spain, in 1948, of the above-named company, formed in Toronto in 1911. The Application stated that the company's share-capital belonged largely to Belgian nationals and claimed that the acts of organs of the Spanish State whereby the company had been declared bankrupt and liquidated were contrary to international law and that Spain, as responsible for the resultant damage, was under an obligation either to restore or to pay compensation for the liquidated assets. In May 1960, Spain filed preliminary objections to the jurisdiction of the Court, but before the time-limit fixed for its observations and submissions thereon Belgium informed the Court that it did not intend to go on with the proceedings. Accordingly, the case was removed from the List by an Order of 10 April 1961.

*1.32. Barcelona Traction, Light and Power Company, Limited
(New Application: 1962) (Belgium v. Spain)*

Belgium had ceased pursuing the aforementioned case (see No. 1.31 above) on account of efforts to negotiate a friendly settlement. The negotiations broke down, however, and Belgium filed a new Application on 19 June 1962. The following March, Spain filed four preliminary objections to the Court's jurisdiction, and on 24 July 1964 the Court delivered a Judgment dismissing the first two but joining the others to the merits. After the filing, within the time-limits requested by the Parties, of the pleadings on the merits and on the objections joined thereto, hearings were held from 15 April to 22 July 1969. Belgium sought compensation for the damage claimed to have been caused to its nationals, shareholders in the Barcelona Traction, Light and Power Company, Ltd., as the result of acts contrary to international law said to have been committed by organs of the Spanish State. Spain, on the other hand, submitted that the Belgian claim should be declared inadmissible or unfounded. In a Judgment delivered on 5 February 1970, the Court found that Belgium had no legal standing to exercise diplomatic protection of shareholders in a Canadian company in respect of measures taken against that company in Spain. It also pointed out that the adoption of the theory of diplomatic protection of shareholders as such would open the door to competing claims on the part of different States, which could create an atmosphere of insecurity in international economic relations. Accordingly, and in so far as the company's

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national State (Canada) was able to act, the Court was not of the opinion that *jus standi* was conferred on the Belgian Government by considerations of equity. The Court accordingly rejected Belgium's claim.

1.33. *Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon)*

This case arose out of certain measures adopted by the Lebanese Government with regard to two French companies. France instituted proceedings against Lebanon because it considered these measures contrary to certain undertakings embodied in a Franco-Lebanese agreement of 1948. Lebanon raised preliminary objections to the Court's jurisdiction, but before hearings could be held the Parties informed the Court that satisfactory arrangements had been concluded. Accordingly, the case was removed from the List by an Order of 31 August 1960.

1.34. *Temple of Preah Vihear (Cambodia v. Thailand)*

Cambodia complained that Thailand had occupied a piece of its territory surrounding the ruins of the Temple of Preah Vihear, a place of pilgrimage and worship for Cambodians, and asked the Court to declare that territorial sovereignty over the Temple belonged to it and that Thailand was under an obligation to withdraw the armed detachment stationed there since 1954. Thailand filed preliminary objections to the Court's jurisdiction, which were rejected in a Judgment given on 26 May 1961. In its Judgment on the merits, rendered on 15 June 1962, the Court noted that a Franco-Siamese Treaty of 1904 provided that, in the area under consideration, the frontier was to follow the watershed line, and that a map based on the work of a Mixed Delimitation Commission showed the Temple on the Cambodian side of the boundary. Thailand asserted various arguments aimed at showing that the map had no binding character. One of its contentions was that the map had never been accepted by Thailand or, alternatively, that if Thailand had accepted it, it had done so only because of a mistaken belief that the frontier indicated corresponded to the watershed line. The Court found that Thailand had indeed accepted the map and concluded that the Temple was situated on Cambodian territory. It also held that Thailand was under an obligation to withdraw any military or police force stationed there and to restore to Cambodia any objects removed from the ruins since 1954.

See also No. 1.125. *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)* below.

1.35-1.36. *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*

On 4 November 1960, Ethiopia and Liberia, as former States Members of the League of Nations, instituted separate proceedings against South Africa in a case concerning the continued existence of the League of Nations Mandate for South

West Africa (see below, Advisory Cases, Nos. 2.5-2.8) and the duties and performance of South Africa as mandatory Power. The Court was requested to make declarations to the effect that South West Africa remained a territory under a Mandate, that South Africa had been in breach of its obligations under that Mandate, and that the Mandate and hence the mandatory authority were subject to the supervision of the United Nations. On 20 May 1961, the Court made an Order finding Ethiopia and Liberia to be in the same interest and joining the proceedings each had instituted. South Africa filed four preliminary objections to the Court's jurisdiction. In a Judgment of 21 December 1962, the Court rejected these and upheld its jurisdiction. After pleadings on the merits had been filed within the time-limits fixed at the request of the Parties, the Court held public sittings from 15 March to 29 November 1965 in order to hear oral arguments and testimony, and judgment in the second phase was given on 18 July 1966. By the casting vote of the President — the votes having been equally divided (7-7) — the Court found that Ethiopia and Liberia could not be considered to have established any legal right or interest appertaining to them in the subject-matter of their claims, and accordingly decided to reject those claims.

1.37. Northern Cameroons (Cameroon v. United Kingdom)

The Republic of Cameroon claimed that the United Kingdom had violated the Trusteeship Agreement for the Territory of the Cameroons under British administration (divided into the Northern and the Southern Cameroons) by creating such conditions that the Trusteeship had led to the attachment of the Northern Cameroons to Nigeria instead of to the Republic of Cameroon, the territory of which had previously been administered by France and to which the Southern Cameroons had been attached. The United Kingdom raised preliminary objections to the Court's jurisdiction. The Court found that to adjudicate on the merits would be devoid of purpose since, as the Republic of Cameroon had recognized, its judgment thereon could not affect the decision of the General Assembly providing for the attachment of the Northern Cameroons to Nigeria in accordance with the results of a plebiscite supervised by the United Nations. Accordingly, by a Judgment of 2 December 1963, the Court found that it could not adjudicate upon the merits of the claim.

*1.38-1.39. North Sea Continental Shelf
(Federal Republic of Germany/Denmark;
Federal Republic of Germany/Netherlands)*

These cases concerned the delimitation of the continental shelf of the North Sea as between Denmark and the Federal Republic of Germany, and as between the Netherlands and the Federal Republic, and were submitted to the Court by Special Agreement. The Parties asked the Court to state the principles and rules of international law applicable, and undertook thereafter to carry out the delimitations on that basis. By an Order of 26 April 1968 the Court, having found Denmark and the Netherlands to be in the same interest, joined the proceedings

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in the two cases. In its Judgment, delivered on 20 February 1969, the Court found that the boundary lines in question were to be drawn by agreement between the Parties and in accordance with equitable principles in such a way as to leave to each Party those areas of the continental shelf which constituted the natural prolongation of its land territory under the sea, and it indicated certain factors to be taken into consideration for that purpose. The Court rejected the contention that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in the 1958 Geneva Convention on the Continental Shelf. The Court took account of the fact that the Federal Republic had not ratified that Convention, and held that the equidistance principle was not inherent in the basic concept of continental shelf rights, and that this principle was not a rule of customary international law.

1.40. *Appeal relating to the Jurisdiction of the ICAO Council* (*India v. Pakistan*)

In February 1971, following an incident involving the diversion to Pakistan of an Indian aircraft, India suspended overflights of its territory by Pakistan civil aircraft. Pakistan took the view that this action was in breach of the 1944 Convention on International Civil Aviation and the International Air Services Transit Agreement and complained to the Council of the International Civil Aviation Organization. India raised preliminary objections to the jurisdiction of the Council, but these were rejected and India appealed to the Court. During the written and oral proceedings, Pakistan contended, *inter alia*, that the Court was not competent to hear the appeal. In its Judgment of 18 August 1972, the Court found that it was competent to hear the appeal of India. It further decided that the ICAO Council was competent to deal with both the Application and the Complaint of which it had been seised by Pakistan, and accordingly dismissed the appeal laid before it by the Government of India.

1.41-1.42. *Fisheries Jurisdiction (United Kingdom v. Iceland;* *Federal Republic of Germany v. Iceland)*

On 14 April and 5 June 1972, respectively, the United Kingdom and the Federal Republic of Germany instituted proceedings against Iceland concerning a dispute over the proposed extension by Iceland, as from 1 September 1972, of the limits of its exclusive fisheries jurisdiction from a distance of 12 to a distance of 50 nautical miles. Iceland declared that the Court lacked jurisdiction, and declined to be represented in the proceedings or file pleadings. At the request of the United Kingdom and the Federal Republic, the Court in 1972 indicated, and in 1973 confirmed, provisional measures to the effect that Iceland should refrain from implementing, with respect to their vessels, the new regulations regarding the extension of the zone of its exclusive fishing rights, and that the annual catch of those vessels in the disputed area should be limited to certain maxima. In Judgments delivered on 2 February 1973, the Court found that it possessed jurisdiction; and in Judgments on the merits of 25 July 1974, it found that the Icelandic regulations

constituting a unilateral extension of exclusive fishing rights to a limit of 50 nautical miles were not opposable to either the United Kingdom or the Federal Republic, that Iceland was not entitled unilaterally to exclude their fishing vessels from the disputed area, and that the Parties were under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences.

*1.43-1.44. Nuclear Tests
(Australia v. France; New Zealand v. France)*

On 9 May 1973, Australia and New Zealand each instituted proceedings against France concerning tests of nuclear weapons which France proposed to carry out in the atmosphere in the South Pacific region. France stated that it considered the Court manifestly to lack jurisdiction and refrained from appearing at the public hearings or filing any pleadings. By two Orders of 22 June 1973, the Court, at the request of Australia and New Zealand, indicated provisional measures to the effect, *inter alia*, that pending judgment France should avoid nuclear tests causing radioactive fall-out on Australian or New Zealand territory. By two Judgments delivered on 20 December 1974, the Court found that the Applications of Australia and New Zealand no longer had any object and that it was therefore not called upon to give any decision thereon. In so doing the Court based itself on the conclusion that the objective of Australia and New Zealand had been achieved inasmuch as France, in various public statements, had announced its intention of carrying out no further atmospheric nuclear tests on the completion of the 1974 series.

1.45. Trial of Pakistani Prisoners of War (Pakistan v. India)

In May 1973, Pakistan instituted proceedings against India concerning 195 Pakistani prisoners of war whom, according to Pakistan, India proposed to hand over to Bangladesh, which was said to intend trying them for acts of genocide and crimes against humanity. India stated that there was no legal basis for the Court's jurisdiction in the matter and that Pakistan's Application was without legal effect. Pakistan having also filed a request for the indication of provisional measures, the Court held public sittings to hear observations on this subject; India was not represented at the hearings. In July 1973, Pakistan asked the Court to postpone further consideration of its request in order to facilitate the negotiations which were due to begin. Before any written pleadings had been filed, Pakistan informed the Court that negotiations had taken place, and requested the Court to record discontinuance of the proceedings. Accordingly, the case was removed from the List by an Order of 15 December 1973.

1.46. Aegean Sea Continental Shelf (Greece v. Turkey)

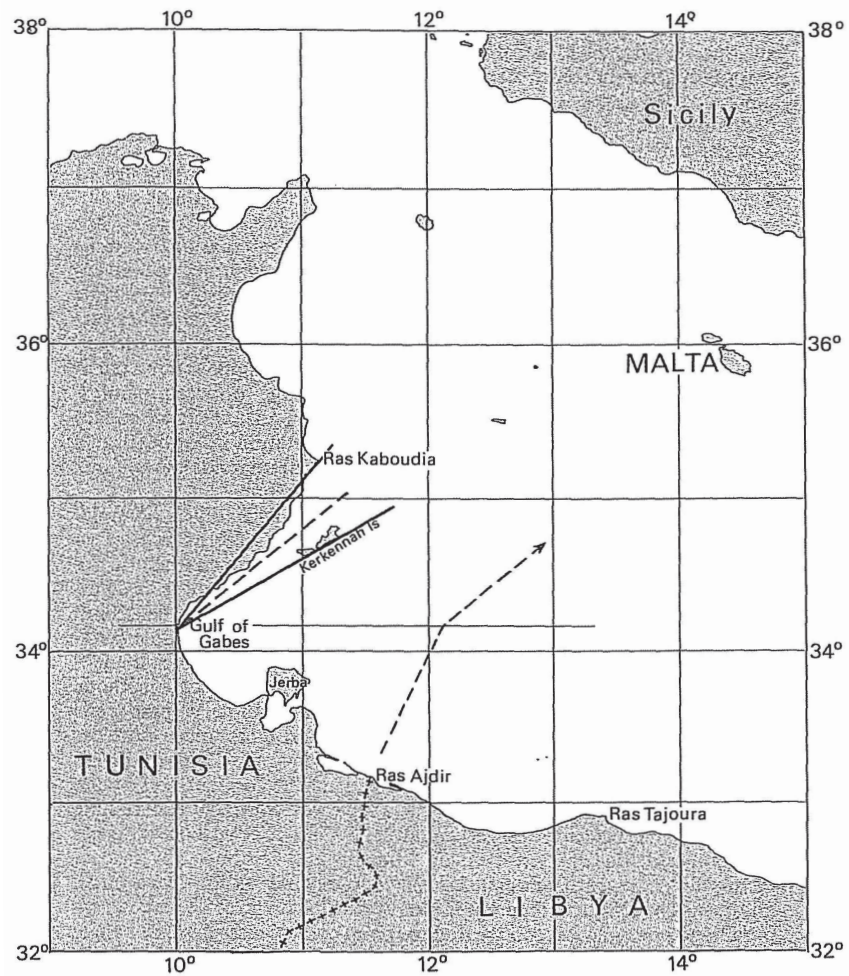
On 10 August 1976, Greece instituted proceedings against Turkey in a dispute over the Aegean Sea continental shelf. It asked the Court in particular to declare that the Greek islands in the area were entitled to their lawful portion of conti-

mental shelf and to delimit the respective parts of that shelf appertaining to Greece and Turkey. At the same time, it requested provisional measures indicating that, pending the Court's judgment, neither State should, without the other's consent, engage in exploration or research with respect to the shelf in question. On 11 September 1976, the Court found that the indication of such measures was not required and, as Turkey had denied that the Court was competent, ordered that the proceedings should first concern the question of jurisdiction. In a Judgment delivered on 19 December 1978, the Court found that jurisdiction to deal with the case was not conferred upon it by either of the two instruments relied upon by Greece: the application of the General Act for Pacific Settlement of International Disputes (Geneva, 1928) — whether or not it was in force — was excluded by the effect of a reservation made by Greece upon accession, while the Greco-Turkish press communiqué of 31 May 1975 did not contain an agreement binding upon either State to accept the unilateral referral of the dispute to the Court.

1.47. Continental Shelf (Tunisia/Libyan Arab Jamahiriya)

By a Special Agreement notified to the Court in 1978, it was asked to determine what principles and rules of international law were applicable to the delimitation as between Tunisia and the Libyan Arab Jamahiriya of the respective areas of continental shelf appertaining to each. After considering arguments as well as evidence based on geology, physiography and bathymetry on the basis of which each party sought to support its claims to particular areas of the sea-bed as the natural prolongation of its land territory, the Court concluded, in a Judgment of 24 February 1982, that the two countries abutted on a common continental shelf and that physical criteria were therefore of no assistance for the purpose of delimitation. Hence it had to be guided by “equitable principles” (as to which it emphasized that this term cannot be interpreted in the abstract, but only as referring to the principles and rules which may be appropriate in order to achieve an equitable result) and by certain factors such as the necessity of ensuring a reasonable degree of proportionality between the areas allotted and the lengths of the coastlines concerned.

The Court found that the application of the equidistance method could not, in the particular circumstances of the case, lead to an equitable result. With respect to the course to be taken by the delimitation line, it distinguished two sectors: near the shore, it considered, having taken note of some evidence of historical agreement as to the maritime boundary, that the delimitation (beginning at the boundary point of Ras Adjir) should run in a north-easterly direction at an angle of approximately 26°; further seawards, it considered that the line of delimitation should veer eastwards at a bearing of 52° to take into account the change of direction of the Tunisian coast to the north of the Gulf of Gabes and the existence of the Kerkennah Islands, to which a “half-effect” was attributed (see map on p. 126).



Purely illustrative map reflecting the approach adopted by the Court for the purpose of drawing the delimitation line

Continental Shelf (Tunisia/Libyan Arab Jamahiriya)

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During the course of the proceedings, Malta requested permission to intervene, claiming an interest of a legal nature under Article 62 of the Court's Statute. In view of the very character of the intervention for which permission was sought, the Court considered that the interest of a legal nature which Malta had invoked could not be affected by the decision in the case and that the request was not one to which, under Article 62, the Court might accede. It therefore rejected it.

1.48. United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)

The case was brought before the Court by Application by the United States following the occupation of its Embassy in Tehran by Iranian militants on 4 November 1979, and the capture and holding as hostages of its diplomatic and consular staff. On a request by the United States for the indication of provisional measures, the Court held that there was no more fundamental prerequisite for relations between States than the inviolability of diplomatic envoys and embassies, and it indicated provisional measures for ensuring the immediate restoration to the United States of the Embassy premises and the release of the hostages. In its decision on the merits of the case, at a time when the situation complained of still persisted, the Court, in its Judgment of 24 May 1980, found that Iran had violated and was still violating obligations owed by it to the United States under conventions in force between the two countries and rules of general international law, that the violation of these obligations engaged its responsibility, and that the Iranian Government was bound to secure the immediate release of the hostages, to restore the Embassy premises, and to make reparation for the injury caused to the United States Government. The Court reaffirmed the cardinal importance of the principles of international law governing diplomatic and consular relations. It pointed out that while, during the events of 4 November 1979, the conduct of militants could not be directly attributed to the Iranian State — for lack of sufficient information — that State had however done nothing to prevent the attack, stop it before it reached its completion or oblige the militants to withdraw from the premises and release the hostages. The Court noted that, after 4 November 1979, certain organs of the Iranian State had endorsed the acts complained of and decided to perpetuate them, so that those acts were transformed into acts of the Iranian State. The Court gave judgment, notwithstanding the absence of the Iranian Government and after rejecting the reasons put forward by Iran in two communications addressed to the Court in support of its assertion that the Court could not and should not entertain the case. The Court was not called upon to deliver a further judgment on the reparation for the injury caused to the United States Government since, by Order of 12 May 1981, the case was removed from the List following discontinuance.

1.49. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)

On 25 November 1981, Canada and the United States notified to the Court a Special Agreement whereby they referred to a Chamber of the Court the question

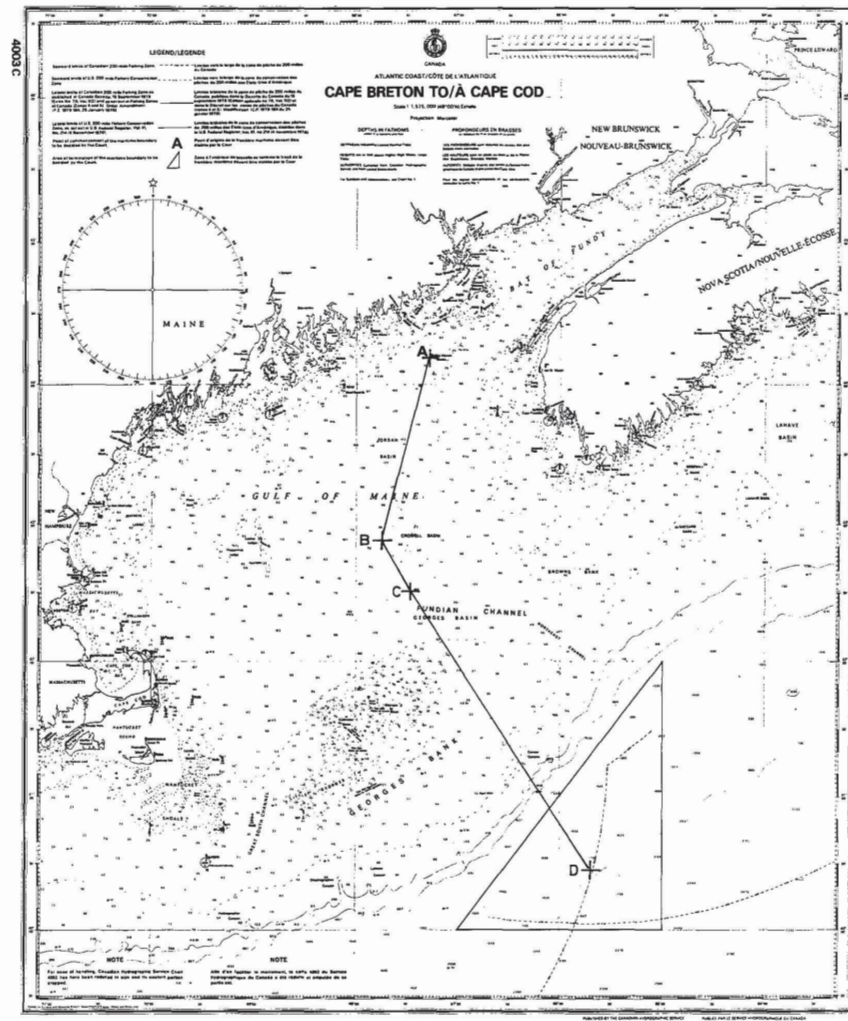
of the delimitation of the maritime boundary dividing the continental shelf and fisheries zones of the two Parties in the Gulf of Maine area. This Chamber was constituted by an Order of 20 January 1982, and it was the first time that a case had been heard by an *ad hoc* Chamber of the Court.

The Chamber delivered its Judgment on 12 October 1984. Having established its jurisdiction and defined the area to be delimited, it reviewed the origin and development of the dispute and laid down the principles and rules of international law governing the issue. It indicated that the delimitation was to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographical configuration of the area and the other relevant circumstances, an equitable result. It rejected the delimitation lines proposed by the Parties, and defined the criteria and methods which it considered to be applicable to the single delimitation line which it was asked to draw. It applied criteria of a primarily geographical nature, and used geometrical methods appropriate both for the delimitation of the sea-bed and for that of the superjacent waters. As for the plotting of the delimitation line, the Chamber distinguished between three segments, the first two lying within the Gulf of Maine and the third outside it. In the case of the first segment, it considered that there was no special circumstance precluding the division into equal parts of the overlapping of the maritime projections of the two States' coasts. The delimitation line runs from the starting-point agreed between the Parties, and is the bisector of the angle formed by the perpendicular to the coastal line running from Cape Elizabeth to the existing boundary terminus and the perpendicular to the coastal line running from that boundary terminus to Cape Sable. For the second segment, the Chamber considered that, in view of the quasi-parallelism between the coasts of Nova Scotia and Massachusetts, a median line should be drawn approximately parallel to the two opposite coasts, and should then be corrected to take account of (a) the difference in length between the coasts of the two States abutting on the delimitation area and (b) the presence of Seal Island off the coast of Nova Scotia. The delimitation line corresponds to the corrected median line from its intersection with the above-mentioned bisector to the point where it reaches the closing line of the Gulf. The third segment is situated in the open ocean, and consists of a perpendicular to the closing line of the Gulf from the point at which the corrected median line intersects with that line. The terminus of this final segment lies within the triangle defined by the Parties and coincides with the last point of overlapping of the respective 200-mile zones claimed by the two States (see map, p. 129). The co-ordinates of the line drawn by the Chamber are given in the operative part of the Judgment.

1.50. *Continental Shelf (Libyan Arab Jamahiriya/Malta)*

This case, which was submitted to the Court in 1982 by Special Agreement between Libya and Malta, related to the delimitation of the areas of continental

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Delimitation line drawn by the Chamber

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)

shelf appertaining to each of these two States. In support of its argument, Libya relied on the principle of natural prolongation and the concept of proportionality. Malta maintained that States' rights over areas of continental shelf were now governed by the concept of distance from the coast, which was held to confer a primacy on the equidistance method of defining boundaries between areas of continental shelf, particularly when these appertained to States lying directly opposite each other, as in the case of Malta and Libya. The Court found that, in view of developments in the law relating to the rights of States over areas of continental shelf, there was no reason to assign a role to geographical or geophysical factors when the distance between the two States was less than 400 miles (as in the instant case). It also considered that the equidistance method did not have to be used and was not the only appropriate delimitation technique. The Court defined a number of equitable principles and applied them in its Judgment of 3 June 1985, in the light of the relevant circumstances. It took account of the main features of the coasts, the difference in their lengths and the distance between them. It took care to avoid any excessive disproportion between the continental shelf appertaining to a State and the length of its coastline, and adopted the solution of a median line transposed northwards over a certain distance. In the course of the proceedings, Italy applied for permission to intervene, claiming that it had an interest of a legal nature under Article 62 of the Statute. The Court found that the intervention requested by Italy fell, by virtue of its object, into a category which — on Italy's own showing — was one which could not be accepted, and the Application was accordingly refused.

1.51. *Frontier Dispute (Burkina Faso/Republic of Mali)*

On 14 October 1983 Burkina Faso (then known as Upper Volta) and Mali notified to the Court a Special Agreement referring to a Chamber of the Court the question of the delimitation of part of the land frontier between the two States. This Chamber was constituted by an Order of 3 April 1985. Following grave incidents between the armed forces of the two countries at the very end of 1985, both Parties submitted parallel requests to the Chamber for the indication of interim measures of protection. The Chamber indicated such measures by an Order of 10 January 1986.

In its Judgment delivered on 22 December 1986, the Chamber began by ascertaining the source of the rights claimed by the Parties. It noted that, in that case, the principles that ought to be applied were the principle of the intangibility of frontiers inherited from colonization and the principle of *uti possidetis juris*, which accords pre-eminence to legal title over effective possession as a basis of sovereignty, and whose primary aim is to secure respect for the territorial boundaries which existed at the time when independence was achieved. The Chamber specified that, when those boundaries were no more than delimitations between

different administrative divisions or colonies all subject to the same sovereign, the application of the principle of *uti possidetis juris* resulted in their being transformed into international frontiers, as in the instant case.

It also indicated that it would have regard to equity *infra legem*, that is, that form of equity which constitutes a method of interpretation of the law and which is based on law. The Parties also relied upon various types of evidence to give support to their arguments, including French legislative and regulative texts or administrative documents, maps and “colonial *effectivités*” or, in other words, the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. Having considered those various kinds of evidence, the Chamber defined the course of the boundary between the Parties in the disputed area. The Chamber likewise took the opportunity to point out, with respect to the tripoint Niger-Mali-Burkina Faso, that its jurisdiction was not restricted simply because the endpoint of the frontier lay on the frontier of a third State not a party to the proceedings. It further pointed out that the rights of Niger were in any event safeguarded by the operation of Article 59 of the Statute of the Court.

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

On 9 April 1984 Nicaragua filed an Application instituting proceedings against the United States of America, together with a request for the indication of provisional measures concerning a dispute relating to responsibility for military and paramilitary activities in and against Nicaragua. On 10 May 1984 the Court made an Order indicating provisional measures. One of these measures required the United States immediately to cease and refrain from any action restricting access to Nicaraguan ports, and, in particular, the laying of mines. The Court also indicated that the right to sovereignty and to political independence possessed by Nicaragua, like any other State, should be fully respected and should not be jeopardized by activities contrary to the principle prohibiting the threat or use of force and to the principle of non-intervention in matters within the domestic jurisdiction of a State. The Court also decided in the aforementioned Order that the proceedings would first be addressed to the questions of the jurisdiction of the Court and of the admissibility of the Nicaraguan Application. Just before the closure of the written proceedings in this phase, El Salvador filed a declaration of intervention in the case under Article 63 of the Statute, requesting permission to claim that the Court lacked jurisdiction to entertain Nicaragua’s Application. In its Order dated 4 October 1984, the Court decided that El Salvador’s declaration of intervention was inadmissible inasmuch as it related to the jurisdictional phase of the proceedings.

After hearing argument from both Parties in the course of public hearings held from 8 to 18 October 1984, on 26 November 1984 the Court delivered a Judgment

stating that it possessed jurisdiction to deal with the case and that Nicaragua's Application was admissible. In particular, it held that the Nicaraguan declaration of 1929 was valid and that Nicaragua was therefore entitled to invoke the United States declaration of 1946 as a basis of the Court's jurisdiction (Article 36, paragraphs 2 and 5, of the Statute). The subsequent proceedings took place in the absence of the United States, which announced on 18 January 1985 that it "intends not to participate in any further proceedings in connection with this case". From 12 to 20 September 1985, the Court heard oral argument by Nicaragua and the testimony of the five witnesses it had called. On 27 June 1986, the Court delivered its Judgment on the merits. The findings included a rejection of the justification of collective self-defence advanced by the United States concerning the military or paramilitary activities in or against Nicaragua, and a statement that the United States had violated the obligations imposed by customary international law not to intervene in the affairs of another State, not to use force against another State, not to infringe the sovereignty of another State, and not to interrupt peaceful maritime commerce. The Court also found that the United States had violated certain obligations arising from a bilateral Treaty of Friendship, Commerce and Navigation of 1956, and that it had committed acts such to deprive that treaty of its object and purpose.

It decided that the United States was under a duty immediately to cease and to refrain from all acts constituting breaches of its legal obligations, and that it must make reparation for all injury caused to Nicaragua by the breaches of obligations under customary international law and the 1956 Treaty, the amount of that reparation to be fixed in subsequent proceedings if the Parties were unable to reach agreement. The Court subsequently fixed, by an Order, time-limits for the filing of written pleadings by the Parties on the matter of the form and amount of reparation, and the Memorial of Nicaragua was filed on 29 March 1988, while the United States maintained its refusal to take part in the case. In September 1991, Nicaragua informed the Court, *inter alia*, that it did not wish to continue the proceedings. The United States told the Court that it welcomed the discontinuance and, by an Order of the President dated 26 September 1991, the case was removed from the Court's List.

*1.53. Application for Revision and Interpretation
of the Judgment of 24 February 1982 in the Case concerning
the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)
(Tunisia v. Libyan Arab Jamahiriya)*

This application was submitted to the Court by Tunisia, which took the view that the 1982 Judgment (see No. 1.47 above) gave rise to certain problems of implementation. Although the Court had already had to deal with several requests for interpretation, this was the first time an application for revision had come before it. The Statute of the Court states that a judgment may only be revised if there has been a discovery of some fact of such a nature as to be a decisive factor.

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Libya opposed Tunisia's twofold application, denying that there had been any problems of implementation of the kind invoked by Tunisia, and arguing that Tunisia's request for interpretation was merely an application for revision, in another guise.

In its Judgment of 10 December 1985, rendered unanimously, the Court rejected the application for revision as inadmissible. It found admissible the request for interpretation of the Judgment of 24 February 1982 so far as it related to the first sector of the delimitation laid down by that Judgment, stated the interpretation which should be made in that respect, and found that the submission of Tunisia relating to that sector could not be upheld; it found moreover that the request made by Tunisia for the correction of an error was without object, and that there was no call for it to give a decision thereon. The Court also found admissible the request for interpretation of the Judgment of 24 February 1982 so far as it related to the most westerly point of the Gulf of Gabes in the second sector of the delimitation laid down by that Judgment, stated the interpretation which should be made in that respect, and found that it could not uphold the submission made by Tunisia relating to that sector. In conclusion, the Court found that no cause had arisen for it to order an expert survey for the purpose of ascertaining the precise co-ordinates of the most westerly point of the Gulf of Gabes.

1.54-1.55. Border and Transborder Armed Actions (Nicaragua v. Costa Rica) (Nicaragua v. Honduras)

On the same day, 28 July 1986, Nicaragua instituted proceedings against Costa Rica and Honduras, respectively, alleging various violations of international law for which the two States bore legal responsibility, particularly on account of certain military activities directed against the Nicaraguan authorities by the *contras* operating from their territory.

In the former case, Nicaragua proceeded to file its Memorial on the merits on 10 August 1987. Subsequently, by a communication dated 12 August 1987, Nicaragua, referring to an agreement signed on 7 August 1987 at Guatemala City by the Presidents of the five States of Central America (the "Esquipulas II" Agreement), declared that it was discontinuing the judicial proceedings instituted against Costa Rica. Costa Rica did not object to the discontinuance, and the case was removed from the General List by an Order of the President dated 19 August 1987.

In the latter case, Honduras informed the Court that in its view the Court had no jurisdiction to deal with the case and, after a meeting with the President, the Parties agreed that the questions of jurisdiction and admissibility would be dealt with at a preliminary stage of the proceedings. Once the Parties had filed their written pleadings and taken part in hearings devoted to those questions, the Court delivered its Judgment in the case on 20 December 1988. Nicaragua had relied, as the basis of the jurisdiction of the Court, both on Article XXXI of the Inter-American Treaty for the Peaceful Settlement of Disputes (known as the "Pact of

Bogotá”) of 1948 and on the declarations of acceptance of the compulsory jurisdiction of the Court made by the Parties under Article 36, paragraph 2, of the Statute. The Court found that the Pact of Bogotá conferred jurisdiction upon it. It dismissed the two arguments asserted successively by Honduras in that regard, namely that Article XXXI of the Pact had to be supplemented by a declaration of acceptance of compulsory jurisdiction or that it could be so supplemented but need not be. The Court found that the first argument was incompatible with the actual terms of Article XXXI. With regard to the second argument, the Court had to consider the divergent interpretations of Article XXXI that were proposed by the Parties, and set aside the interpretation of Honduras according to which, *inter alia*, effect should be given to the reservations to Honduras’s acceptance of the jurisdiction of the Court that had been introduced into its declaration of 1986. On that point, the Court found that the commitment in Article XXXI of the Pact was independent of the declarations of acceptance of its jurisdiction.

The Court moreover rejected the four objections raised by Honduras to the admissibility of the Application, of which two had a general character and two were derived from the Pact of Bogotá. Subsequently, and after the proceedings on the merits had been initiated and Nicaragua had filed its Memorial, and after the Court, at the request of the Parties, had postponed the date for the fixing of the time-limit for the presentation of the Counter-Memorial of Honduras, the Agent of Nicaragua, in May 1992, informed the Court that the Parties had reached an out-of-court agreement and did not wish to go on with the proceedings. On 27 May 1992, the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the General List.

1.56. Land, Island and Maritime Frontier Dispute
(El Salvador/Honduras: Nicaragua intervening)

On 11 December 1986, El Salvador and Honduras notified to the Court a Special Agreement whereby the Parties requested the Court to form a Chamber — consisting of three Members of the Court and two judges *ad hoc* — in order to (1) delimit the frontier line in the six sectors not delimited by the 1980 General Treaty of Peace concluded between the two States in 1980 and (2) determine the legal situation of the islands in the Gulf of Fonseca and the maritime spaces within and outside it. That Chamber was constituted by an Order of 8 May 1987. The time-limits for the written proceedings were fixed, but extended several times at the request of the Parties.

In November 1989, Nicaragua addressed to the Court an Application under Article 62 of the Statute for permission to intervene in the case, stating that, while it had no desire to intervene in the dispute concerning the land boundary, it wished to protect its rights in the Gulf of Fonseca (of which the three States are riparians), as well as “in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute”. Nicaragua further maintained that

its request for permission to intervene was a matter exclusively within the procedural mandate of the full Court. The Court, by an Order adopted on 28 February 1990, found that it was for the Chamber formed to deal with the case to decide whether the Application for permission to intervene should be granted. Having heard the Parties and Nicaragua at a series of public sittings, the Chamber delivered its Judgment on 13 September 1990. It found that Nicaragua had shown that it had an interest of a legal nature which might be affected by part of the Judgment of the Chamber on the merits, with regard to the legal régime of the waters of the Gulf of Fonseca.

The Chamber on the other hand decided that Nicaragua had not shown such an interest which might be affected by any decision it might be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf or any decision as to the legal situation of the islands in the Gulf. Within the framework thus defined, the Chamber decided that Nicaragua was entitled to intervene in the case. A written statement of Nicaragua and written observations on that statement by El Salvador and Honduras were subsequently filed with the Court. The oral arguments of the Parties and the oral observations of Nicaragua were heard at 50 public sittings, held between April and June 1991. The Chamber delivered its Judgment on 11 September 1992.

The Chamber began by noting the agreement of both Parties that the fundamental principle for determining the land area is the *uti possidetis juris*, i.e., the principle, generally accepted in Spanish America, that international boundaries follow former colonial administrative boundaries. The Chamber was, moreover, authorized to take into account, where pertinent, a provision of the 1980 Peace Treaty that a basis for delimitation is to be found in documents issued by the Spanish Crown or any other Spanish authority during the colonial period, and indicating the jurisdictions or limits of territories, as well as other evidence and arguments of a legal, historical, human or any other kind. Noting that the Parties had invoked the exercise of government powers in the disputed areas and of other forms of *effectivités*, the Chamber considered that it might have regard to evidence of action of this kind affording indications of the *uti possidetis juris* boundary. The Chamber then considered successively, from west to east, each of the six disputed sectors of the land boundary, to which some 152 pages were specifically devoted.

With regard to the legal situation of the islands in the Gulf, the Chamber considered that, although it had jurisdiction to determine the legal situation of all the islands, a judicial determination was required only for those in dispute, which it found to be El Tigre, Meanguera and Meanguerita. It rejected Honduras's claim that there was no real dispute as to El Tigre. Noting that in legal theory each island appertained to one of the Gulf States by succession from Spain, which precluded acquisition by occupation, the Chamber observed that effective possession

by one of the States could constitute a post-colonial *effectivité* shedding light on the legal situation. Since Honduras had occupied El Tigre since 1849, the Chamber concluded that the conduct of the Parties accorded with the assumption that El Tigre appertained to it. The Chamber found Meanguerita, which is very small, uninhabited and contiguous to Meanguera, to be a “dependency” of Meanguera. It noted that El Salvador had claimed Meanguera in 1854 and that from the late nineteenth century the presence there of El Salvador had intensified, as substantial documentary evidence of the administration of Meanguera by El Salvador showed. A protest in 1991 by Honduras to El Salvador over Meanguera was considered too late to affect the presumption of acquiescence by Honduras. The Chamber thus found that Meanguera and Meanguerita appertained to El Salvador.

With respect to the maritime spaces within the Gulf, El Salvador claimed that they were subject to a condominium of the three coastal States and that delimitation would hence be inappropriate; Honduras argued that within the Gulf there was a community of interests necessitating a judicial delimitation. Applying the normal rules of treaty interpretation to the Special Agreement and the Peace Treaty, the Chamber found that it had no jurisdiction to effect a delimitation, whether inside or outside the Gulf. As for the legal situation of the waters of the Gulf, the Chamber noted that, given its characteristics, the Gulf was generally acknowledged to be a historic bay. The Chamber examined the history of the Gulf to discover its “régime”, taking into account the 1917 Judgment of the Central American Court of Justice in a case between El Salvador and Nicaragua concerning the Gulf. In its Judgment, the Central American Court had found *inter alia* that the Gulf was a historic bay possessing the characteristics of a closed sea. Noting that the coastal States continued to claim the Gulf as a historic bay with the character of a closed sea, a position in which other nations acquiesced, the Chamber observed that its views on the régime of the historic waters of the Gulf coincided with those expressed in the 1917 Judgment. It found that the Gulf waters, other than the three-mile maritime belt, were historic waters and subject to the joint sovereignty of the three coastal States. It noted that there had been no attempt to divide the waters according to the principle of *uti possidetis juris*. A joint succession of the three States to the maritime area thus seemed to be the logical outcome of the *uti possidetis* principle. The Chamber accordingly found that Honduras had legal rights in the waters up to the bay closing line, which it considered also to be a baseline.

Regarding the waters outside the Gulf, the Chamber observed that entirely new concepts of law, unthought of when the Central American Court gave its Judgment in 1917, were involved, in particular those regarding the continental shelf and the exclusive economic zone, and found that, excluding a strip at either extremity corresponding to the maritime belts of El Salvador and Nicaragua, the three joint sovereigns were entitled, outside the closing line, to a territorial sea, continental shelf and exclusive economic zone, but must proceed to a division by mutual

agreement. Lastly, as regards the effect of the Judgment on the intervening State, the Chamber found that it was not *res judicata* for Nicaragua.

1.57. Elettronica Sicula S.p.A. (ELSI)
(United States of America v. Italy)

On 6 February 1987, the United States instituted proceedings against Italy in respect of a dispute arising out of the requisition by the Government of Italy of the plant and related assets of Raytheon-Elsi S.p.A., an Italian company producing electronic components and previously known as Elettronica Sicula S.p.A. (ELSD), which was stated to have been 100 per cent owned by two United States corporations. The Court, by an Order dated 2 March 1987, formed a Chamber of five judges to deal with the case, as requested by the Parties. Italy, in its Counter-Memorial, raised an objection to the admissibility of the Application on the grounds of a failure to exhaust local remedies, and the Parties agreed that that objection should “be heard and determined within the framework of the merits”. On 20 July 1989, the Chamber delivered a Judgment in which it rejected the objection raised by Italy and said that the latter had not committed any of the breaches alleged by the United States of the bilateral Treaty of Friendship, Commerce and Navigation of 1948, or of the Agreement Supplementing that Treaty. The United States principally reproached the Respondent *(a)* with having effected an unlawful requisition of the ELSI plant, thus depriving the shareholders of their direct right to proceed to the liquidation of the company’s assets under normal conditions; *(b)* with having been incapable of preventing the occupation of the plant by the employees; *(c)* with having failed to reach any decision as to the legality of the requisition during a period of sixteen months; and *(d)* with having intervened in the bankruptcy proceedings, with the result that it had purchased ELSI at a price well below its true market value. After a detailed consideration of the facts alleged and the relevant conventional provisions, the Chamber found that the Respondent had not breached the 1948 Treaty and the Agreement supplementing that Treaty in the manner claimed by the Applicant, and rejected the claim for reparation made by the United States.

1.58. Maritime Delimitation in the Area between Greenland and Jan Mayen
(Denmark v. Norway)

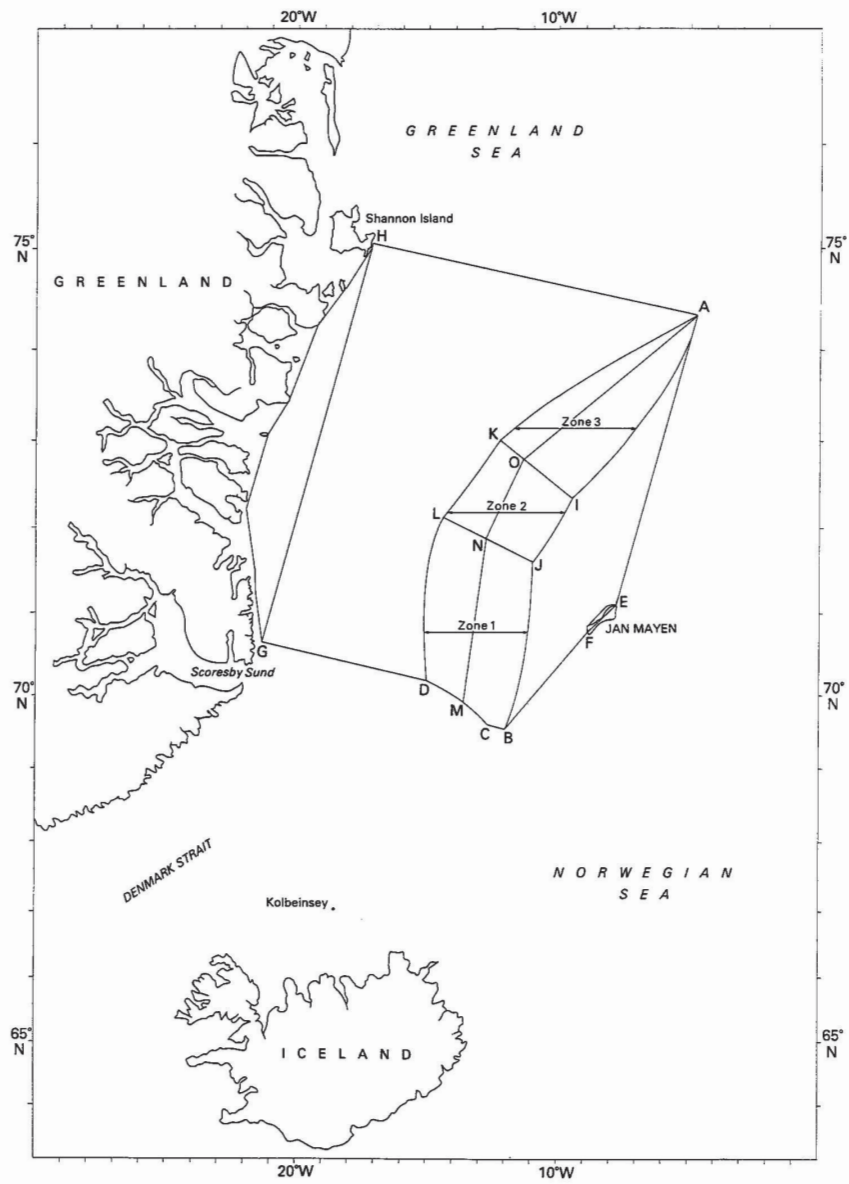
On 16 August 1988, the Government of Denmark filed in the Registry an Application instituting proceedings against Norway, by which it seised the Court of a dispute concerning the delimitation of Denmark’s and Norway’s fishing zones and continental shelf areas in the waters between the east coast of Greenland and the Norwegian island of Jan Mayen, where both Parties laid claim to an area of some 72,000 square kilometres. On 14 June 1993, the Court delivered its Judgment. Denmark had asked the Court to draw a single line of delimitation of those areas at a distance of 200 nautical miles measured from Greenland’s baseline, or, if the Court did not find it possible to draw such a line, in accordance with international law. Norway, for its part, had asked the Court to find that the median

line constituted the two lines of separation for the purpose of the delimitation of the two relevant areas, on the understanding that those lines would then coincide, but that the delimitations would remain conceptually distinct. A principal contention of Norway was that a delimitation had already been established between Jan Mayen and Greenland, by the effect of treaties in force between the Parties — a bilateral Agreement of 1965 and the 1958 Geneva Convention on the Continental Shelf — as both instruments provide for the drawing of a median line.

The Court noted, in the first place, that the 1965 Agreement covered areas different from the continental shelf between the two countries, and that that Agreement did not place on record any intention of the Parties to undertake to apply the median line for any of the subsequent delimitations of that continental shelf. The Court then found that the force of Norway's argument relating to the 1958 Convention depended in the circumstances of the case upon the existence of "special circumstances" as envisaged by the Convention. It subsequently rejected the argument of Norway according to which the Parties, by their "conjoint conduct" had long recognized the applicability of a median line delimitation in their mutual relations. The Court examined separately the two strands of the applicable law: the effect of Article 6 of the 1958 Convention, applicable to the delimitation of the continental shelf boundary, and then the effect of the customary law which governed the fishery zone. After examining the case law in this field and the provisions of the 1982 United Nations Convention on the Law of the Sea, the Court noted that the statement (in those provisions) of an "equitable solution" as the aim of any delimitation process reflected the requirements of customary law as regards the delimitation both of the continental shelf and of exclusive economic zones. It appeared to the Court that, both for the continental shelf and for the fishery zones in the instant case, it was proper to begin the process of delimitation by a median line provisionally drawn, and it then observed that it was called upon to examine every particular factor in the case which might suggest an adjustment or shifting of the median line provisionally drawn. The 1958 Convention required the investigation of any "special circumstances"; the customary law based upon equitable principles for its part required the investigation of the "relevant circumstances".

The Court found that, although it was a matter of categories which were different in origin and in name, there was inevitably a tendency towards assimilation between the two types of circumstances. The Court then turned to the question whether the circumstances of the instant case required adjustment or shifting of the median line. To that end it considered a number of factors. With regard to the disparity or disproportion between the lengths of the "relevant coasts", alleged by Denmark, the Court concluded that the striking difference in lengths of the relevant coasts constituted a special circumstance within the meaning of Article 6, paragraph 1, of the 1958 Convention. Similarly, as regards the fishery zones, the Court was of the opinion that the application of the median line led to manifestly

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Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)

inequitable results. The Court concluded therefrom that the median line should be adjusted or shifted in such a way as to effect a delimitation closer to the coast of Jan Mayen.

The Court then considered certain circumstances that might also affect the position of the boundary line, i.e., access to resources, essentially fishery resources (capelin), particularly with regard to the presence of ice; population and economy; questions of security; conduct of the Parties. Among those factors, the Court only retained the one relating to access to resources, considering that the median line was too far to the west for Denmark to be assured of equitable access to the capelin stock. It concluded that, for that reason also, the median line had to be adjusted or shifted eastwards. Lastly, the Court proceeded to define the single line of delimitation as being the line M-N-O-A marked on the sketch-map reproduced on page 139.

*1.59. Aerial Incident of 3 July 1988
(Islamic Republic of Iran v. United States of America)*

By an Application dated 17 May 1989, the Islamic Republic of Iran instituted proceedings before the Court against the United States of America, further to the destruction in the air by the *USS Vincennes*, a guided-missile cruiser of the United States armed forces operating in the Persian Gulf, of an Iran Air Airbus A-300B, causing the deaths of its 290 passengers and crew. According to the Government of the Islamic Republic of Iran, the United States, by its destruction of that aircraft occasioning fatal casualties, by refusing to compensate Iran for the damage caused and by its continuous interference in aviation in the Persian Gulf, had violated certain provisions of the 1944 Chicago Convention on International Civil Aviation and of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The Islamic Republic of Iran likewise asserted that the Council of the International Civil Aviation Organization (ICAO) had erred in a decision of 17 March 1989 concerning the incident. Within the time-limit fixed for the filing of its Counter-Memorial, the United States of America raised preliminary objections to the jurisdiction of the Court.

Subsequently, by a letter dated 8 August 1994, the Agents of the two Parties jointly informed the Court that their Governments had “entered into negotiations that may lead to a full and final settlement of [the] case” and requested the Court “[to postpone] *sine die* the opening of the oral proceedings” on the preliminary objections, for which it had fixed the date of 12 September 1994. By a letter dated 22 February 1996 and filed in the Registry on the same day, the Agents of the two Parties jointly notified the Court that their Governments had agreed to discontinue the case because they had entered into “an agreement in full and final settlement”. Accordingly, the President of the Court, also on 22 February 1996, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court’s List.

1.60. Certain Phosphate Lands in Nauru (Nauru v. Australia)

On 19 May 1989 the Republic of Nauru filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in respect of a dispute concerning the rehabilitation of certain phosphate lands mined under Australian administration before Nauruan independence. In its Application, Nauru claimed that Australia had breached the trusteeship obligations it had accepted under Article 76 of the Charter of the United Nations and under the Trusteeship Agreement for Nauru of 1 November 1947. Nauru further claimed that Australia had breached certain obligations towards Nauru under general international law, more particularly with regard to the implementation of the principle of self-determination and of permanent sovereignty over natural wealth and resources. Australia was said to have incurred an international legal responsibility and to be bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered. Within the time-limit fixed for the filing of its Counter-Memorial, Australia raised certain preliminary objections relating to the admissibility of the Application and the jurisdiction of the Court.

On 26 June 1992, the Court delivered its Judgment on those questions. With regard to the matter of its jurisdiction, the Court noted that Nauru based that jurisdiction on the declarations whereby Australia and Nauru had accepted the jurisdiction of the Court under Article 36, paragraph 2, of the Statute. The declaration of Australia specified that it did “not apply to any dispute in regard to which the Parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement”. Referring to the Trusteeship Agreement of 1947 and relying upon the reservation contained in its declaration to assert that the Court lacked jurisdiction to deal with Nauru’s Application, Australia argued that any dispute which arose in the course of the trusteeship between “the Administering Authority and the indigenous inhabitants” should be regarded as having been settled by the very fact of the termination of the trusteeship (provided that that termination had been unconditional) as well as by the effect of the Agreement relating to the Nauru Island Phosphate Industry of 1967, concluded between the Nauru Local Government Council, on the one hand, and Australia, New Zealand and the United Kingdom, on the other, whereby Nauru was said to have waived its claims to rehabilitation of the phosphate lands. As Australia and Nauru did not, after 31 January 1968, when Nauru acceded to independence, conclude any agreement whereby the two States undertook to settle their dispute relating to rehabilitation, the Court rejected that first preliminary objection of Australia. It likewise rejected the second, third, fourth and fifth objections raised by Australia.

The Court then considered the objection by Australia based on the fact that New Zealand and the United Kingdom were not parties to the proceedings. It noted that the three Governments mentioned in the Trusteeship Agreement constituted, in the very terms of that Agreement, “the Administering Authority” for Nauru; but this Authority did not have an international legal personality distinct

from those of the States thus designated; and that, of those States, Australia played a very special role, established, in particular, by the Trusteeship Agreement. The Court did not consider, to begin with, that any reason had been shown why a claim brought against only one of the three States should be declared inadmissible in *limine litis*, merely because that claim raised questions regarding the administration of the territory, which was shared with the two other States. It further considered, *inter alia*, that it was in no way precluded from adjudicating upon the claims submitted to it, provided the legal interests of the third State which might possibly be affected did not form the actual subject-matter of the decision requested. Where the Court was so entitled to act, the interests of the third State which was not a party to the case were protected by Article 59 of the Statute. The Court found that, in the instant case, the interests of New Zealand and the United Kingdom did not constitute the actual subject-matter of the Judgment to be rendered on the merits of Nauru's Application and that, consequently, it could not refuse to exercise its jurisdiction and that the objection argued on that point should be dismissed.

Lastly, the Court upheld the preliminary objection addressed by Australia to the claim by Nauru concerning the overseas assets of the British Phosphate Commissioners, according to which it was inadmissible on the ground that it was a completely new claim which appeared for the first time in the Memorial, and that the object of the dispute originally submitted to the Court would have been transformed if it had dealt with that request. A Counter-Memorial of Australia on the merits was subsequently filed and the Court fixed the dates for the filing of a Reply by the Applicant and a Rejoinder by the Respondent. However, before those two pleadings were filed, the two Parties, by a joint notification deposited on 9 September 1993, informed the Court that they had, in consequence of having reached a settlement, agreed to discontinue the proceedings. Accordingly, the case was removed from the General List by an Order of the Court of 13 September 1993.

1.61. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)

On 23 August 1989, Guinea-Bissau instituted proceedings against Senegal, on the basis of the declarations made by both States under Article 36, paragraph 2, of the Statute. Guinea-Bissau explained that, notwithstanding the negotiations pursued from 1977 onwards, the two States had been unable to reach a settlement of a dispute concerning the maritime delimitation to be effected between them. Consequently they had jointly consented, by an Arbitration Agreement dated 12 March 1985, to submit that dispute to an Arbitration Tribunal composed of three members. Guinea-Bissau indicated that, according to the terms of Article 2 of that Agreement, the Tribunal had been asked to rule on the following twofold question:

“1. Does the Agreement concluded by an exchange of letters [between France and Portugal] on 26 April 1960, and which relates to the maritime

boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?

2. In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"

Guinea-Bissau added that it had been specified, in Article 9 of the Agreement, that the Tribunal would inform the two Governments of its decision regarding the questions set forth in Article 2, and that that decision should include the drawing of the frontier line on a map. According to the Application, the Tribunal communicated to the Parties on 31 July 1989 a "text that was supposed to serve as an award" but did not in fact amount to one. Guinea-Bissau asserted that the decision was inexistent as the majority of two arbitrators (against one) that had voted in favour of the text was no more than apparent given that one of the two arbitrators — in fact the President of the Tribunal — was said to have "expressed a view in contradiction with the one apparently adopted by the vote", in a declaration appended thereto. Subsidiarily, Guinea-Bissau maintained that the Award was null and void, as the Tribunal had failed, in various ways (see explanation below) to accomplish the task assigned to it by the Agreement. By an Order dated 12 February 1990, the Court dismissed a request for the indication of provisional measures presented by Guinea-Bissau.

It delivered its Judgment on 12 November 1991. The Court first considered its jurisdiction, and, in particular, found that Guinea-Bissau's declaration contained no reservation, but that the declaration of Senegal, which replaced a previous declaration of 3 May 1985, provided among other things that it was applicable only to "all legal disputes arising after the present declaration . . .". As the Parties agreed that only the dispute relating to the Award rendered by the Tribunal (which arose after the Senegalese declaration) was the subject of the proceedings before the Court and that it should not be seen as an appeal from the Award, or as an application for revision of it, the Court accordingly regarded its jurisdiction as established. It then rejected, *inter alia*, Senegal's contention that Guinea-Bissau's Application, or the arguments used in support of it, amounted to an abuse of process. With regard to Guinea-Bissau's contention that the Award was inexistent, the Court considered that the view expressed by the President of the Tribunal in his declaration constituted only an indication of what he considered would have been a better course. His position therefore could not be regarded as standing in contradiction with the position adopted by the Award. The Court accordingly dismissed the contention of Guinea-Bissau that the Award was inexistent for lack of a real majority.

The Court then examined the question of the nullity of the Award, as Guinea-Bissau had observed that the Tribunal had not replied to the second question put in Article 2 of the Arbitration Agreement and had not appended to the

Award the map provided for in Article 9 of that Agreement. According to Guinea-Bissau, those two omissions constituted an *excès de pouvoir*. It was further asserted that no reasons had been given by the Tribunal for its decision. With regard to the absence of a reply to the second question, the Court recognized that the structure of the Award was, in that respect, open to criticism, but concluded that the Award was not flawed by any failure to decide. The Court then observed that the Tribunal's statement of reasoning, while succinct, was clear and precise, and concluded that the second contention of Guinea-Bissau must also be dismissed. With regard to the validity of the reasoning adopted by the Tribunal on the issue of whether it was required to answer the second question, the Court recalled that an international tribunal normally had the right to decide as to its own jurisdiction and the power to interpret for that purpose the instruments which governed that jurisdiction. It observed that Guinea-Bissau was in fact criticizing the interpretation in the Award of the provisions of the Arbitration Agreement which determine the Tribunal's jurisdiction, and proposing another interpretation. Further to a detailed consideration of Article 2 of the Arbitration Agreement, it concluded that the Tribunal had not acted in manifest breach of its competence to determine its own jurisdiction by deciding that it was not required to answer the second question except in the event of a negative answer to the first. Then, with respect to the argument of Guinea-Bissau that the answer given by the Tribunal to the first question was a partially negative answer and that this sufficed to satisfy the prescribed condition for entering into the second question, the Court found that the answer given achieved a partial delimitation, and that the Tribunal had thus been able to find, without manifest breach of its competence, that its answer to the first question was not a negative one. The Court concluded that, in this respect also, the contention of Guinea-Bissau that the entire Award was a nullity must be rejected. It considered moreover that the absence of a map could not in this case constitute such an irregularity as would render the Award invalid.

1.62. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*

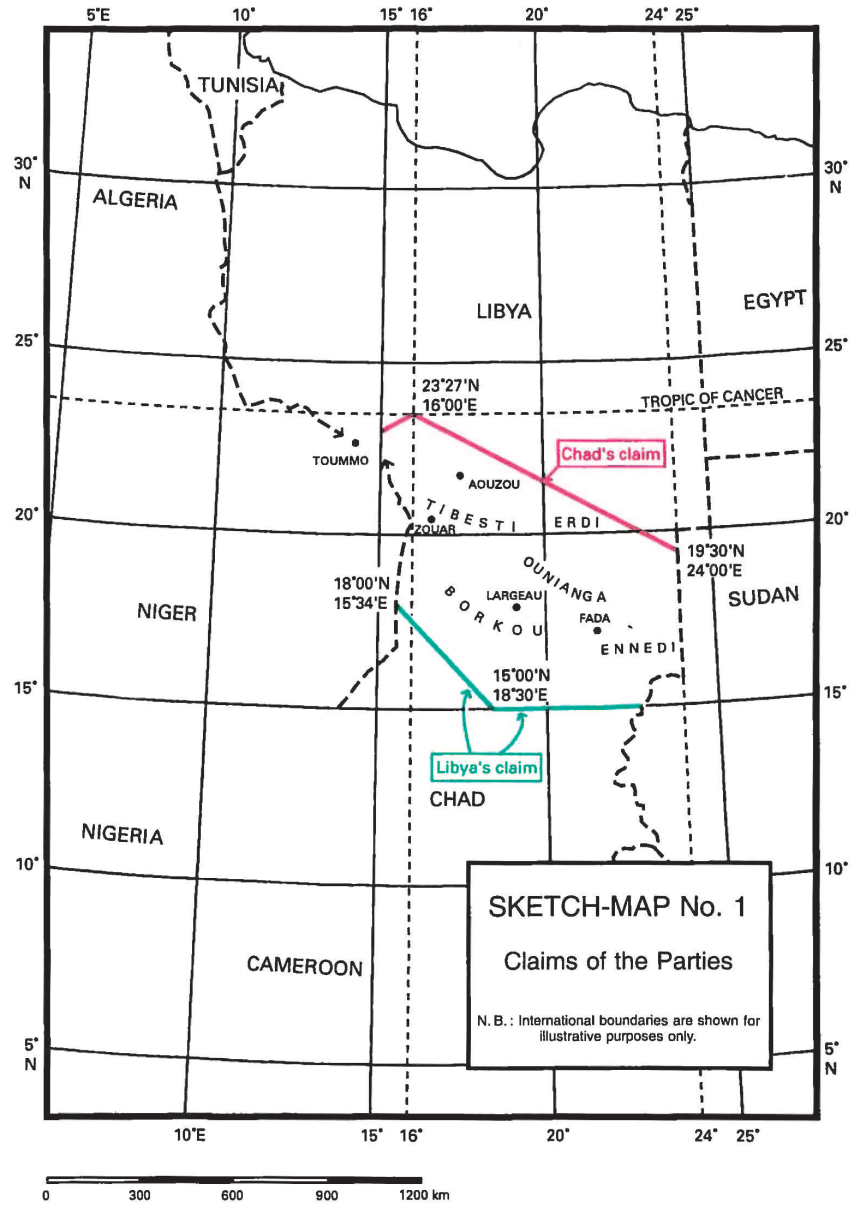
On 31 August 1990, the Libyan Arab Jamahiriya filed in the Registry a notification of an Agreement that it had concluded with Chad in Algiers on 31 August 1989, in which it was agreed, *inter alia*, that in the absence of a political settlement of their territorial dispute, they undertook to submit that dispute to the Court. On 3 September 1990, Chad filed an Application instituting proceedings against the Libyan Arab Jamahiriya that was based upon the aforementioned Agreement and, subsidiarily, on the Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955. The Parties subsequently agreed that the proceedings had in fact been instituted by two successive notifications of the Special Agreement constituted by the Algiers Agreement. The written proceedings occasioned the filing, by each of the Parties, of a Memorial, a Counter-Memorial and a Reply, accompanied by voluminous annexes, and the oral proceedings were held in June and July 1993.

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The Court delivered its Judgment on 3 February 1994. It began by observing that Libya considered that there was no existing boundary, and had asked the Court to determine one, while Chad considered that there was an existing boundary, and had asked the Court to declare what that boundary was. The Court then referred to the lines claimed by Chad and by Libya, as illustrated in sketch-map No. 1 reproduced in the Judgment (see below p. 146); Libya's claim was on the basis of a coalescence of rights and titles of the indigenous inhabitants, the Senoussi Order, the Ottoman Empire, Italy and Libya itself; while that of Chad was on the basis of a Treaty of Friendship and Good Neighbourliness concluded by France and Libya on 10 August 1955, or, alternatively, on French *effectivités*, either in relation to, or independently of, the provisions of earlier treaties.

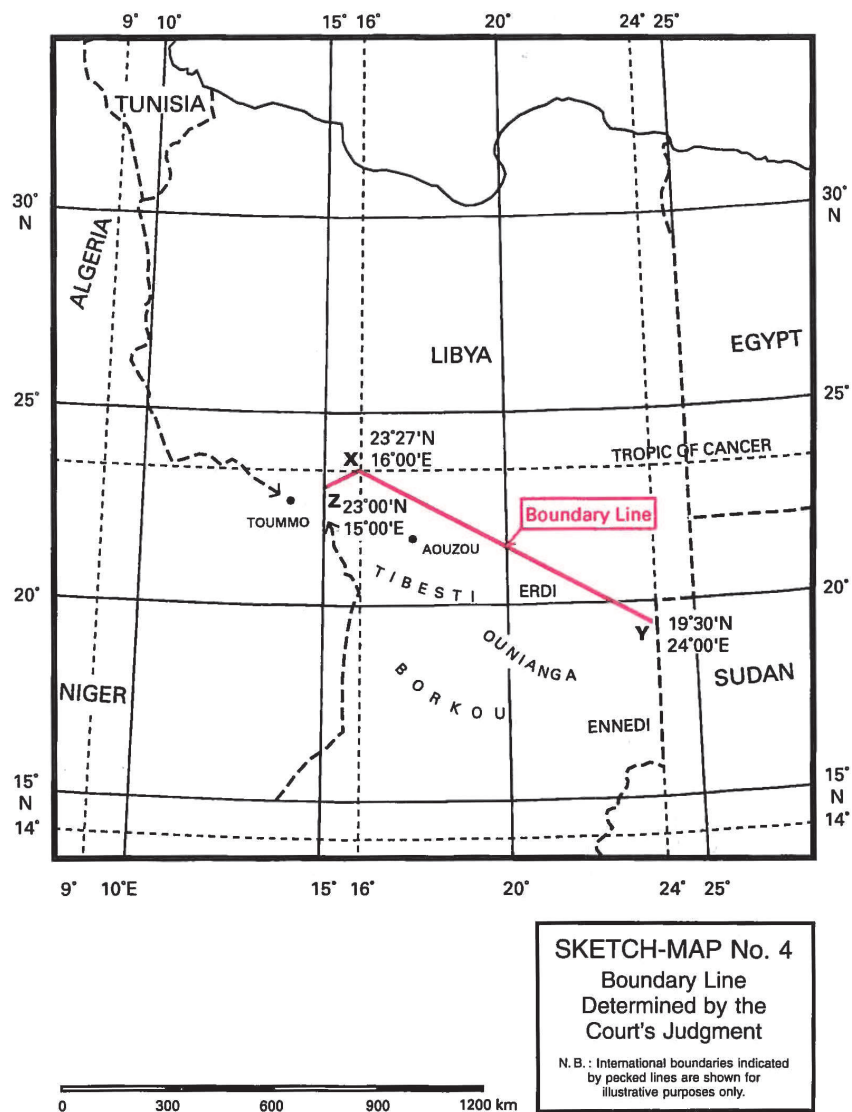
The Court noted that it had been recognized by both Parties that the 1955 Treaty between France and Libya was the logical starting-point for consideration of the issues before the Court. Neither Party questioned the validity of the 1955 Treaty, nor did Libya question Chad's right to invoke against Libya any such provisions thereof as related to the frontiers of Chad. One of the matters specifically addressed was the question of frontiers, dealt with in Article 3 and Annex I. The Court pointed out that if the 1955 Treaty did result in a boundary, this furnished the answer to the issues raised by the Parties. Article 3 of the Treaty provided that France and Libya recognized that the frontiers between, *inter alia*, the territories of French Equatorial Africa and the territory of Libya were those that resulted from a number of international instruments in force on the date of the constitution of the United Kingdom of Libya and reproduced in Annex I to the Treaty. In the view of the Court, the terms of the Treaty signified that the Parties thereby recognized complete frontiers between their respective territories as resulting from the combined effect of all the instruments listed in Annex I. By entering into the Treaty, the Parties recognized the frontiers to which the text of the Treaty referred; the task of the Court was thus to determine the exact content of the undertaking entered into. The Court specified in that regard that there was nothing to prevent the Parties from deciding by mutual agreement to consider a certain line as a frontier, whatever the previous status of that line. If it was already a territorial boundary, it was confirmed purely and simply.

It was clear to the Court that — contrary to what was contended by the Libyan Arab Jamahiriya — the Parties had agreed to consider the instruments listed as being in force for the purpose of Article 3, since otherwise they would not have included them in the Annex. Having concluded that the Contracting Parties wished, by the 1955 Treaty, to define their common frontier, the Court considered what that frontier was. Accordingly it proceeded to a detailed study of the instruments relevant to the case, i.e., (a) to the east of the line of 16° longitude, the Anglo-French Declaration of 1899 — which defined a line limiting the French zone (or sphere of influence) to the north-east in the direction of Egypt and the Nile Valley, already under British control — and the Convention of 8 Septem-



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ber 1919 signed at Paris between Great Britain and France, which resolved the question of the location of the boundary of the French zone under the 1899 Declaration; (b) to the west of the line of 16° longitude, the Franco-Italian Agreement (Exchange of Letters) of 1 November 1902, which referred to the map annexed to the Declaration of 21 March 1899. The Court pointed out that that map could only be the map in the *Livre jaune* published by the French authorities in 1899 and which showed a dotted line indicating the frontier of Tripolitania.

The Court then described the line resulting from those relevant international instruments (see map on p. 147). Considering the attitudes adopted subsequently by the Parties with regard to their frontiers, it reached the conclusion that the existence of a determined frontier had been accepted and acted upon by the Parties. Lastly, referring to the provision of the 1955 Treaty according to which it had been concluded for a period of 20 years and could be terminated unilaterally, the Court indicated that that Treaty had to be taken to have determined a permanent frontier, and observed that, when a boundary has been the subject of agreement, its continued existence is not dependent upon the continuing life of the Treaty under which that boundary was agreed.

1.63. *East Timor (Portugal v. Australia)*

On 22 February 1991, Portugal filed an Application instituting proceedings against Australia concerning “certain activities of Australia with respect to East Timor”, in relation to the conclusion, on 11 December 1989, of a treaty between Australia and Indonesia which created a Zone of Co-operation in a maritime area between “the Indonesian Province of East Timor and Northern Australia”. According to the Application, Australia had by its conduct failed to observe the obligation to respect the duties and powers of Portugal as the Administering Power of East Timor and the right of the people of East Timor to self-determination. In consequence, according to the Application, Australia had incurred international responsibility vis-à-vis the people of both East Timor and Portugal. As the basis for the jurisdiction of the Court, the Application referred to the declarations by which the two States had accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute. In its Counter-Memorial, Australia raised questions concerning the jurisdiction of the Court and the admissibility of the Application.

The Court delivered its Judgment on 30 June 1995. It began by considering Australia’s objection that there was in reality no dispute between itself and Portugal. Australia contended that the case as presented by Portugal was artificially limited to the question of the lawfulness of Australia’s conduct, and that the true respondent was Indonesia, not Australia, observing that Portugal and itself had accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute, but that Indonesia had not. The Court found in that respect that there was a legal dispute between the two States. The Court then considered Aus-

tralia's principal objection, to the effect that Portugal's Application would require the Court to determine the rights and obligations of Indonesia. Australia contended that the Court would not be able to act if, in order to do so, it were required to rule on the lawfulness of Indonesia's entry into and continuing presence in East Timor, on the validity of the 1989 Treaty between Australia and Indonesia, or on the rights and obligations of Indonesia under that Treaty, even if the Court did not have to determine its validity. In support of its argument, Australia referred to the Court's Judgment in the case concerning *Monetary Gold Removed from Rome in 1943* (see No. 1.12 above).

After having carefully considered the arguments advanced by Portugal which sought to separate Australia's behaviour from that of Indonesia, the Court concluded that Australia's behaviour could not be assessed without first entering into the question why it was that Indonesia could not lawfully have concluded the 1989 Treaty, while Portugal allegedly could have done so; the very subject-matter of the Court's decision would necessarily be a determination whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of the continental shelf. The Court took the view that it could not make such a determination in the absence of the consent of Indonesia.

The Court then rejected Portugal's additional argument that the rights which Australia allegedly breached were rights *erga omnes* and that accordingly Portugal could require it, individually, to respect them. In the Court's view, Portugal's assertion that the right of peoples to self-determination had an *erga omnes* character, was irreproachable, and the principle of self-determination of peoples had been recognized by the Charter of the United Nations and in the jurisprudence of the Court, and was one of the essential principles of contemporary international law. However, the Court considered that the *erga omnes* character of a norm and the rule of consent to jurisdiction were two different things, and that it could not in any event rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of another State which was not a party to the case.

The Court then considered another argument of Portugal which rested on the premise that the United Nations resolutions, and in particular those of the Security Council, could be read as imposing an obligation on States not to recognize any authority on the part of Indonesia over East Timor and, where the latter is concerned, to deal only with Portugal. Portugal maintained that those resolutions would constitute "givens" on the content of which the Court would not have to decide *de novo*. The Court took note, in particular, of the fact that for the two Parties, the territory of East Timor remained a non-self-governing territory and its people had the right to self-determination, but considered that the resolutions could not be regarded as "givens" constituting a sufficient basis for determining

the dispute between the Parties. It followed from all the foregoing considerations that the Court would necessarily first have to rule upon the lawfulness of Indonesia's conduct. Indonesia's rights and obligations would thus constitute the very subject-matter of such a judgment made in the absence of that State's consent, which would run directly counter to the principle according to which "the Court can only exercise jurisdiction over a State with its consent". The Court accordingly found that it was not required to consider Australia's other objections and that it could not rule on Portugal's claims on the merits.

**1.64. *Maritime Delimitation between Guinea-Bissau and Senegal*
(*Guinea-Bissau v. Senegal*)**

On 12 March 1991, while proceedings were still in progress in the case brought by Guinea-Bissau against Senegal concerning the *Arbitral Award of 31 July 1989* (see No. 1.61 above), Guinea-Bissau filed a further Application instituting proceedings against Senegal, in which the Court was asked to adjudge and declare:

"What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future decision of the Court in the case concerning the Arbitral 'award' of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

For its part, Senegal indicated that it expressed every reservation as to the admissibility of that fresh claim, and possibly as to the Court's jurisdiction. At a meeting held by the President of the Court with the representatives of the Parties on 5 April 1991, the latter agreed that no measure should be taken in the case until the Court had delivered its decision in the other case pending between the two States. The Court delivered its Judgment in that case on 12 November 1991 indicating, *inter alia*, that it considered it "highly desirable that the elements of the dispute that were not settled by the Arbitral Award of 31 July 1989 be resolved as soon as possible, as both Parties desire". The Parties then initiated negotiations. As they were able to conclude an "accord de gestion et de coopération", they subsequently, at a meeting with the President of the Court on 1 November 1995, notified him of their decision to discontinue the proceedings. By a letter dated 2 November 1995, the Agent of Guinea-Bissau confirmed that his Government, by virtue of the agreement reached by the two Parties on the disputed zone, had decided to discontinue the proceedings. By a letter dated 6 November 1995, the Agent of Senegal confirmed that his Government agreed to that discontinuance. On 8 November 1995, the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's List.

1.65. *Passage through the Great Belt* (*Finland v. Denmark*)

On 17 May 1991 Finland instituted proceedings against Denmark in respect of a dispute concerning passage through the Great Belt (Storebælt), and the project by the Government of Denmark to construct a fixed traffic connection for both

road and rail traffic across the West and East Channels of the Great Belt. The effect of this project, and in particular of the planned high-level suspension bridge over the East Channel, would have been permanently to close the Baltic for deep draught vessels of over 65 m height, thus preventing the passage of such drill ships and oil rigs manufactured in Finland as required more than that clearance. In its Application Finland requested the Court to adjudge and declare (a) that there was a right of free passage through the Great Belt which applied to all ships entering and leaving Finnish ports and shipyards; (b) that this right extended to drill ships, oil rigs and reasonably foreseeable ships; (c) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs (a) and (b) above and; (d) that Denmark and Finland ought to start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs (a) to (c) above, should be guaranteed. On 23 May 1991, Finland requested the Court to indicate certain provisional measures aimed, principally, at stopping all construction works in connection with the planned bridge project over the East Channel of the Great Belt which it was alleged would prevent the passage of ships, in particular drill ships and oil rigs, entering and leaving Finnish ports and shipyards.

By an Order dated 29 July 1991, the Court dismissed that request for the indication of provisional measures by Finland, while at the same time indicating that, pending its decision on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement was to be welcomed, and going on to say that it would be appropriate for the Court, with the co-operation of the Parties, to ensure that the decision on the merits was reached with all possible expedition. By a letter dated 3 September 1992, the Agent of Finland, referring to the relevant passage of the Order, stated that a settlement of the dispute had been attained and accordingly notified the Court of the discontinuance of the case. Denmark let it be known that it had no objection to that discontinuance. Consequently, the President of the Court, on 10 September 1992, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's List.

*1.66. Maritime Delimitation and Territorial Questions
between Qatar and Bahrain (Qatar v. Bahrain)*

On 8 July 1991, Qatar filed in the Registry of the Court an Application instituting proceedings against Bahrain in respect of certain disputes between the two States relating to sovereignty over the Hawar Islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah and the delimitation of their maritime areas. Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990, the subject and scope of the commitment to accept that jurisdiction being determined by a formula proposed by Bahrain to Qatar in October 1988 and accepted by the latter

State in December 1990 (the “Bahraini formula”). As Bahrain contested the basis of jurisdiction invoked by Qatar, the Parties agreed that the written proceedings should first be addressed to the questions of jurisdiction and admissibility. After a Memorial of the Applicant and Counter-Memorial of the Respondent had been filed, the Court directed that a Reply and a Rejoinder be filed by each of them, respectively.

On 1 July 1994 the Court delivered a first Judgment on the above-mentioned questions. It took the view that both the exchanges of letters of December 1987 between the King of Saudi Arabia and the Amir of Qatar, and between the King of Saudi Arabia and the Amir of Bahrain, and the document entitled “Minutes” and signed at Doha in December 1990 constituted international agreements creating rights and obligations for the Parties; and that by the terms of those agreements they had undertaken to submit to the Court the whole of the dispute between them. In the latter regard, the Court pointed out that the Application of Qatar did not cover some of the constitutive elements that the Bahraini formula was supposed to cover. It accordingly decided to give the Parties the opportunity to submit to it “the whole of the dispute” as circumscribed by the Minutes of 1990 and that formula, while fixing 30 November 1994 as the time-limit within which the Parties were, jointly or separately, to take action to that end. On the prescribed date, Qatar filed a document entitled “Act”, which referred to the absence of an agreement between the Parties to act jointly and declared that it was submitting “the whole of the dispute” to the Court. On the same day, Bahrain filed a document entitled “Report” in which it indicated, *inter alia*, that the submission to the Court of “the whole of the dispute” must be “consensual in character, that is, a matter of agreement between the Parties”. By observations submitted to the Court at a later time, Bahrain indicated that the unilateral “Act” of Qatar did not “create that jurisdiction [of the Court] or effect a valid submission in the absence of Bahrain’s consent”. By a second Judgment on the questions of jurisdiction and admissibility, delivered on 15 February 1995, the Court found that it had jurisdiction to adjudicate upon the dispute submitted to it between Qatar and Bahrain, and that the Application of Qatar, as formulated on 30 November 1994, was admissible. The Court, having proceeded to an examination of the two paragraphs constituting the Doha Agreement, found that, in that Agreement, the Parties had reasserted their consent to its jurisdiction and had defined the object of the dispute in accordance with the Bahraini formula; it further found that the Doha Agreement permitted the unilateral seisin and that it was now seised of the whole of the dispute. By two Orders, the Court subsequently fixed and then extended the time-limit within which each of the Parties could file a Memorial on the merits.

Following the objections raised by Bahrain as to the authenticity of certain documents annexed to the Memorial and Counter-Memorial of Qatar, the Court, by an Order of 30 March 1998, fixed a time-limit for the filing, by the latter, of a

report concerning the authenticity of each of the disputed documents. By the same Order, the Court directed the submission of a Reply on the merits of the dispute by each of the Parties. Qatar having decided to disregard the challenged documents for the purposes of the case, the Court, by an Order of 17 February 1999, decided that the Replies would not rely on those documents. It also granted an extension of the time-limit for the filing of the said Replies.

In its Judgment of 16 March 2001, the Court, after setting out the procedural background in the case, recounted the complex history of the dispute. It noted that Bahrain and Qatar had concluded exclusive protection agreements with Great Britain in 1892 and 1916 respectively, and that that status of protected States had ended in 1971. The Court further cited the disputes which had arisen between Bahrain and Qatar on the occasion, *inter alia*, of the granting of concessions to oil companies, as well as the efforts made to settle those disputes.

The Court first considered the Parties' claims to Zubarah. It stated that, in the period after 1868, the authority of the Sheikh of Qatar over Zubarah had been gradually consolidated, that it had been acknowledged in the Anglo-Ottoman Convention of 29 July 1913 and definitively established in 1937. It further stated that there was no evidence that members of the Naim tribe had exercised sovereign authority on behalf of the Sheikh of Bahrain within Zubarah. Accordingly, it concluded that Qatar had sovereignty over Zubarah.

Turning to the Hawar Islands, the Court stated that the decision by which the British Government had found in 1939 that those islands belonged to Bahrain did not constitute an arbitral award, but that did not mean that it was devoid of legal effect. It noted that Bahrain and Qatar had consented to Great Britain settling their dispute at the time and found that the 1939 decision must be regarded as a decision that was binding from the outset on both States and continued to be so after 1971. Rejecting Qatar's arguments that the decision was null and void, the Court concluded that Bahrain had sovereignty over the Hawar Islands.

The Court observed that the British decision of 1939 did not mention Janan Island, which it considered as forming a single island with Hadd Janan. It pointed out, however, that in letters sent in 1947 to the Rulers of Qatar and Bahrain, the British Government had made it clear that "Janan Island is not regarded as being included in the islands of the Hawar group". The Court considered that the British Government, in so doing, had provided an authoritative interpretation of its 1939 decision, an interpretation which revealed that it regarded Janan as belonging to Qatar. Accordingly, Qatar had sovereignty over Janan Island, including Hadd Janan.

The Court then turned to the question of the maritime delimitation. It recalled that international customary law was the applicable law in the case and that the Parties had requested it to draw a single maritime boundary. In the southern part, the Court had to draw a boundary delimiting the territorial seas of the Parties,

areas over which they enjoyed territorial sovereignty (including sea-bed, superjacent waters and superjacent aerial space). In the northern part, the Court had to make a delimitation between areas in which the Parties had only sovereign rights and functional jurisdiction (continental shelf, exclusive economic zone).

With respect to the territorial seas, the Court considered that it had to draw provisionally an equidistance line (a line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured) and then to consider whether that line must be adjusted in the light of any special circumstances. As the Parties had not specified the baselines to be used, the Court recalled that, under the applicable rules of law, the normal baseline for measuring the breadth of the territorial sea was the low-water line along the coast. It observed that Bahrain had not included a claim to the status of archipelagic State in its formal submissions and that the Court was therefore not requested to take a position on that issue. In order to determine what constituted the Parties' relevant coasts, the Court first had to establish which islands came under their sovereignty. Bahrain had claimed to have sovereignty over the islands of Jazirat Mashtan and Umm Jalid, a claim which had not been contested by Qatar. As to Qit'at Jaradah, the nature of which was disputed, the Court held that it should be considered as an island because it was above water at high tide; the Court added that the activities which had been carried out by Bahrain were sufficient to support its claim of sovereignty over the island. With regard to low-tide elevations, the Court, after noting that international treaty law was silent on the question whether those elevations should be regarded as "territory", found that low-tide elevations situated in the overlapping area of the territorial seas of both States could not be taken into consideration for the purposes of drawing the equidistance line. That was true of Fasht ad Dibal, which both Parties regarded as a low-tide elevation. The Court then considered whether there were any special circumstances which made it necessary to adjust the equidistance line in order to obtain an equitable result. It found that there were such circumstances which justified choosing a delimitation line passing on the one hand between Fasht al Azm and Qit'at ash Shajarah and, on the other, between Qit'at Jaradah and Fasht ad Dibal.

In the northern part, the Court, citing its case law, followed the same approach, provisionally drawing an equidistance line and examining whether there were circumstances requiring an adjustment of that line. The Court rejected Bahrain's argument that the existence of certain pearling banks situated to the north of Qatar, and which were predominantly exploited in the past by Bahraini fishermen, constituted a circumstance justifying a shifting of the line. It also rejected Qatar's argument that there was a significant disparity between the coastal lengths of the Parties calling for an appropriate correction. The Court further stated that considerations of equity required that the maritime formation of Fasht al Jarim should have no effect in determining the boundary line.

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*1.67-1.68. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie
(Libyan Arab Jamahiriya v. United Kingdom)
(Libyan Arab Jamahiriya v. United States of America)*

On 3 March 1992 the Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United States of America and the Government of the United Kingdom, in respect of a dispute over the interpretation and application of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in Montreal on 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988. In its Applications, Libya referred to the charging and indictment of two Libyan nationals by a Grand Jury of the United States of America and by the Lord Advocate of Scotland, respectively, with having caused a bomb to be placed aboard Pan Am flight 103. The bomb subsequently exploded, causing the aeroplane to crash, all persons aboard being killed. Libya pointed out that the acts alleged constituted an offence within the meaning of Article 1 of the Montreal Convention, which it claimed to be the only appropriate Convention in force between the Parties, and asserted that it had fully complied with its own obligations under that instrument, Article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; and that there was no extradition treaty between Libya and the respective other Parties, so that Libya was obliged under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution. Libya contended that the United States of America and the United Kingdom were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial. On 3 March 1992, Libya made two separate requests to the Court to indicate forthwith certain provisional measures, namely: (a) to enjoin the United States and the United Kingdom respectively from taking any action against Libya calculated to coerce or compel it to surrender the accused individuals to any jurisdiction outside Libya; and (b) to ensure that no steps were taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that were the subject of Libya's Applications.

On 14 April 1992, the Court read two Orders on those requests for the indication of provisional measures, in which it found that the circumstances of the cases were not such as to require the exercise of its powers to indicate such measures. Within the time-limit fixed for the filing of its Counter-Memorial, each of the respondent States filed preliminary objections: the United States of America filed certain preliminary objections requesting the Court to adjudge and declare that it lacked jurisdiction and could not entertain the case; the United Kingdom filed certain preliminary objections to the jurisdiction of the Court and to the admissi-

bility of the Libyan claims. In accordance with the provisions of Article 79 of the Rules of Court, the proceedings on the merits were suspended in those two cases. By Orders dated 22 September 1995, the Court then fixed 22 December 1995 as the time-limit within which the Libyan Arab Jamahiriya might present, in each case, a written statement of its observations and submissions on the preliminary objections raised, which it did within the prescribed time-limit.

On 27 February 1998, the Court delivered two Judgments on the preliminary objections raised by the United Kingdom and the United States of America. The Court first began by dismissing the Respondents' respective objections to jurisdiction on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention. It declared that it had jurisdiction on the basis of Article 14, paragraph 1, of that Convention to hear the disputes between Libya and the respondent States concerning the interpretation or application of the provisions of the Convention. The Court then went on to dismiss the objection to admissibility based on Security Council resolutions 748 (1992) and 883 (1993). Lastly, it found that the objection raised by each of the respondent States on the ground that those resolutions would have rendered the claims of Libya without object did not, in the circumstances of the case, have an exclusively preliminary character.

In June 1999, the Court authorized Libya to submit a Reply, and the United Kingdom and the United States to file Rejoinders. Those pleadings were filed by the Parties within the time-limits laid down by the Court and its President.

By two letters of 9 September 2003, the Governments of Libya and the United Kingdom on the one hand, and of Libya and the United States on the other, jointly notified the Court that they had "agreed to discontinue with prejudice the proceedings". Following those notifications, the President of the Court, on 10 September 2003, made an Order in each case placing on record the discontinuance of the proceedings with prejudice, by agreement of the Parties, and directing the removal of the case from the Court's List.

1.69. Oil Platforms (Islamic Republic of Iran v. United States of America)

On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America with respect to the destruction of Iranian oil platforms. The Islamic Republic founded the jurisdiction of the Court upon a provision of the Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States, signed at Tehran on 15 August 1955. In its Application, Iran alleged that the destruction caused by several warships of the United States Navy, in October 1987 and April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international

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law. Time-limits for the filing of written pleadings were then fixed and subsequently extended by two Orders of the President of the Court. On 16 December 1993, within the extended time-limit for filing the Counter-Memorial, the United States of America filed a preliminary objection to the Court's jurisdiction. In accordance with the terms of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended; by an Order of 18 January 1994, the Court fixed 1 July 1994 as the time-limit within which Iran could present a written statement of its observations and submissions on the objection, which was filed within the prescribed time-limit.

In its Judgment of 12 December 1996, the Court rejected the preliminary objection raised by the United States of America and found that it had jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by Iran under Article X, paragraph 1, of that Treaty, which protects freedom of commerce and navigation between the territories of the Parties.

When filing its Counter-Memorial, the United States of America submitted a counter-claim requesting the Court to adjudge and declare that, through its actions in the Persian Gulf in 1987 and 1988, Iran had also breached its obligations under Article X of the Treaty of 1955. Iran having disputed the admissibility of that counter-claim under Article 80, paragraph 1, of the Rules, the Court ruled on the matter in an Order of 10 March 1998. It found that the counter-claim was admissible as such and formed part of the current proceedings, and directed Iran to submit a Reply and the United States to submit a Rejoinder. Those pleadings were filed within the extended time-limits thus fixed. In its Order of 1998, the Court also stated that it was necessary, in order to ensure strict equality between the Parties, to reserve the right of Iran to present its views in writing a second time on the counter-claim, in an additional pleading, the filing of which might be the subject of a subsequent Order. Such an Order was made by the Vice-President on 28 August 2001, and Iran subsequently filed its additional pleading within the time-limits fixed. Public sittings on the claim of Iran and the counter-claim of the United States of America were held from 17 February to 7 March 2003.

The Court delivered its Judgment on 6 November 2003. Iran had contended that, in attacking on two occasions and destroying three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, the United States had violated freedom of commerce between the territories of the Parties as guaranteed by the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran. It sought reparation for the injury thus caused. The United States had argued in its counter-claim that it was Iran which had violated the 1955 Treaty by attacking vessels in the Gulf and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the United States and Iran. The United States likewise sought reparation.

The Court first considered whether the actions by American naval forces against the Iranian oil complexes were justified under the 1955 Treaty as measures necessary to protect the essential security interests of the United States (Art. XX, para. 1 (*d*), of the Treaty). Interpreting the Treaty in light of the relevant rules of international law, it concluded that the United States was only entitled to have recourse to force under the provision in question if it was acting in self-defence. The United States could exercise such a right of self-defence only if it had been the victim of an armed attack by Iran and the United States actions must have been necessary and proportional to the armed attack against it. After carrying out a detailed examination of the evidence provided by the Parties, the Court found that the United States had not succeeded in showing that these various conditions were satisfied, and concluded that the United States was therefore not entitled to rely on the provisions of Article XX, paragraph 1 (*d*), of the 1955 Treaty.

The Court then examined the issue of whether the United States, in destroying the platforms, had impeded their normal operation, thus preventing Iran from enjoying freedom of commerce “between the territories of the two High Contracting Parties” as guaranteed by the 1955 Treaty (Art. X, para. 1). It concluded that, as regards the first attack, the platforms attacked were under repair and not operational, and that at that time there was thus no trade in crude oil from those platforms between Iran and the United States. Accordingly, the attack on those platforms could not be considered as having affected freedom of commerce between the territories of the two States. The Court reached the same conclusion in respect of the later attack on two other complexes, since all trade in crude oil between Iran and the United States had been suspended as a result of an embargo imposed by an Executive Order adopted by the American authorities. The Court thus found that the United States had not breached its obligations to Iran under Article X, paragraph 1, of the 1955 Treaty and rejected Iran’s claim for reparation.

In regard to the United States counter-claim, the Court, after rejecting the objections to jurisdiction and admissibility raised by Iran, considered whether the incidents attributed by the United States to Iran infringed freedom of commerce or navigation between the territories of the Parties as guaranteed by Article X, paragraph 1, of the 1955 Treaty. The Court found that none of the ships alleged by the United States to have been damaged by Iranian attacks was engaged in commerce or navigation between the territories of the two States. Nor did the Court accept the generic claim by the United States that the actions of Iran had made the Persian Gulf unsafe for shipping, concluding that, according to the evidence before it, there was not, at the relevant time, any actual impediment to commerce or navigation between the territories of Iran and the United States. The Court accordingly rejected the United States counter-claim for reparation.

*1.70. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*²⁹

On 20 March 1993, the Republic of Bosnia and Herzegovina instituted proceedings against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, as well as various matters which Bosnia and Herzegovina claimed were connected therewith. The Application invoked Article IX of the Genocide Convention as the basis for the jurisdiction of the Court. Subsequently, Bosnia and Herzegovina also invoked certain additional bases of jurisdiction.

On 20 March 1993, immediately after the filing of its Application, Bosnia and Herzegovina submitted a request for the indication of provisional measures under Article 41 of the Statute and, on 1 April 1993, Yugoslavia submitted written observations on Bosnia and Herzegovina's request for provisional measures, in which it, in turn, recommended the Court to order the application of provisional measures to Bosnia and Herzegovina. By an Order dated 8 April 1993, the Court, after hearing the Parties, indicated certain provisional measures with a view to the protection of rights under the Genocide Convention. On 27 July 1993, Bosnia and Herzegovina submitted a new request for the indication of provisional measures and, on 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures. By an Order dated 13 September 1993, the Court, after hearing the Parties, reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented. Then, within the extended time-limit of 30 June 1995 for the filing of its Counter-Memorial, Yugoslavia, referring to Article 79, paragraph 1, of the Rules of Court, raised preliminary objections concerning both the admissibility of the Application and the jurisdiction of the Court to entertain the case.

²⁹ The title of the case was amended following the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, as a result of which the name of the State changed from the "Federal Republic of Yugoslavia" to "Serbia and Montenegro". In the following summary, the name "Yugoslavia" has been employed with respect to all proceedings before 4 February 2003 and the name "Serbia and Montenegro" has been used for all events subsequent to that date and prior to 3 June 2006. On this latter date, the President of the Republic of Serbia informed the Secretary-General of the United Nations that, following the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, "the membership of the state union Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system, [would be] continued by the Republic of Serbia on the basis of Article 60 of the Constitutional Charter of Serbia and Montenegro". He further stated that "in the United Nations the name 'Republic of Serbia' [was] to be henceforth used instead of the name 'Serbia and Montenegro'" and added that the Republic of Serbia "remain[ed] responsible in full for all the rights and obligations of the state union of Serbia and Montenegro under the UN Charter". The name "Republic of Serbia" or "Serbia" has therefore been used in the summary for all events subsequent to 3 June 2006.

In its Judgment of 11 July 1996, the Court rejected the preliminary objections raised by Yugoslavia and found that it had jurisdiction to deal with the dispute on the basis of Article IX of the Genocide Convention, dismissing the additional bases of jurisdiction invoked by Bosnia and Herzegovina. Among other things, it found that the Convention bound the two Parties and that there was a legal dispute between them falling within the provisions of Article IX.

By an Order dated 23 July 1996, the President of the Court fixed 23 July 1997 as the time-limit for the filing by Yugoslavia of its Counter-Memorial on the merits. The Counter-Memorial was filed within the prescribed time-limit and contained counter-claims, by which Yugoslavia requested the Court, among other things, to adjudge and declare that Bosnia and Herzegovina was responsible for acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the Genocide Convention. The admissibility of the counter-claims under Article 80, paragraph 1, of the Rules of Court having been called into question by Bosnia and Herzegovina, the Court ruled on the matter, declaring, in its Order of 17 December 1997, that the counter-claims were admissible as such and formed part of the proceedings in the case. The Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia were subsequently filed within the time-limits laid down by the Court and its President. During 1999 and 2000, various exchanges of letters took place concerning new procedural difficulties which had emerged in the case. In April 2001, Yugoslavia informed the Court that it wished to withdraw its counter-claims. As Bosnia and Herzegovina had raised no objection, the President of the Court, by an Order of 10 September 2001, placed on record the withdrawal by Yugoslavia of the counter-claims it had submitted in its Counter-Memorial. On 4 May 2001, Yugoslavia submitted to the Court a document entitled "Initiative to the Court to reconsider *ex officio* jurisdiction over Yugoslavia", in which it first asserted that the Court had no jurisdiction *ratione personae* over Serbia and Montenegro and secondly requested the Court to "suspend proceedings regarding the merits of the case until a decision on this Initiative", i.e., on the jurisdictional issue, had been rendered. On 1 July 2001, it also filed an Application for revision of the Judgment of 11 July 1996; this was found to be inadmissible by the Court in its Judgment of 3 February 2003 (see No. 1.98 below). In a letter dated 12 June 2003, the Registrar informed the Parties to the case that the Court had decided that it could not accede to the Applicant's request to suspend the proceedings on the merits.

Following public hearings held between 27 February 2006 and 9 May 2006, the Court rendered its Judgment on the merits on 26 February 2007. It began by examining the new jurisdictional issues raised by the Respondent arising out of its admission as a new Member of the United Nations in 2001. The Court affirmed that it had jurisdiction on the basis of Article IX of the Genocide Convention, stating in particular that its 1996 Judgment, whereby it found it had jurisdiction under the Genocide Convention, benefited from the "fundamental" principle of *res judicata*,

which guaranteed “the stability of legal relations”, and that it was in the interest of each Party “that an issue which has already been adjudicated in favour of that party be not argued again”. The Court then made extensive findings of fact as to whether alleged atrocities had occurred and, if so, whether they could be characterized as genocide. After determining that massive killings and other atrocities were perpetrated during the conflict throughout the territory of Bosnia and Herzegovina, the Court found that these acts were not accompanied by the specific intent that defines the crime of genocide, namely the intent to destroy, in whole or in part, the protected group. The Court did, however, find that the killings in Srebrenica in July 1995 were committed with the specific intent to destroy in part the group of Bosnian Muslims in that area and that what happened there was indeed genocide. The Court found that there was corroborated evidence which indicated that the decision to kill the adult male population of the Muslim community in Srebrenica had been taken by some members of the VRS (Army of the Republika Srpska) Main Staff. The evidence before the Court, however, did not prove that the acts of the VRS could be attributed to the Respondent under the rules of international law of State responsibility. Nonetheless, the Court found that the Republic of Serbia had violated its obligation contained in Article 1 of the Genocide Convention to prevent the Srebrenica genocide. The Court observed that this obligation required States that are aware, or should normally have been aware, of the serious danger that acts of genocide would be committed, to employ all means reasonably available to them to prevent genocide, within the limits permitted by international law.

The Court further held that the Respondent had violated its obligation to punish the perpetrators of genocide, including by failing to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY) with respect to the handing over for trial of General Ratko Mladić. This failure constituted a violation of the Respondent’s duties under Article VI of the Genocide Convention.

In respect of Bosnia and Herzegovina’s request for reparation, the Court found that, since it had not been shown that the genocide at Srebrenica would in fact have been averted if Serbia had attempted to prevent it, financial compensation for the failure to prevent the genocide at Srebrenica was not the appropriate form of reparation. The Court considered that the most appropriate form of satisfaction would be a declaration in the operative clause of the Judgment that Serbia had failed to comply with the obligation to prevent the crime of genocide. As for the obligation to punish acts of genocide, the Court found that a declaration in the operative clause that Serbia had violated its obligations under the Convention and that it must transfer individuals accused of genocide to the ICTY and must co-operate fully with the Tribunal would constitute appropriate satisfaction.

1.71. Gabčíkovo-Nagymaros Project (Hungary/Slovakia)

On 2 July 1993 the Governments of the Republic of Hungary and of the Slovak Republic notified jointly to the Registry of the Court a Special Agreement, signed

at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the “provisional solution”. The Special Agreement records that the Slovak Republic is in this respect the sole successor State of the Czech and Slovak Federal Republic. In Article 2 of the Special Agreement, the Court was asked to say: (a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros project and on that part of the Gabčíkovo project for which the Treaty attributed responsibility to the Republic of Hungary; (b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the “provisional solution” and to put into operation from October 1992 this system (the damming up of the Danube at river kilometre 1,851.7 on Czechoslovak territory and the resulting consequences for the water and navigation course); and (c) what were the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary. The Court was also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the above-mentioned questions. Each of the Parties filed a Memorial, a Counter-Memorial and a Reply accompanied by a large number of annexes.

In June 1995, the Agent of Slovakia requested the Court to visit the site of the Gabčíkovo-Nagymaros hydroelectric dam project on the Danube for the purpose of obtaining evidence. A “Protocol of Agreement” was thus signed in November 1995 between the two Parties. The visit to the site, the first such visit by the Court in its 50-year history, took place from 1 to 4 April 1997 between the first and second rounds of oral pleadings.

In its Judgment of 25 September 1997, the Court asserted that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros project and on the part of the Gabčíkovo project for which it was responsible, and that Czechoslovakia was entitled to proceed, in November 1991, to the “provisional solution” as described by the terms of the Special Agreement. On the other hand, the Court stated that Czechoslovakia was not entitled to put into operation, from October 1992, the barrage system in question and that Slovakia, as successor to Czechoslovakia, had become Party to the Treaty of 16 September 1977 as from 1 January 1993. The Court also decided that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation and must take all necessary measures to ensure the achievement of the objectives of the said Treaty, in accordance with such modalities as they might agree upon. Further, Hungary was to compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible, whereas, again according to the Judgment of

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the Court, Slovakia was to compensate Hungary for the damage it had sustained on account of the putting into operation of the dam by Czechoslovakia and its maintenance in service by Slovakia.

On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional Judgment in the case. Slovakia considered such a Judgment necessary because of the unwillingness of Hungary to implement the Judgment delivered by the Court on 25 September 1997. In its request, Slovakia stated that the Parties had conducted a series of negotiations of the modalities for executing the 1997 Judgment and had initialled a draft Framework Agreement, which had been approved by the Slovak Government. However, according to the latter, Hungary had decided to postpone its approval and had even disavowed it when the new Hungarian Government had come into office. Slovakia requested the Court to determine the modalities for executing the Judgment, and, as the basis for its request, invoked the Special Agreement signed at Brussels on 7 April 1993 by itself and Hungary. After the filing by Hungary of a statement of its position on Slovakia's request, the Parties resumed negotiations and informed the Court on a regular basis of the progress in them.

1.72. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*

On 29 March 1994, Cameroon filed in the Registry of the Court an Application instituting proceedings against Nigeria with respect to the question of sovereignty over the Bakassi Peninsula, and requesting the Court to determine the course of the maritime frontier between the two States in so far as that frontier had not been established in 1975. As a basis for the jurisdiction of the Court, Cameroon referred to the declarations made by the two States under Article 36, paragraph 2, of the Statute of the Court, by which they accepted that jurisdiction as compulsory. In its Application, Cameroon referred to "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities on the Bakassi Peninsula", and asked the Court, *inter alia*, to adjudge and declare that sovereignty over the Peninsula of Bakassi was Cameroonian, by virtue of international law, and that Nigeria had violated and was violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*), as well as other rules of conventional and customary international law, and that Nigeria's international responsibility was involved. Cameroon also requested the Court to proceed to prolong the course of its maritime boundary with Nigeria up to the limit of the maritime zone which international law placed under their respective jurisdictions.

On 6 June 1994, Cameroon filed in the Registry an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described as relating essentially "to the question of sovereignty over part of the territory of Cameroon in the area of Lake Chad", while also requesting the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the

sea. That Application was treated as an amendment to the initial Application. After Nigeria had raised certain preliminary objections, Cameroon presented, on 1 May 1996, a written statement of its observations and submissions relating thereto, in accordance with an Order of the President dated 10 January 1996. Moreover, on 12 February 1996, Cameroon, referring to the “grave incidents which [had] taken place between the . . . forces [of the Parties] in the Bakassi Peninsula since . . . 3 February 1996”, asked the Court to indicate provisional measures. By an Order dated 15 March 1996, the Court indicated a number of provisional measures aimed principally at putting an end to the hostilities.

The Court held hearings from 2 to 11 March 1998 on the preliminary objections raised by Nigeria. In its Judgment of 11 June 1998, the Court found that it had jurisdiction to adjudicate upon the merits of the dispute and that Cameroon’s requests were admissible. The Court rejected seven of the preliminary objections raised by Nigeria and declared that, as the eighth did not have an exclusively preliminary character, it should be settled during the proceedings on the merits.

Nigeria filed its Counter-Memorial, including counter-claims, within the time-limit extended by the Court. On 30 June 1999, the Court adopted an Order declaring Nigeria’s counter-claims admissible and fixing 4 April 2000 as the time-limit for the filing of the Reply of Cameroon and 4 January 2001 as the time-limit for the filing of the Rejoinder of Nigeria. In its Order, the Court also reserved the right of Cameroon to present its views in writing a second time on the Nigerian counter-claims in an additional pleading which might be the subject of a subsequent Order. The Reply and the Rejoinder were duly filed within the time-limits so fixed. In January 2001, Cameroon informed the Court that it wished to present its views in writing a second time on Nigeria’s counter-claims. As Nigeria had no objection to that request, the Court authorized the presentation by Cameroon of an additional pleading relating exclusively to the counter-claims submitted by Nigeria. That pleading was duly filed within the time-limit fixed by the Court.

On 30 June 1999, the Republic of Equatorial Guinea filed an Application for permission to intervene in the case. Each of the two Parties having filed its written observations on that Application and Equatorial Guinea having informed the Court of its views with respect to them, the Court, by Order of 21 October 1999, authorized Equatorial Guinea to intervene in the case pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in its Application. Equatorial Guinea filed a written statement and each of the Parties filed written observations on the latter within the time-limits fixed by the Court. Public hearings on the merits were held from 18 February to 21 March 2002.

In its Judgment of 10 October 2002, the Court determined as follows the course of the boundary, from north to south, between Cameroon and Nigeria :

- In the Lake Chad area, the Court decided that the boundary was delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the

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Henderson-Fleuriiau Exchange of Notes of 1931 (between Great Britain and France); it found that the boundary started in the Lake from the Cameroon-Nigeria-Chad tripoint (whose co-ordinates it defined) and followed a straight line to the mouth of the River Ebeji as it was in 1931 (whose co-ordinates it also defined) and thence ran in a straight line to the point where the river today divided into two branches.

- Between Lake Chad and the Bakassi Peninsula, the Court confirmed that the boundary was delimited by the following instruments:
 - (i) from the point where the River Ebeji bifurcated as far as Tamnyar Peak, by the Thomson-Marchand Declaration of 1929-1930 (paras. 2-60), as incorporated in the Henderson-Fleuriiau Exchange of Notes of 1931;
 - (ii) from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;
 - (iii) from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913.
- The Court examined point by point seventeen sectors of the land boundary and specified for each one how the above-mentioned instruments were to be interpreted.
- In Bakassi, the Court decided that the boundary was delimited by the Anglo-German Agreement of 11 March 1913 (Arts. XVIII-XX) and that sovereignty over the Bakassi Peninsula lay with Cameroon. It decided that in that area the boundary followed the *thalweg* of the River Akpakorum (Akwayafe), dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as a straight line joining Bakassi Point and King Point.
- As regards the maritime boundary, the Court, having established that it had jurisdiction to address that aspect of the case — which Nigeria had disputed —, fixed the course of the boundary between the two States' maritime areas.

In its Judgment the Court requested Nigeria, expeditiously and without condition, to withdraw its administration and military or police forces from the area of Lake Chad falling within Cameroonian sovereignty and from the Bakassi Peninsula. It also requested Cameroon expeditiously and without condition to withdraw any administration or military or police forces which might be present along the land boundary from Lake Chad to the Bakassi Peninsula on territories which, pursuant to the Judgment, fell within the sovereignty of Nigeria. The latter had the same obligation in regard to territories in that area which fell within the sovereignty of Cameroon. The Court took note of Cameroon's undertaking, given at the hearings, to "continue to afford protection to Nigerians living in the [Bakassi] peninsula and in the Lake Chad area". Finally, the Court rejected Cameroon's submissions regarding the State responsibility of Nigeria, as well as Nigeria's counter-claims.

1.73. *Fisheries Jurisdiction (Spain v. Canada)*

On 28 March 1995, Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, to the implementing regulations of that Act, and to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the *Estai*, sailing under the Spanish flag. Spain indicated, *inter alia*, that by the amended Act an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the Regulatory Area of the North-West Atlantic Fisheries Organization (NAFO), that is, on the high seas, outside Canada's exclusive economic zone, while expressly permitting the use of force against foreign fishing boats in the zones that that Act terms the "high seas". Spain added that the implementing regulation of 3 March 1995 "expressly permit[s] such conduct as regards Spanish and Portuguese ships on the high seas". The Application of Spain alleged the violation of various principles and norms of international law and stated that there was a dispute between Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain. As a basis of the Court's jurisdiction, the Application referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court. As Canada contested the jurisdiction of the Court, on the basis of its aforementioned declaration, it was decided that the written pleadings should focus initially upon that question of jurisdiction. A Memorial of the Applicant and a Counter-Memorial of the Respondent were filed in that respect. By an Order dated 8 May 1996, the Court decided not to authorize the presentation of a Reply of the Applicant and a Rejoinder of the Respondent.

In its Judgment of 4 December 1998, the Court found that the dispute between the Parties was a dispute that had "ar[isen]" out of "conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and "the enforcement of such measures", and that, consequently, it was within the terms of one of the reservations in the Canadian declaration. The Court found that it therefore had no jurisdiction to adjudicate in the case.

1.74. *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*³⁰

On 21 August 1995, the New Zealand Government filed in the Registry a document entitled "Request for an Examination of the Situation" in which reference

³⁰ The Court's decision in this case formed the object of an Order, in which it is indicated that the Request was entered in the General List for the sole purpose of enabling it to determine whether the conditions laid down in the said paragraph 63 had been fulfilled.

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was made to a “proposed action announced by France which will, if carried out, affect the basis of the Judgment rendered by the Court on 20 December 1974 in the *Nuclear Tests (New Zealand v. France)* case”, namely “a decision announced by France in a media statement of 13 June 1995” by the President of the French Republic, according to which “France would conduct a final series of eight nuclear weapons tests in the South Pacific starting in September 1995”. In that Request, the Court was reminded that, at the end of its 1974 Judgment, it had found that it was not called upon to give a decision on the claim submitted by New Zealand in 1973, that claim no longer having any object, by virtue of the declarations by which France had undertaken not to carry out further atmospheric nuclear tests (see Nos. 1.43-1.44 above). That Judgment contained a paragraph 63 worded as follows

“Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court’s function to contemplate that it will not comply with it. However, the Court observes that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute . . .”

New Zealand asserted that this paragraph gave it the “right”, in such circumstances, to request “the resumption of the case begun by application on 9 May 1973”, and observed that the operative part of the Judgment concerned could not be construed as showing any intention on the part of the Court definitively to close the case. On the same day, the New Zealand Government also filed in the Registry a “Further Request for the Indication of Provisional Measures” in which reference was made, *inter alia*, to the Order for the indication of provisional measures made by the Court on 22 June 1973, which was principally aimed at ensuring that France would refrain from conducting any further nuclear tests at Mururoa and Fangataufa Atolls.

After holding public hearings on 11 and 12 September 1995, the Court made its Order on 22 September 1995. The Court found that, when inserting into paragraph 63 the sentence “the Applicant could request an examination of the situation in accordance with the provisions of the Statute”, it had not excluded a special procedure for access to it (unlike those mentioned in the Court’s Statute, such as the filing of a new application, or a request for interpretation or revision, which would have been open to the Applicant in any event); however, it found that that special procedure would only be available to the Applicant if circumstances were to arise which affected the basis of the 1974 Judgment. And that, it found, was not the case, as the decision announced by France in 1995 had related to a series of underground tests, whereas the basis of the Judgment of 1974 was France’s undertaking not to conduct any further atmospheric nuclear tests. Consequently, New Zealand’s Request for provisional measures and the Applications for permission to intervene submitted by Australia, Samoa, Solomon Islands, the

Marshall Islands and the Federated States of Micronesia as well as the Declarations of Intervention made by the last four States, all of which were proceedings incidental to New Zealand's main request, likewise had to be dismissed.

1.75. Kasikili/Sedudu Island (Botswana/Namibia)

On 29 May 1996, the Government of Botswana and the Government of Namibia notified jointly to the Registrar of the Court a Special Agreement which had been signed between them on 15 February 1996 and had entered into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of that island. The Special Agreement referred to a Treaty between Great Britain and Germany concerning the respective spheres of influence of the two countries, signed on 1 July 1890, and to the appointment on 24 May 1992 of a Joint Team of Technical Experts to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island on the basis of that Treaty and of the applicable principles of international law. Unable to reach a conclusion on the question submitted to it, the Joint Team of Technical Experts recommended recourse to a peaceful settlement of the dispute on the basis of the applicable rules and principles of international law. At a Summit Meeting held in Harare, Zimbabwe, on 15 February 1995, the Presidents of the two States agreed to submit the dispute to the Court.

Taking account of the relevant provisions of the Special Agreement, the Court, by an Order dated 24 June 1996, fixed time-limits for the filing, by each of the Parties, of a Memorial and a Counter-Memorial. Those pleadings were duly filed within the time-limits fixed.

The Court, in view of the agreement between the Parties, also authorized the filing of a Reply by each Party. The Replies were duly filed within the time-limits so prescribed.

In its Judgment of 13 December 1999, the Court began by stating that the island in question, which in Namibia is known as "Kasikili", and in Botswana as "Sedudu", is approximately 3.5 sq km in area, that it is located in the Chobe River, which divides around it to the north and south, and that it is subject to flooding of several months' duration, beginning around March. It briefly outlined the historical context of the dispute, then examined the text of the 1890 Treaty, which, in respect of the region concerned, located the dividing line between the spheres of influence of Great Britain and Germany in the "main channel" of the River Chobe. In the Court's opinion, the real dispute between the Parties concerned the location of that main channel, Botswana contending that it was the channel running north of Kasikili/Sedudu Island and Namibia the channel running south of the island. Since the Treaty did not define the notion of "main channel", the Court itself proceeded to determine which was the main channel of the Chobe River around the Island. In order to do so, it took into consideration, *inter alia*, the depth and the width of the channel, the flow (i.e., the volume of water

carried), the bed profile configuration and the navigability of the channel. After considering the figures submitted by the Parties, as well as surveys carried out on the ground at different periods, the Court concluded that “the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel”. Having invoked the object and purpose of the 1890 Treaty and its *travaux préparatoires*, the Court examined at length the subsequent practice of the parties to the Treaty. The Court found that that practice did not result in any agreement between them regarding the interpretation of the Treaty or the application of its provisions. The Court further stated that it could not draw conclusions from the cartographic material “in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty” and in the light of “the uncertainty and inconsistency” of the maps submitted by the Parties to the dispute. It finally considered Namibia’s alternative argument that it and its predecessors had prescriptive titles to Kasikili/Sedudu Island by virtue of the exercise of sovereign jurisdiction over it since the beginning of the century, with the full knowledge and acceptance of the authorities of Botswana and its predecessors. The Court found that, while the Masubia of the Caprivi Strip (territory belonging to Namibia) did indeed use the island for many years, they did so intermittently, according to the seasons and for exclusively agricultural purposes, without it being established that they occupied the island *à titre de souverain*, i.e., that they were exercising functions of State authority there on behalf of the Caprivi authorities. The Court therefore rejected that argument. After concluding that the boundary between Botswana and Namibia around Kasikili/Sedudu Island followed the line of deepest soundings in the northern channel of the Chobe and that the island formed part of the territory of Botswana, the Court recalled that, under the terms of an agreement concluded in May 1992 (the “Kasane Communiqué”), the Parties had undertaken to one another that there should be unimpeded navigation for craft of their nationals and flags in the channels around the Island.

*1.76. Vienna Convention on Consular Relations
(Paraguay v. United States of America)*

On 3 April 1998, the Republic of Paraguay filed in the Registry an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Paraguay based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute and on Article I of the Optional Protocol which accompanies the Vienna Convention on Consular Relations, and which gives the Court jurisdiction as regards the settlement of disputes arising out of the interpretation or application of that Convention. In its Application, Paraguay indicated that, in 1992, the authorities of the Commonwealth of Virginia had arrested a Paraguayan national, charged and convicted him of culpable homicide and sentenced him to death without informing him of his rights as required by Article 36, paragraph 1 (*b*), of the Convention. Those rights included the right to request that the

relevant consular office of the State of which he was a national be advised of his arrest and detention and the right to communicate with that office. It was further alleged by the Applicant that the authorities of the Commonwealth of Virginia had not advised the Paraguayan consular officers, who were therefore only able to render assistance to him from 1996, when the Paraguayan Government learned of the case by its own means. Paraguay asked the Court to adjudge and declare that the United States of America had violated its international legal obligations towards Paraguay and that the latter was entitled to “restitution in kind”.

The same day, 3 April 1998, Paraguay also submitted a request for the indication of provisional measures to ensure that the national concerned was not executed pending a decision by the Court. At a public hearing on 9 April 1998, the Court made an Order on the request for the indication of provisional measures submitted by Paraguay. The Court unanimously found that the United States of America should take all measures at its disposal to ensure that the Paraguayan national concerned was not executed pending the decision by the Court. By an Order the same day, the Vice-President, acting as President, having regard to the Court’s Order for the indication of provisional measures and the agreement of the Parties, fixed the time-limits for the filing of the Memorial and the Counter-Memorial. Paraguay filed its Memorial on 9 October 1998.

By letter of 2 November 1998, Paraguay indicated that it wished to discontinue the proceedings with prejudice. The United States of America concurred in the discontinuance on 3 November. On 10 November 1998, the Court therefore made an Order placing on record the discontinuance and directing the case to be removed from the List.

*1.77. Request for Interpretation of the Judgment of 11 June 1998
in the Case concerning the Land and Maritime Boundary
between Cameroon and Nigeria (Cameroon v. Nigeria),
Preliminary Objections (Nigeria v. Cameroon)*

On 28 October 1998, the Republic of Nigeria filed in the Registry of the Court an Application instituting proceedings against the Republic of Cameroon, whereby it requested the Court to interpret the Judgment on the preliminary objections delivered on 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria* (see No. 1.72 above). In its Request for an interpretation, Nigeria submitted that one aspect of the case concerning the *Land and Maritime Boundary* still before the Court was the alleged responsibility of Nigeria for certain incidents said by Cameroon to have occurred at various places in Bakassi and Lake Chad and also along the length of the frontier between those two regions. Nigeria held that, as Cameroon had not provided full information on those incidents, the Court had not been able to specify which incidents were to be considered further as part of the merits of the case. Nigeria considered that the meaning and scope of the Judgment required interpretation. The Court was asked to interpret the Judgment as suggested by the Applicant.

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After the filing of written observations by Cameroon on Nigeria's Request for interpretation, the Court did not deem it necessary to invite the Parties to furnish further written or oral explanations. On 25 March 1999, the Court delivered a Judgment, in which it concluded that, in its Judgment of June 1998, it had already dealt with certain of the submissions presented by Nigeria at the end of its Request for interpretation, and that the other submissions presented by Nigeria endeavoured to remove from the Court's consideration elements of law and fact which the Court, in its 1998 Judgment, had already authorized Cameroon to present, or which Cameroon had not yet put forward. In any event, the Court concluded that it could not entertain Nigeria's submissions. Accordingly, it declared Nigeria's Request for interpretation inadmissible.

1.78. Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)

On 2 November 1998, the Republic of Indonesia and Malaysia jointly notified the Court of a Special Agreement between the two States, signed at Kuala Lumpur on 31 May 1997 and having entered into force on 14 May 1998. In accordance with that Special Agreement, they requested the Court to determine, on the basis of the treaties, agreements and any other evidence furnished by them, to which of the two States sovereignty over Pulau Ligitan and Pulau Sipadan belonged.

Shortly after the filing by the Parties of the Memorials, Counter-Memorials and Replies, the Philippines, on 13 March 2001, requested permission to intervene in the case. In its Application, the Philippines indicated that the object of its request was to

“preserve and safeguard the historical and legal rights [of its Government] arising from its claim to dominion and sovereignty over the territory of North Borneo, to the extent that those rights [were] affected, or [might] be affected, by a determination of the Court of the question of sovereignty over Pulau Ligitan and Pulau Sipadan”.

The Philippines specified that it was not seeking to become a party in the case. Further, the Philippines specified that “[its] Constitution . . . as well as its legislation ha[d] laid claim to dominion and sovereignty over North Borneo”. The Application for permission to intervene drew objections from Indonesia and Malaysia. Among other things, Indonesia stated that the Application should be rejected on the ground that it had not been filed in time and that the Philippines had not shown that it had an interest of a legal nature at issue in the case. Meanwhile, Malaysia added that the object of the Application was inadequate. The Court therefore decided to hold public sittings to hear the Philippines, Indonesia and Malaysia, before ruling on whether to grant the Application for permission to intervene. Following those sittings, the Court, on 23 October 2001, delivered a Judgment by which it rejected the Application by the Philippines for permission to intervene.

After the holding of public sittings in June 2002, the Court delivered its Judgment on the merits on 17 December 2002. In that Judgment, it began by recalling the complex historical background of the dispute between the Parties. It then examined the titles invoked by them. Indonesia asserted that its claim to sovereignty over the islands was based primarily on a conventional title, the 1891 Convention between Great Britain and the Netherlands.

After examining the 1891 Convention, the Court found that, when read in the context and in the light of its object and purpose, that instrument could not be interpreted as establishing an allocation line determining sovereignty over the islands out to sea, to the east of the island of Sebatik, and that as a result the Convention did not constitute a title on which Indonesia could found its claim to Ligitan and Sipadan. The Court stated that that conclusion was confirmed both by the *travaux préparatoires* and by the subsequent conduct of the parties to the Convention. The Court further held that the cartographic material submitted by the Parties in the case did not contradict that conclusion.

Having rejected that argument by Indonesia, the Court turned to consideration of the other titles on which Indonesia and Malaysia claimed to found their sovereignty over the islands of Ligitan and Sipadan. The Court sought to determine whether Indonesia or Malaysia obtained a title to the islands by succession. In that connection, it did not accept Indonesia's contention that it retained title to the islands as successor to the Netherlands, which had allegedly acquired it through contracts concluded with the Sultan of Bulungan, the original title-holder. Nor did the Court accept Malaysia's contention that it had acquired sovereignty over the islands of Ligitan and Sipadan following a series of alleged transfers of the title originally held by the former sovereign, the Sultan of Sulu, that title having allegedly passed in turn to Spain, to the United States, to Great Britain on behalf of the State of North Borneo, to the United Kingdom and finally to Malaysia.

Having found that neither of the Parties had a treaty-based title to Ligitan and Sipadan, the Court next considered the question whether Indonesia or Malaysia could hold title to the disputed islands by virtue of the *effectivités* cited by them. In that regard, the Court determined whether the Parties' claims to sovereignty were based on activities evidencing an actual, continued exercise of authority over the islands, i.e., the intention and will to act as sovereign.

In that connection, Indonesia cited a continuous presence of the Dutch and Indonesian navies in the vicinity of Ligitan and Sipadan. It added that the waters around the islands had traditionally been used by Indonesian fishermen. In respect of the first of those arguments, it was the opinion of the Court that from the facts relied upon in the case "it [could] not be deduced . . . that the naval authorities concerned considered Ligitan and Sipadan and the surrounding waters to be under the sovereignty of the Netherlands or Indonesia". As for the second argument, the Court considered that "activities by private persons [could] not be

seen as *effectivités* if they [did] not take place on the basis of official regulations or under governmental authority”.

Having rejected Indonesia’s arguments based on its *effectivités*, the Court turned to the consideration of the *effectivités* relied on by Malaysia. As evidence of its effective administration of the islands, Malaysia cited *inter alia* the measures taken by the North Borneo authorities to regulate and control the collecting of turtle eggs on Ligitan and Sipadan, an activity of some economic significance in the area at the time. It relied on the Turtle Preservation Ordinance of 1917 and maintained that the Ordinance “[had been] applied until the 1950s at least” in the area of the two disputed islands. It further invoked the fact that the authorities of the colony of North Borneo had constructed a lighthouse on Sipadan in 1962 and another on Ligitan in 1963, that those lighthouses still existed and that they had been maintained by Malaysian authorities since its independence. The Court noted that

“the activities relied upon by Malaysia . . . [we]re modest in number but . . . they [we]re diverse in character and include[d] legislative, administrative and quasi-judicial acts. They cover[ed] a considerable period of time and show[ed] a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands.”

The Court further stated that “at the time when these activities were carried out, neither Indonesia nor its predecessor, the Netherlands, [had] ever expressed its disagreement or protest”.

The Court concluded, on the basis of the above-mentioned *effectivités*, that sovereignty over Pulau Ligitan and Pulau Sipadan belonged to Malaysia.

1.79. *Ahmadou Sadio Diallo*
(*Republic of Guinea v. Democratic Republic of the Congo*)

On 28 December 1998, Guinea filed an Application instituting proceedings against the Democratic Republic of the Congo (DRC) in respect of a dispute concerning “serious violations of international law” alleged to have been committed upon the person of Mr. Ahmadou Sadio Diallo, a Guinean national. In its Application, Guinea maintained that

“Mr. Ahmadou Sadio Diallo, a businessman of Guinean nationality, was unjustly imprisoned by the authorities of the Democratic Republic of the Congo, after being resident in that State for thirty-two (32) years, despoiled of his sizable investments, businesses, movable and immovable property and bank accounts, and then expelled.”

Guinea added:

“[t]his expulsion came at a time when Mr. Ahmadou Sadio Diallo was pursuing recovery of substantial debts owed to his businesses [Africom-Zaire

and Africontainers-Zaire] by the [Congolese] State and by oil companies established in its territory and of which the State is a shareholder”.

To found the jurisdiction of the Court, Guinea invoked in the Application the declarations whereby the two States have recognized the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

On 3 October 2002, the DRC raised preliminary objections in respect of the admissibility of Guinea’s Application. In its Judgment of 24 May 2007 on these preliminary objections, the Court declared the Application of the Republic of Guinea to be admissible “in so far as it concerns protection of Mr. Diallo’s rights as an individual” and “in so far as it concerns protection of [his] direct rights as *associé* in Africom-Zaire and Africontainers-Zaire”. However, the Court declared the Application of the Republic of Guinea to be inadmissible “in so far as it concerns protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire”.

In its Judgment of 30 November 2010 on the merits, the Court found that, in respect of the circumstances in which Mr. Diallo had been expelled on 31 January 1996, the DRC had violated Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples’ Rights. The Court also found that, in respect of the circumstances in which Mr. Diallo had been arrested and detained in 1995-1996 with a view to his expulsion, the DRC had violated Article 9, paragraphs 1 and 2, of the Covenant and Article 6 of the African Charter. The Court further decided that “the Democratic Republic of the Congo [was] under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) [of the operative part]”, namely the unlawful arrests, detentions and expulsion of Mr. Diallo. In addition, the Court found that the DRC had violated Mr. Diallo’s rights under Article 36, paragraph 1 (*b*), of the Vienna Convention on Consular Relations. It did not however order the DRC to pay compensation for this violation. In the same Judgment, the Court rejected all other submissions by Guinea relating to the arrests and detentions of Mr. Diallo, including the contention that he had been subjected to treatment prohibited by Article 10, paragraph 1, of the Covenant during his detentions. Furthermore, the Court found that the DRC had not violated Mr. Diallo’s direct rights as an *associé* in the companies Africom-Zaire and Africontainers-Zaire. Finally, the Court decided, with respect to the question of compensation owed by the DRC to Guinea, that “failing agreement between the Parties on this matter within six months from the date of [the said] Judgment, [this] question . . . shall be settled by the Court”.

The time-limit of six months thus fixed by the Court having expired on 30 May 2011 without an agreement being reached between the Parties on the

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question of compensation due to Guinea, it fell to the Court to determine the amount of compensation to be awarded to Guinea as a consequence of the unlawful arrests, detentions and expulsion of Mr. Diallo by the DRC, pursuant to the findings of the Court set out in its Judgment of 30 November 2010. By an Order of 20 September 2011, the Court fixed 6 December 2011 and 21 February 2012 as the respective time-limits for the filing of the Memorial of Guinea and the Counter-Memorial of the DRC on the question of compensation due to Guinea. The Memorial and the Counter-Memorial were duly filed within the time-limits thus prescribed. The Court delivered its Judgment on 19 June 2012.

In its Memorial, Guinea valued the mental and moral damage suffered by Mr. Diallo at US\$250,000. The Court considered various factors in its assessment of that injury, notably the arbitrary nature of Mr. Diallo's arrests and detentions, the unjustifiably long period of his detention, the unsubstantiated accusations of which he was the victim, his wrongful expulsion from a country where he had resided for 32 years and where he had engaged in significant business activities and the link between his expulsion and the fact that he had attempted to recover debts which he believed were owed to his companies by the Zairean State or companies in which that State held a substantial portion of the capital. It also took account of the fact that there was no evidence that Mr. Diallo had been mistreated. On the basis of equitable considerations, the Court found that the amount of US\$85,000 would provide appropriate compensation for the non-material injury suffered by Mr. Diallo.

In its Memorial, Guinea also valued the loss of personal property at US\$550,000. The Court found that Guinea had failed to prove the extent of the loss of personal property alleged to have been suffered by Mr. Diallo and the extent to which any such loss was caused by the DRC's unlawful conduct. Nevertheless, taking account of the fact that Mr. Diallo had lived and worked in the territory of the DRC for over 30 years, during which time he surely accumulated personal property, and on the basis of considerations of equity, the Court considered that the sum of US\$10,000 would provide appropriate compensation for the material injury suffered by Mr. Diallo.

Finally, in its Memorial, Guinea valued the loss of earnings suffered by Mr. Diallo during his unlawful detention and following his unlawful expulsion at almost US\$6.5 million. The Court ruled that Guinea had failed to prove the existence of any such loss. Consequently, it awarded no compensation on that basis.

The Court concluded that the total sum to be awarded to Guinea was thus US\$95,000, to be paid by 31 August 2012. It decided that, should payment be delayed, post-judgment interest on the principal sum due would accrue as from 1 September 2012 at an annual rate of 6 per cent. The Court ruled that each Party would bear its own costs.

1.80. LaGrand (Germany v. United States of America)

On 2 March 1999, the Federal Republic of Germany filed in the Registry of the Court an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Germany stated that, in 1982, the authorities of the State of Arizona had detained two German nationals, Karl and Walter LaGrand, who were tried and sentenced to death without having been informed of their rights, as is required under Article 36, paragraph 1 (*b*), of the Vienna Convention. Germany also alleged that the failure to provide the required notification precluded Germany from protecting its nationals' interest provided for by Articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts. Germany asserted that although the two nationals, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the federal courts, the latter, applying the municipal law doctrine of "procedural default", decided that, because the individuals in question had not asserted their rights in the previous legal proceedings at State level, they could not assert them in the federal proceedings. In its Application, Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol of the Vienna Convention on Consular Relations.

Germany accompanied its Application by an urgent request for the indication of provisional measures, requesting the Court to indicate that the United States should take "all measures at its disposal to ensure that [one of its nationals, whose date of execution had been fixed at 3 March 1999] [was] not executed pending final judgment in the case . . .". On 3 March 1999, the Court delivered an Order for the indication of provisional measures calling upon the United States of America, among other things, to "take all measures at its disposal to ensure that [the German national] [was] not executed pending the final decision in [the] proceedings". However, the two German nationals were executed by the United States.

Public hearings in the case were held from 13 to 17 November 2000. In its Judgment of 27 June 2001, the Court began by outlining the history of the dispute and then examined certain objections of the United States of America to the Court's jurisdiction and to the admissibility of Germany's submissions. It found that it had jurisdiction to deal with all Germany's submissions and that they were admissible.

Ruling on the merits of the case, the Court observed that the United States did not deny that, in relation to Germany, it had violated Article 36, paragraph 1 (*b*), of the Vienna Convention, which required the competent authorities of the United States to inform the LaGrands of their right to have the Consulate of Germany notified of their arrest. It added that, in the case concerned, that breach had led to the violation of paragraph 1 (*a*) and paragraph 1 (*c*) of that Article, which dealt

respectively with mutual rights of communication and access of consular officers and their nationals, and the right of consular officers to visit their nationals in prison and to arrange for their legal representation. The Court further stated that the United States had not only breached its obligations to Germany as a State party to the Convention, but also that there had been a violation of the individual rights of the LaGrands under Article 36, paragraph 1, which rights could be relied on before the Court by their national State.

The Court then turned to Germany's submission that the United States, by applying rules of its domestic law, in particular the doctrine of "procedural default", had violated Article 36, paragraph 2, of the Convention. That provision required the United States to "enable full effect to be given to the purposes for which the rights accorded [under Article 36] [were] intended". The Court stated that, in itself, the procedural default rule did not violate Article 36. The problem arose, according to the Court, when the rule in question did not allow the detained individual to challenge a conviction and sentence by invoking the failure of the competent national authorities to comply with their obligations under Article 36, paragraph 1. The Court concluded that, in the present case, the procedural default rule had the effect of preventing Germany from assisting the LaGrands in a timely fashion as provided for by the Convention. Under those circumstances, the Court held that in the present case the rule referred to violated Article 36, paragraph 2.

With regard to the alleged violation by the United States of the Court's Order of 3 March 1999 indicating provisional measures, the Court pointed out that it was the first time it had been called upon to determine the legal effects of such orders made under Article 41 of its Statute — the interpretation of which had been the subject of extensive controversy in the literature. After interpreting Article 41, the Court found that such orders did have binding effect. In the present case, the Court concluded that its Order of 3 March 1999 "was not a mere exhortation" but "created a legal obligation for the United States". The Court then went on to consider the measures taken by the United States to implement the Order concerned and concluded that it had not complied with it.

With respect to Germany's request seeking an assurance that the United States would not repeat its unlawful acts, the Court took note of the fact that the latter had repeatedly stated in all phases of those proceedings that it was implementing a vast and detailed programme in order to ensure compliance, by its competent authorities, with Article 36 of the Convention and concluded that such a commitment must be regarded as meeting the request made by Germany. Nevertheless, the Court added that if the United States, notwithstanding that commitment, were to fail again in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned had been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States, by whatever means it chose, to allow the review and

reconsideration of the conviction and sentence taking account of the violation of the rights set forth in the Convention.

1.81-1.90. *Legality of Use of Force (Serbia and Montenegro v. Belgium) (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) (Yugoslavia v. Spain) (Serbia and Montenegro v. United Kingdom) (Yugoslavia v. United States of America)*³¹

On 29 April 1999, the Federal Republic of Yugoslavia filed in the Registry of the Court Applications instituting proceedings against Belgium, Canada, France, Germany, Italy, Netherlands, Portugal, Spain, United Kingdom and United States of America for alleged violations of their obligation not to use force against another State. In its Applications against Belgium, Canada, Netherlands, Portugal, Spain and United Kingdom, Yugoslavia referred, as a basis for the jurisdiction of the Court, to Article 36, paragraph 2, of the Statute of the Court and to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948. Yugoslavia also relied upon Article IX of that Convention in its Applications against France, Germany, Italy and United States, but also relied on Article 38, paragraph 5, of the Rules of Court.

On 29 April 1999, Yugoslavia also submitted, in each case, an Application for the indication of provisional measures to ensure that the respondent State concerned “cease immediately its acts of use of force and . . . refrain from any act of threat or use of force” against Yugoslavia. After hearings on the provisional measures from 10 to 12 May 1999, the Court delivered its decision in each of the cases on 2 June 1999. In two of them (*Yugoslavia v. Spain* and *Yugoslavia v. United States of America*), the Court, rejecting the request for the indication of provisional measures, concluded that it manifestly lacked jurisdiction and consequently ordered that the cases be removed from the List. In the eight other cases, the Court declared that it lacked *prima facie* jurisdiction (one of the prerequisites for the indication of provisional measures) and that it therefore could not indicate such measures.

In each of the eight cases which remained on the List, Yugoslavia filed a Memorial in January 2000. In July 2000, the Respondents filed preliminary objections to jurisdiction and admissibility within the time-limit laid down for the filing of their Counter-Memorials. Consequently, pursuant to Article 79, paragraph 3, of the Rules of Court adopted on 14 April 1978, the proceedings on the merits

³¹ The titles of the eight cases remaining on the Court’s List were modified following the change in the name of Yugoslavia on 4 February 2003. In the following summary, the name “Yugoslavia” has been retained with respect to all proceedings before this date.

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in each of the cases were suspended. By Orders of 8 September 2000, the Vice-President fixed 5 April 2001 as the time-limit for the submission by Yugoslavia, in each case, of a written statement containing its observations on the preliminary objections.

In January 2001 and February 2002, Yugoslavia, referring to “dramatic” and “ongoing” changes in the country, which would have put those cases “in a quite different perspective”, as well as to the decision to be taken by the Court in another case involving Yugoslavia, requested the Court “for a stay of proceedings or for an extension by 12 months of the time-limit for the submission of observations on the preliminary objections raised by . . . [the respondent State]” in each case. In 2001 and 2002, the respondent States indicated that they were not opposed to a stay of proceedings or to an extension of the time-limit for the filing of the observations and submissions of Yugoslavia on their preliminary objections. Consequently, the Court twice extended by one year the time-limits originally fixed for the submission by Yugoslavia of the written statements containing its observations and submissions on the preliminary objections raised by the eight respondent States. On 20 December 2002, Yugoslavia filed that written statement in each of the eight cases.

By subsequent letters addressed to the Court in January and February 2003, the eight respondent States expressed their views concerning the written statement of Serbia and Montenegro. In reply, by a letter of 28 February 2003, Serbia and Montenegro informed the Court that its written observations filed on 20 December 2002 were not to be interpreted as a notice of discontinuance of the proceedings; it indicated that their object was simply to request the Court to decide on its own jurisdiction on the basis of the new elements to which the Court’s attention had been drawn.

Serbia and Montenegro availed itself of the right under Article 31, paragraph 2, of the Statute to choose a judge *ad hoc*, during the phase of the cases devoted to the request for the indication of provisional measures. At that time, some of the respondent States also chose judges *ad hoc*. In the subsequent phase of the proceedings, Belgium, Canada and Italy requested the extension of the appointments of their judges *ad hoc* and Portugal indicated its intention to appoint a judge *ad hoc*. Serbia and Montenegro objected on the ground that the respondent States were in the same interest. Following a meeting held by the President with the representatives of the Parties on 12 December 2003, the Registrar informed the Parties that the Court had decided, pursuant to Article 31, paragraph 5, of its Statute, taking into account the presence on the Bench of judges of British, Dutch and French nationality, that the judges *ad hoc* chosen by the respondent States should not sit during the then current phase of the procedure in these cases; and that that decision did not in any way prejudice the question whether, if the Court should reject the preliminary objections of the respondents, judges *ad hoc* chosen by them might sit in subsequent stages of the said cases.

At the meeting of 12 December 2003, the question was also raised of a possible joinder of the proceedings. By the Registrar's letters of 23 December 2003, the Parties were informed that the Court had decided that the proceedings should not be joined. Although there were thus eight separate proceedings, instituted by eight separate Applications, the position of the Applicant in each case was the same, and its responses to the eight sets of preliminary objections proceeded on substantially the same basis. Consequently, the Court organized the conduct of the oral proceedings in this phase of the case in such a manner as to avoid unnecessary duplication of arguments. Oral proceedings were held from 19 to 23 April 2004.

In its Judgments of 15 December 2004, the Court observed that the question whether Serbia and Montenegro was or was not a State party to the Statute of the Court at the time of the institution of the proceedings was fundamental; for if Serbia and Montenegro were not such a party, the Court would not be open to it, unless it met the conditions prescribed in Article 35, paragraph 2, of the Statute. The Court therefore had to examine whether the Applicant met the conditions for access to it laid down in Articles 34 and 35 of the Statute before examining the issues relating to the conditions laid down in Articles 36 and 37 of the Statute.

The Court pointed out that there was no doubt that Serbia and Montenegro was a State for the purpose of Article 34, paragraph 1, of the Statute. However, the objection had been raised by certain Respondents that, at the time when the Application was filed, Serbia and Montenegro did not meet the conditions set down in Article 35, paragraph 1, of the Statute, because it was not a Member of the United Nations at the relevant time. After recapitulating the sequence of events relating to the legal position of the applicant State vis-à-vis the United Nations, the Court concluded that the legal situation that obtained within the United Nations during the period 1992-2000 concerning the status of the Federal Republic of Yugoslavia, following the break-up of the Socialist Federal Republic of Yugoslavia, had remained ambiguous and open to different assessments. This situation had come to an end with a new development in 2000. On 27 October of that year, the Federal Republic of Yugoslavia requested admission to membership in the United Nations, and on 1 November, by General Assembly resolution 55/12, it was so admitted. The Applicant thus had the status of membership in the Organization as from 1 November 2000. However, its admission to the United Nations did not have, and could not have had, the effect of dating back to the time when the Socialist Federal Republic of Yugoslavia broke up and disappeared. The Court therefore concluded that the Applicant thus was not a Member of the United Nations, and in that capacity a State party to the Statute of the International Court of Justice, at the time of filing its Application to institute the proceedings in each of the cases before the Court on 29 April 1999. As it had not become a party to the Statute on any other basis, the Court was not open to it at that time under Article 35, paragraph 1, of the Statute.

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The Court then considered whether it might have been open to the Applicant under paragraph 2 of Article 35. It noted that the words “treaties in force” in that paragraph were to be interpreted as referring to treaties which were in force at the time that the Statute itself came into force, and that consequently, even assuming that the Applicant was a party to the Genocide Convention when instituting proceedings, Article 35, paragraph 2, of the Statute did not provide it with a basis for access to the Court under Article IX of that Convention, since the Convention only entered into force on 12 January 1951, after the entry into force of the Statute.

In the cases against Belgium and the Netherlands, the Court finally examined the question whether Serbia and Montenegro was entitled to invoke the dispute settlement convention it had concluded with each of those States in the early 1930s as a basis of jurisdiction in those cases. The question was whether the conventions dating from the early 1930s, which had been concluded prior to the entry into force of the Statute, might rank as a “treaty in force” for purposes of Article 35, paragraph 2, and hence provide a basis of access. The Court first recalled that Article 35 of the Statute of the Court concerns access to the present Court and not to its predecessor, the Permanent Court of International Justice (PCIJ). It then observed that the conditions for transfer of jurisdiction from the PCIJ to the present Court are governed by Article 37 of the Statute. The Court noted that Article 37 applies only as between parties to the Statute under Article 35, paragraph 1. As it had already found that Serbia and Montenegro was not a party to the Statute when instituting proceedings, the Court accordingly found that Article 37 could not give it access to the Court under Article 35, paragraph 2, on the basis of the Conventions dating from the early 1930s, irrespective of whether or not those instruments were in force on 29 April 1999, the date of the filing of the Application.

At the end of its reasoning, the Court finally recalled that, irrespective of whether it has jurisdiction over a dispute, the parties “remain in all cases responsible for acts attributable to them that violate the rights of other States”.

*1.91-1.93. Armed Activities on the Territory of the Congo
(Democratic Republic of the Congo v. Burundi)
(Democratic Republic of the Congo v. Rwanda)
(Democratic Republic of the Congo v. Uganda)*

On 23 June 1999, the Democratic Republic of the Congo (DRC) filed in the Registry of the Court Applications instituting proceedings against Burundi, Uganda and Rwanda “for acts of armed aggression committed . . . in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity”. In addition to the cessation of the alleged acts, Congo sought reparation for acts of intentional destruction and looting and the restitution of national property and resources appropriated for the benefit of the respective respondent States.

In its Applications instituting proceedings against Burundi and Rwanda, the DRC referred, as bases for the Court’s jurisdiction, to Article 36, paragraph 1, of

the Statute, the New York Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation and, lastly, Article 38, paragraph 5, of the Rules of Court. However, the Government of the DRC informed the Court on 15 January 2001 that it intended to discontinue the proceedings instituted against Burundi and Rwanda, stating that it reserved the right to invoke subsequently new grounds of jurisdiction of the Court. The two cases were therefore removed from the List on 30 January 2001. (For the case brought subsequently by the DRC against Rwanda on 28 May 2002, see No. 1.102 below.)

In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the DRC founded the jurisdiction of the Court on the declarations of acceptance of the compulsory jurisdiction of the Court made by the two States. On 19 June 2000, the DRC filed a request for the indication of provisional measures to put a stop to all military activity and violations of human rights and of the sovereignty of the DRC by Uganda. On 1 July 2000, the Court ordered each of the two Parties to prevent and refrain from any armed action which might prejudice the rights of the other Party or aggravate the dispute, to take all measures necessary to comply with all of their obligations under international law and also to ensure full respect for fundamental human rights and for the applicable provisions of humanitarian law.

Uganda subsequently filed a Counter-Memorial containing three counter-claims. By an Order of 29 November 2001, the Court found that two of the counter-claims (acts of aggression allegedly committed by the Congo against Uganda; and attacks on Ugandan diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the Congo is alleged to be responsible) were admissible as such and formed part of the proceedings. It also directed the submission of a Reply by the Congo and a Rejoinder by Uganda relating to the claims of both Parties in the proceedings. Those pleadings were filed within the time-limits laid down by the Court.

By an Order of 29 January 2003, the Court authorized the submission by the DRC of an additional pleading relating solely to the counter-claims submitted by Uganda, which was duly filed on 28 February 2003.

Following oral proceedings in April 2005, the Court handed down its Judgment on the merits on 19 December 2005. It began by noting that it was aware of the complex and tragic situation which had long prevailed in the Great Lakes region and of the suffering of the local population. It observed that the instability in the DRC in particular had had negative security implications for Uganda and several other neighbouring States. It recalled, however, that its task was to respond, on the basis of international law, to the particular legal dispute brought before it.

The Court first dealt with the question of the invasion of the DRC by Uganda. After examining the materials submitted to it by the Parties, the Court found that,

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in the period preceding August 1998, the DRC had not objected to the presence or activities of Ugandan troops in its eastern border area. The two countries had agreed, among other things, that their respective armies would “co-operate in order to insure security and peace along the common border”. However, the Court drew attention to the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent. It was limited, in terms of objectives and geographic location, to actions directed at stopping the rebels who were operating across the common border. It did not constitute a consent to all that was to follow.

The Court carefully examined the various treaties directed to achieving and maintaining a ceasefire, the withdrawal of foreign forces and the stabilization of relations between the DRC and Uganda. It concluded that none of those instruments constituted consent by the DRC to the presence of Ugandan troops on its territory (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement). The Court also rejected Uganda’s claim that its use of force, where not covered by consent, was an exercise of self-defence, finding that the preconditions for self-defence did not exist. Indeed, the unlawful military intervention by Uganda was of such magnitude and duration that the Court considered it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the United Nations Charter.

The Court also found that, by actively extending military, logistic, economic and financial support to irregular forces operating on the territory of the DRC, the Republic of Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention.

The Court then moved to the question of occupation and of the violations of human rights and humanitarian law. It observed first that, under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.

Having concluded that Uganda was the occupying power in Ituri at the relevant time, the Court stated that, as such, it was under an obligation, according to Article 43 of the 1907 Hague Regulations, to take all measures in its power to restore and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This had not been done. The Court also considered that it had credible evidence sufficient to conclude that UPDF (Uganda Peoples’ Defence Forces) troops had committed violations of international humanitarian law and human rights law. It found that these violations were attributable to Uganda.

The third issue that the Court was called upon to examine concerned the alleged exploitation of Congolese natural resources by Uganda. In this regard,

the Court considered that it had credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, had been involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities had not taken any measures to put an end to these acts. Uganda was responsible both for the conduct of the UPDF as a whole and for the conduct of individual soldiers and officers of the UPDF in the DRC. This was so even when UPDF officers and soldiers had acted contrary to instructions given or had exceeded their authority. The Court found, on the other hand, that it did not have at its disposal credible evidence to prove that there was a governmental policy on the part of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources.

In respect of the first counter-claim of Uganda (see above concerning the Order of 29 November 2011), the Court found that Uganda had not produced sufficient evidence to show that the DRC had provided political and military support to anti-Ugandan rebel groups operating in its territory, or even to prove that the DRC had breached its duty of vigilance by tolerating anti-Ugandan rebels on its territory. The Court thus rejected the first counter-claim submitted by Uganda in its entirety.

As for the second counter-claim of Uganda (see above concerning the Order of 29 November 2011), the Court first declared inadmissible the part of that claim relating to the alleged maltreatment of Ugandan nationals not enjoying diplomatic status at Ndjili International Airport. Regarding the merits of the claim, it found, on the other hand, that there was sufficient evidence to prove that there were attacks against the Embassy and acts of maltreatment against Ugandan diplomats at Ndjili International Airport. Consequently, it found that the DRC had breached its obligations under the Vienna Convention on Diplomatic Relations. The removal of property and archives from the Ugandan Embassy was also in violation of the rules of international law on diplomatic relations.

The Court noted in its Judgment that the nature, form and amount of compensation owed by each Party had been reserved and would only be submitted to the Court should the Parties be unable to reach agreement on the basis of the Judgment just rendered by the Court. Following the delivery of the Judgment, the Parties have regularly informed the Court on the progress of negotiations. On 8 September 2007, the President of the Republic of Uganda and the President of the DRC concluded an Agreement on Bilateral Co-operation, Article 8 of which provided for the establishment of an *ad hoc* committee, composed of not more than seven members nominated by each Party, to study the Judgment rendered by the Court and to make recommendations concerning reparation. At a meeting on 25 May 2010 in Kampala, Uganda, the two States named their respective members of the *ad hoc* committee and agreed that that committee would adopt a work plan, rules of procedure and determine timeframes for completing its work. In

addition, the DRC presented to the Ugandan delegation a document in which it provided its valuation of the damages it had suffered. In September 2012, the DRC and Uganda concluded an agreement establishing a work plan for the presentation of evidence in support of their respective claims.

*1.94. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)*³²

On 2 July 1999, Croatia filed an Application against the Federal Republic of Yugoslavia (FRY) “for violations of the Convention on the Prevention and Punishment of the Crime of Genocide”. As basis for the Court’s jurisdiction, Croatia invoked Article IX of that Convention to which, according to it, both Croatia and Yugoslavia were parties. The Memorial of Croatia was filed on 1 March 2001, within the time-limit fixed by the Court for that purpose. On 11 September 2002, Yugoslavia filed preliminary objections to the jurisdiction of the Court and to the admissibility of the claims made by Croatia and, pursuant to Article 79, paragraph 3, of the Rules of Court adopted on 14 April 1978, the proceedings on the merits were suspended.

The Court delivered its Judgment on the preliminary objections on 18 November 2008. It began by considering the first preliminary objection relating to the question of Serbia’s access to the Court, taking particular account of its 2004 decision that Yugoslavia did not have access to the Court in 1999 when it filed its Applications against the NATO countries in the cases concerning the *Legality of Use of Force* (see Nos. 1.81-1.90 above). The Court observed that, while its jurisdiction should normally be assessed on the date of the filing of the act instituting proceedings, it had also shown flexibility in certain situations in which the conditions governing the Court’s jurisdiction were not fully satisfied when proceedings were initiated but were subsequently satisfied, before the Court ruled on its jurisdiction. It concluded in this respect that the Court was open to the FRY as of 1 November 2000, when the latter was readmitted as a Member of the United Nations and *ipso facto* became a party to the Statute of the Court. The Court reasoned, therefore, that it was in a position to uphold its jurisdiction if it found that Serbia was bound by Article IX of the Genocide Convention — the instrument invoked by Croatia as the basis for the Court’s jurisdiction — on 2 July 1999, the date on which the proceedings were instituted, and that it remained bound by that Article until 1 November 2000.

³² The title of the case was amended following the change in the name of Yugoslavia on 4 February 2003. In the following summary, the name “Yugoslavia” has been retained with respect to all proceedings prior to this date. In addition, on 3 June 2006 Montenegro declared its independence from Serbia (see *supra* note 29, p. 159). The following summary thus uses the name “Yugoslavia” with respect to all proceedings before 4 February 2003, “Serbia and Montenegro” with respect to all events subsequent to that date and prior to 3 June 2006, and “Republic of Serbia” or “Serbia” with respect to all events subsequent to 3 June 2006.

In this connection, the Court noted that, by a declaration of 27 April 1992 and a Note of the same date, the FRY stated that it would “continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia [SFRY] in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia”. In the light of the text of the declaration and Note of 27 April 1992, and of Yugoslavia’s consistent conduct throughout the years 1992-2001, the Court ruled that the declaration and the Note had the effect of a notification of succession by the FRY to the SFRY in relation to the Genocide Convention, including Article IX thereof, which provided for the Court’s jurisdiction. It concluded that it had, on the date on which the proceedings were instituted by Croatia, jurisdiction to entertain the case on the basis of Article IX, and that that situation had continued at least until 1 November 2000, the date on which Serbia and Montenegro became a Member of the United Nations and thus a party to the Statute of the Court. Having concluded that Serbia had acquired the status of party to the Court’s Statute on 1 November 2000, that it was bound by the Genocide Convention, including Article IX thereof, on the date on which the proceedings were instituted and that it remained so until at least 1 November 2000, the Court rejected Serbia’s first preliminary objection.

The Court then considered the second preliminary objection of Serbia that “the claims based on acts and omissions which took place prior to 27 April 1992” — that is to say before Serbia existed as a State — were beyond its jurisdiction and inadmissible. The Court found that such a preliminary objection raised the question of the applicability of the obligations under the Genocide Convention to the FRY before 27 April 1992 and whether consequences should be drawn with regard to the responsibility of the FRY for those same facts under the general rules of State responsibility. The Court stated that it could not determine these questions without to some degree determining issues properly pertaining to the merits of the case, and that since the objection raised was not exclusively preliminary in character, it would have to be dealt with at the merits stage, when the Court would be in possession of greater evidence.

Lastly, the Court addressed Serbia’s third preliminary objection that claims relating to the prosecution of certain persons within the jurisdiction of Serbia, the provision of information regarding the whereabouts of missing Croatian citizens and the return of cultural property were beyond the jurisdiction of the Court and inadmissible. With respect to the submission of persons to trial, the Court found that it would consider this question when it examined Croatia’s claims on the merits. With respect to the provision of information regarding the whereabouts of Croats missing since 1991 and the return of cultural property, the Court indicated that the question whether remedies might appropriately be ordered was one which was dependent upon the findings that the Court might make of breaches of the Genocide Convention by Serbia, and that that question was not

a question which could be the proper subject of a preliminary objection. The Court thus rejected the third preliminary objection of Serbia in its entirety.

Having rejected the preliminary objections or, in the case of one of them, ruled that it was not exclusively preliminary in character, the Court fixed 22 March 2010 as the time-limit for the filing of a Counter-Memorial by the Republic of Serbia. That pleading, containing counter-claims, was filed on 4 January 2010. By an Order of 4 February 2010, the Court directed the submission of a Reply by Croatia and a Rejoinder by Serbia. It fixed 20 December 2010 and 4 November 2011, respectively, as the time-limits for the filing of those written pleadings. The Reply and Rejoinder were filed within the time-limits thus fixed. By an Order of 23 January 2012, in order to ensure strict equality between the Parties, the Court decided to authorize the submission by Croatia of an additional written pleading relating to the counter-claims of Serbia. Croatia filed the additional pleading within the time-limit of 30 August 2012 as fixed by that Order.

1.95. Aerial Incident of 10 August 1999 (Pakistan v. India)

On 21 September 1999, the Islamic Republic of Pakistan filed an Application instituting proceedings against the Republic of India in respect of a dispute concerning the destruction, on 10 August 1999, of a Pakistani aircraft. By letter of 2 November 1999, the Agent of India notified the Court that his Government wished to submit preliminary objections to the jurisdiction of the Court, which were set out in an appended note. On 19 November 1999, the Court decided that the written pleadings would first address the question of the jurisdiction of the Court and fixed time-limits for the filing of the Memorial of Pakistan and the Counter-Memorial of India, which were duly filed within the time-limits so prescribed. Public hearings on the question of the jurisdiction of the Court were held from 3 to 6 April 2000.

In its Judgment of 21 June 2000, the Court noted that, to establish the jurisdiction of the Court, Pakistan had relied on Article 17 of the General Act for Pacific Settlement of International Disputes, signed at Geneva on 26 September 1928, on the declarations of acceptance of the compulsory jurisdiction of the Court made by the Parties and on Article 36, paragraph 1, of the Statute. It considered those bases of jurisdiction in turn.

The Court pointed out first that, on 21 May 1931, British India had acceded to the General Act of 1928. It observed that India and Pakistan had held lengthy discussions on the question whether the General Act had survived the dissolution of the League of Nations and whether, if so, the two States had become parties to that Act on their accession to independence. Referring to a communication addressed to the United Nations Secretary-General of 18 September 1974, in which the Indian Government indicated that, since India's accession to independence in 1947, they had "never regarded themselves as bound by the General Act of 1928 . . . whether by succession or otherwise", the Court concluded that India

could not be regarded as party to the said Act on the date the Application had been filed by Pakistan and that the Convention did not constitute a basis of jurisdiction. The Court then considered the declaration of acceptance of the compulsory jurisdiction of the Court made by the two States. It noted that India's declaration contained a reservation under which "disputes with the government of any State which is or has been a member of the Commonwealth of Nations" was barred from its jurisdiction. The Court recalled that its jurisdiction only existed within the limits within which it had been accepted and that the right of States to attach reservations to their declarations was a recognized practice. Consequently, Pakistan's arguments to the effect that India's reservation was "extra-statutory" or was obsolete could not be upheld. Pakistan being a member of the Commonwealth, the Court concluded that it did not have jurisdiction to deal with the Application on the basis of the declarations made by the two States.

Considering, thirdly, the final basis of jurisdiction relied on by Pakistan, namely Article 36, paragraph 1, of the Statute, according to which "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations", the Court indicated that neither the United Nations Charter nor Article 1 of the Simla Accord of 2 July 1972 between the Parties conferred jurisdiction upon it to deal with the dispute between them.

Lastly, the Court explained that there was "a fundamental distinction between the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law" and that "the Court's lack of jurisdiction [did] not relieve States of their obligation to settle their disputes by peaceful means".

1.96. Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)

On 8 December 1999, the Republic of Nicaragua filed an Application instituting proceedings against the Republic of Honduras in respect of a dispute concerning the delimitation of the maritime zones appertaining to each of those States in the Caribbean Sea.

By an Order of 21 March 2000, the Court fixed 21 March 2001 and 21 March 2002, respectively, as the time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Honduras. Those pleadings were filed within the time-limits thus fixed.

By an Order of 13 June 2002, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Honduras and fixed 13 January 2003 and 13 August 2003 as the respective time-limits for those pleadings. Those pleadings were filed within the time-limits thus prescribed.

Following public hearings in March 2007, the Court rendered its Judgment on 8 October 2007. In respect of sovereignty over the islands of Bobel Cay, Savanna

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Cay, Port Royal Cay and South Cay, located in the area in dispute, the Court concluded that it had not been established that either Honduras or Nicaragua had title to those islands by virtue of *uti possidetis juris*. Having then sought to identify any post-colonial *effectivités*, the Court found that sovereignty over the islands belonged to Honduras, as it had shown that it had applied and enforced its criminal and civil law, had regulated immigration, fisheries activities and building activity and had exercised its authority in respect of public works there. As for the delimitation of the maritime areas between the two States, the Court found that no established boundary existed along the 15th parallel on the basis of either *uti possidetis juris* or a tacit agreement between the Parties. It thus proceeded to determine the delimitation itself. Since it was unable to apply the equidistance method, in view of the particular geographical circumstances, the Court drew a bisector (i.e., a line formed by bisecting the angle created by the linear approximations of the coastlines) with an azimuth of 70° 14' 41.25". It adjusted the course of the line to take account of the territorial seas accorded to the aforementioned islands and to resolve the issue of overlap between those territorial seas and that of the island of Edinburgh Cay (Nicaragua) by drawing a median line. Asked to identify the starting point of the maritime boundary between Nicaragua and Honduras, the Court, taking account of the continuing eastward accretion of Cape Gracias a Dios (a territorial projection and the point where the coastal fronts of the two States meet) as a result of alluvial deposits by the River Coco, decided to fix the point on the bisector at a distance of three nautical miles out to sea from the point which a mixed demarcation commission in 1962 had identified as the endpoint of the land boundary in the mouth of the River Coco. The Court further instructed the Parties to negotiate in good faith with a view to agreeing on the course of a line between the present endpoint of the land boundary and the starting-point of the maritime boundary thus determined. In respect of the endpoint of the maritime boundary, the Court stated that the line which it had drawn continued until it reached the area where the rights of certain third States might be affected.

1.97. *Arrest Warrant of 11 April 2000* (*Democratic Republic of the Congo v. Belgium*)

On 17 October 2000, the Democratic Republic of the Congo (DRC) filed an Application instituting proceedings against Belgium concerning a dispute over an international arrest warrant issued on 11 April 2000 by a Belgian examining judge against the acting Congolese Minister for Foreign Affairs, Mr. Abdoulaye Yerodia Ndombasi, seeking his detention and subsequent extradition to Belgium for alleged crimes constituting "grave violations of international humanitarian law". The arrest warrant was transmitted to all States, including the DRC, which received it on 12 July 2000.

The DRC also filed a request for the indication of a provisional measure seeking "an order for the immediate discharge of the disputed arrest warrant". Belgium,

for its part, called for that request to be rejected and for the case to be removed from the List. In its Order made on 8 December 2000, the Court, rejecting Belgium's request for the case to be removed from the List, stated that "the circumstances, as they [then] presented themselves to the Court, [were] not such as to require the exercise of its power, under Article 41 of the Statute, to indicate provisional measures".

The Memorial of the DRC was filed within the prescribed time-limits. For its part, Belgium filed, within the prescribed time-limits, a Counter-Memorial addressing both issues of jurisdiction and admissibility and the merits.

In its submissions presented at the public hearings, the DRC requested the Court to adjudge and declare that Belgium had violated the rule of customary international law concerning the inviolability and immunity from criminal process of incumbent foreign ministers and that it should be required to recall and cancel that arrest warrant and provide reparation for the moral injury to the DRC. Belgium raised objections relating to jurisdiction, mootness and admissibility.

In its Judgment of 14 February 2002, the Court rejected the objections raised by Belgium and declared that it had jurisdiction to entertain the application of the DRC. With respect to the merits, the Court observed that, in the case, it was only questions of immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that it had to consider, on the basis, moreover, of customary international law.

The Court then observed that, in customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. The Court held that the functions exercised by a Minister for Foreign Affairs were such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoyed full immunity from criminal jurisdiction and inviolability. Inasmuch as the purpose of that immunity and inviolability was to prevent another State from hindering the Minister in the performance of his or her duties, no distinction could be drawn between acts performed by the latter in an "official" capacity and those claimed to have been performed in a "private capacity" or, for that matter, between acts performed before assuming office as Minister for Foreign Affairs and acts committed during the period of office. The Court then observed that, contrary to Belgium's arguments, it had been unable to deduce from its examination of State practice that there existed under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs when they were suspected of having committed war crimes or crimes against humanity.

The Court further observed that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities. The immunities under customary international law, including those of

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Ministers for Foreign Affairs, remained opposable before the courts of a foreign State, even where those courts exercised an extended criminal jurisdiction on the basis of various international conventions on the prevention and punishment of certain serious crimes.

However, the Court emphasized that the immunity from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs did not mean that they enjoyed impunity in respect of any crimes they might have committed, irrespective of their gravity. While jurisdictional immunity was procedural in nature, criminal responsibility was a question of substantive law. Jurisdictional immunity might well bar prosecution for a certain period or for certain offences; it could not exonerate the person to whom it applied from all criminal responsibility. The Court then spelled out the circumstances in which the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs did not represent a bar to criminal prosecution.

After examining the terms of the arrest warrant of 11 April 2000, the Court noted that the issuance, as such, of the disputed arrest warrant represented an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs, on charges of war crimes and crimes against humanity. It found that, given the nature and purpose of the warrant, its mere issuance constituted a violation of an obligation of Belgium towards the DRC, in that it had failed to respect the immunity which Mr. Yerodia enjoyed as incumbent Minister for Foreign Affairs. The Court also declared that the international circulation of the disputed arrest warrant from June 2000 by the Belgian authorities constituted a violation of an obligation of Belgium towards the DRC, in that it had failed to respect the immunity of the incumbent Minister for Foreign Affairs. Finally, the Court considered that its findings constituted a form of satisfaction which would make good the moral injury complained of by the DRC. However, the Court also held that, in order to re-establish “the situation which would, in all probability have existed if [the illegal act] had not been committed”, Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it had been circulated.

*1.98. Application for Revision of the Judgment of 11 July 1996
in the Case concerning Application of the Convention
on the Prevention and Punishment of the Crime of Genocide
(Bosnia and Herzegovina v. Yugoslavia),
Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)*

On 24 April 2001, Yugoslavia³³ filed an Application for a revision of the Judgment delivered by the Court on 11 July 1996 on the preliminary objections raised in the case instituted against it by Bosnia and Herzegovina. By that Judgment of

³³ In fact, the Federal Republic of Yugoslavia, which is referred to as “FRY” in the Judgment of 3 February 2003.

11 July 1996, the Court had declared that it had jurisdiction on the basis of Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and had dismissed the additional bases of jurisdiction relied on by Bosnia and Herzegovina, finding that the Application filed by the latter was admissible. Yugoslavia contended that a revision of the Judgment was necessary, since it had now become clear that, before 1 November 2000 (the date on which it was admitted as a new Member of the United Nations), it did not continue the international legal and political personality of the Socialist Federal Republic of Yugoslavia, was not a Member of the United Nations, was not a State party to the Statute of the Court and was not a State party to the Genocide Convention. Yugoslavia therefore requested the Court to adjudge and declare that there was a new fact of such a character as to call for revision of the 1996 Judgment under Article 61 of the Statute.

After the filing, by Bosnia and Herzegovina, of its written observations on the admissibility of the Application, public hearings were held from 4 to 7 November 2002. In its Judgment on the admissibility of the Application, delivered on 3 February 2003, the Court noted in particular that, under Article 61 of the Statute, an application for revision of a judgment may be made only when it is “based upon the discovery” of a “new” fact which, “when the judgment was given”, was unknown. Such a fact must have been in existence prior to the judgment and have been discovered subsequently. On the other hand, the Court continued, a fact which occurred several years after a judgment had been given was not a “new” fact within the meaning of Article 61, irrespective of the legal consequences that such a fact might have.

Hence, the Court considered that the admission of Yugoslavia to the United Nations on 1 November 2000, well after the 1996 Judgment, could not be regarded as a new fact capable of founding a request for revision of that Judgment.

In the final version of its argument, Yugoslavia claimed that its admission to the United Nations and a letter of 8 December 2000 from the Organization’s Legal Counsel simply “revealed” two facts which had existed in 1996 but had been unknown at the time, namely, that it was not then a party to the Statute of the Court and that it was not bound by the Genocide Convention. On that point, the Court considered that, in so arguing, Yugoslavia was not relying on facts that existed in 1996 but “in reality, base[d] its Application for revision on the legal consequences which it [sought] to draw from facts subsequent to the Judgment which it [was] asking to have revised”. Those consequences, even supposing them to be established, could not be regarded as facts within the meaning of Article 61 and the Court therefore rejected that argument of Yugoslavia.

The Court indicated that at the time when the Judgment of 1996 was given, the situation obtaining was that created by General Assembly resolution 47/1. That resolution, adopted on 22 September 1992, stated *inter alia*:

“The General Assembly . . . considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly.”

In its Judgment of 2003, the Court observed that

“the difficulties which arose regarding the FRY’s status between the adoption of that resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY’s claim to continue the international legal personality of the former Yugoslavia was not ‘generally accepted’ . . . , the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and ECOSOC and in the meetings of States parties to the International Covenant on Civil and Political Rights, etc.)”.

The Court specified that resolution 47/1 did not affect Yugoslavia’s right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute, nor did it affect the position of Yugoslavia in relation to the Genocide Convention. The Court further stated that resolution 55/12 of 1 November 2000 (by which the General Assembly decided to admit Yugoslavia to membership of the United Nations) could not have changed retroactively the *sui generis* position which that State found itself in vis-à-vis the United Nations over the period 1992 to 2000, or its position in relation to the Statute of the Court and the Genocide Convention. From the foregoing, the Court concluded that it had not been established that Yugoslavia’s Application was based upon the discovery of “some fact” which was “when the judgment was given, unknown to the Court and also to the party claiming revision” and accordingly found that one of the conditions for the admissibility of an application for revision laid down by Article 61, paragraph 1, of the Statute had not been satisfied.

1.99. *Certain Property (Liechtenstein v. Germany)*

By an Application filed in the Registry on 1 June 2001, Liechtenstein instituted proceedings against Germany relating to a dispute concerning

“decisions of Germany, in and after 1998, to treat certain property of Liechtenstein nationals as German assets having been ‘seized for the purposes of reparation or restitution, or as a result of the state of war’ — i.e., as a consequence of World War II —, without ensuring any compensation for the loss of that property to its owners, and to the detriment of Liechtenstein itself”.

The historical context of the dispute was as follows. In 1945, Czechoslovakia confiscated certain property belonging to Liechtenstein nationals, including

Prince Franz Josef II of Liechtenstein, pursuant to the “Beneš Decrees”, which authorized the confiscation of “agricultural property” (including buildings, installations and movable property) of “all persons belonging to the German and Hungarian people, regardless of their nationality”. A special régime with regard to German external assets and other property seized in connection with the Second World War was created under the Convention on the Settlement of Matters Arising out of the War and the Occupation (Chapter Six), signed in 1952 at Bonn. In 1991, a painting by the Dutch master Pieter van Laer was lent by a museum in Brno (Czechoslovakia) to a museum in Cologne (Germany) for inclusion in an exhibition. This painting had been the property of the family of the Reigning Prince of Liechtenstein since the eighteenth century; it was confiscated in 1945 by Czechoslovakia under the Beneš Decrees. Prince Hans-Adam II of Liechtenstein, acting in his personal capacity, then filed a lawsuit in the German courts to have the painting returned to him as his property, but that action was dismissed on the ground that, under Article 3, Chapter Six, of the Settlement Convention (paragraphs 1 and 3 of which are still in force), no claim or action in connection with measures taken against German external assets in the aftermath of the Second World War was admissible in German courts. A claim brought by Prince Hans-Adam II before the European Court of Human Rights regarding the decisions of the German courts was also dismissed.

In its Application, Liechtenstein requested the Court “to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered”. It further requested “that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary in a separate phase of the proceedings”. As a basis for the Court’s jurisdiction, Liechtenstein invoked Article I of the European Convention for the Peaceful Settlement of Disputes, signed at Strasbourg on 29 April 1957.

Liechtenstein filed its Memorial on 28 March 2002, within the time-limit fixed by the Court. On 27 June 2002, Germany filed preliminary objections to jurisdiction and admissibility and the proceedings on the merits were accordingly suspended. On 15 November 2002, Liechtenstein filed its written observations on the preliminary objections of Germany within the time-limit prescribed by the President of the Court.

Following public hearings on the preliminary objections of Germany in June 2004, the Court delivered its Judgment on 10 February 2005. The Court began by examining Germany’s first preliminary objection, which argued that the Court lacked jurisdiction because there was no dispute between the Parties. The Court rejected this objection, finding that there existed a legal dispute between the Parties, namely a dispute as to whether, by applying Article 3, Chapter Six, of the Settlement Convention to Liechtenstein property that had been confiscated by Czechoslovakia in 1945, Germany was in breach of the international obligations

it owed to Liechtenstein and, if so, what was the extent of its international responsibility.

The Court then considered Germany's second objection, which required it to decide, in the light of the provisions of Article 27 (*a*) of the European Convention for the Peaceful Settlement of Disputes, whether the dispute related to facts or situations that arose before or after 18 February 1980, the date on which that Convention entered into force between Germany and Liechtenstein. The Court noted in this respect that it was not contested that the dispute had been triggered by the decisions of the German courts in the aforementioned case. The critical issue, however, was not the date on which the dispute arose, but the date of the facts or situations in relation to which the dispute arose. In the Court's view, the dispute brought before it could only relate to the events that transpired in the 1990s if, as argued by Liechtenstein, in that period, Germany had either departed from a previous common position that the Settlement Convention did not apply to Liechtenstein property, or if German courts, by applying their earlier case law under the Settlement Convention for the first time to Liechtenstein property, had applied that Convention "to a new situation" after the critical date. Having found that neither was the case, the Court concluded that, although these proceedings had been instituted by Liechtenstein as a result of decisions by German courts concerning a painting by Pieter van Laer, the events in question had their source in specific measures taken by Czechoslovakia in 1945, which had led to the confiscation of property owned by some Liechtenstein nationals, including Prince Franz Jozef II of Liechtenstein, as well as in the special régime created by the Settlement Convention, and that the source or real cause of the dispute was accordingly to be found in the Settlement Convention and the Beneš Decrees. The Court therefore upheld Germany's second preliminary objection, finding that it could not rule on Liechtenstein's claims on the merits.

1.100. Territorial and Maritime Dispute (Nicaragua v. Colombia)

On 6 December 2001, the Republic of Nicaragua filed an Application instituting proceedings against the Republic of Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation". On 28 April 2003, Nicaragua filed its Memorial within the time-limit laid down by the Court. On 21 July 2003, Colombia filed preliminary objections to jurisdiction, leading to the suspension of the proceedings on the merits.

In its Judgment on the preliminary objections, rendered on 13 December 2007, the Court found that it had jurisdiction to entertain the dispute concerning sovereignty over the maritime features claimed by the Parties, other than the islands of San Andrés, Providencia and Santa Catalina. The Court held that the treaty signed in 1928 between Colombia and Nicaragua (in which Colombia recognized Nicaragua's sovereignty over the Mosquito Coast and the Corn Islands, while

Nicaragua recognized Colombia's sovereignty over the islands of San Andrés, Providencia and Santa Catalina, and the maritime features forming part of the San Andrés Archipelago) had settled the issue of sovereignty over the islands of San Andrés, Providencia and Santa Catalina, that there was no extant legal dispute between the Parties on that question and that, therefore, the Court could not have jurisdiction over it under the American Treaty on Pacific Settlement (also known as the Pact of Bogotá and invoked by Nicaragua as basis for the Court's jurisdiction in the case). On the other hand, as regards the question of the scope and composition of the rest of the San Andrés Archipelago, the Court considered that the 1928 Treaty failed to provide answers as to which other maritime features formed part of the Archipelago and thus that it had jurisdiction to adjudicate on the dispute regarding sovereignty over those other maritime features. As for its jurisdiction with respect to the maritime delimitation issue, the Court concluded that the 1928 Treaty had not effected a general delimitation of the maritime areas between Colombia and Nicaragua and that, as the dispute had not been settled within the meaning of the Pact of Bogotá, the Court had jurisdiction to adjudicate upon it.

On 25 February 2010, Costa Rica filed an Application for permission to intervene in the case. In its Application it contended, among other things, that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled" and indicated that it wished to intervene in the proceedings as a non-party State. On 10 June 2010, the Republic of Honduras also filed an Application for permission to intervene in the case, asserting that Nicaragua, in its dispute with Colombia, had put forward maritime claims that lay in an area of the Caribbean Sea in which Honduras had rights and interests. Honduras stated in its Application that it was seeking primarily to intervene in the proceedings as a party. The Court rendered two Judgments on 4 May 2011, in which it ruled that the Applications for permission to intervene filed by Costa Rica and Honduras could not be granted. The Court noted that the interest of a legal nature invoked by Costa Rica could only be affected if the maritime boundary that the Court had been asked to draw between Nicaragua and Colombia were to be extended beyond a certain latitude southwards. However, following its jurisprudence, the Court, when drawing a line delimiting the maritime areas between the two Parties to the main proceedings, would, if necessary, end that line before it reached an area in which the interests of a legal nature of third States might be involved. The Court concluded that Costa Rica's interest of a legal nature could not be affected by the decision in the proceedings between Nicaragua and Colombia. With respect to Honduras's Application for permission to intervene, the Court found that Honduras had failed to satisfy the Court that it had an interest of a legal nature that might be affected by the decision of the Court in the main proceedings. It ruled on the one hand that, since the entire maritime boundary between Honduras and Nicaragua in the Caribbean Sea had been settled by the Judgment of the Court rendered between those two States in

2007, there were no extant rights or legal interests that Honduras might seek to protect in the settlement of the dispute between Nicaragua and Colombia. On the other hand, the Court held that Honduras could invoke an interest of a legal nature, in the main proceedings, on the basis of the 1986 bilateral treaty concluded between Honduras and Colombia, but clarified that it would not be relying on that treaty to determine the maritime boundary between Colombia and Nicaragua.

In its Judgment rendered on the merits of the case on 19 November 2012, the Court found that the territorial dispute between the Parties concerned sovereignty over the features situated in the Caribbean Sea — the Alburquerque Cays, the East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo — which were all above water at high tide and which were therefore islands capable of appropriation. The Court noted, however, that Quitasueño comprised only a single, tiny island, known as QS 32, and a number of low-tide elevations (features above water at low tide but submerged at high tide). The Court then observed that, under the terms of the 1928 Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua, Colombia not only had sovereignty over the islands of San Andrés, Providencia and Santa Catalina, but also over other islands, islets and reefs “forming part” of the San Andrés Archipelago. Thus, in order to address the question of sovereignty, the Court first needed to ascertain what constituted the San Andrés Archipelago. It concluded, however, that neither the 1928 Treaty nor the historical documents conclusively established the composition of that Archipelago. The Court therefore examined the arguments and evidence not based on the composition of the Archipelago under the 1928 Treaty. It found that neither Nicaragua nor Colombia had established that it had title to the disputed maritime features by virtue of *uti possidetis juris* (the principle that, upon independence, new States inherit the territories and boundaries of the former colonial provinces), because nothing clearly indicated whether these features were attributed to the colonial provinces of Nicaragua or of Colombia. The Court then considered whether sovereignty could be established on the basis of State acts manifesting a display of authority on a given territory (*effectivités*). It regarded it as having been established that for many decades Colombia had continuously and consistently acted *à titre de souverain* in respect of the maritime features in dispute. This exercise of sovereign authority had been public and there was no evidence that it had met with any protest from Nicaragua prior to 1969, when the dispute had crystallized. Moreover, the evidence of Colombia’s acts of administration with respect to the islands was in contrast to the absence of any evidence of acts *à titre de souverain* on the part of Nicaragua. The Court also noted that, while not being evidence of sovereignty, Nicaragua’s conduct with regard to the maritime features in dispute, the practice of third States and maps afforded some support to Colombia’s claim. The Court concluded that Colombia, and not Nicaragua, had sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla.

With respect to Nicaragua's claim for delimitation of a continental shelf extending beyond 200 nautical miles, the Court observed that "any claim of continental shelf rights beyond 200 miles [by a State party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf". Given the object and purpose of UNCLOS, as stipulated in its Preamble, the fact that Colombia was not a party thereto did not relieve Nicaragua of its obligations under Article 76 of that Convention. The Court observed that Nicaragua had submitted to the Commission only "Preliminary Information" which, by its own admission, fell short of meeting the requirements for the Commission to be able to make its recommendations. As the Court was not presented with any further information, it found that, in this case, Nicaragua had not established that it had a continental margin that extended far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast. The Court was therefore not in a position to delimit the maritime boundary between the extended continental shelf as claimed by Nicaragua and the continental shelf of Colombia. Notwithstanding this conclusion, the Court noted that it was still called upon to effect the delimitation of the zone situated within 200 nautical miles of the Nicaraguan coast, where the entitlements of Colombia and Nicaragua overlapped.

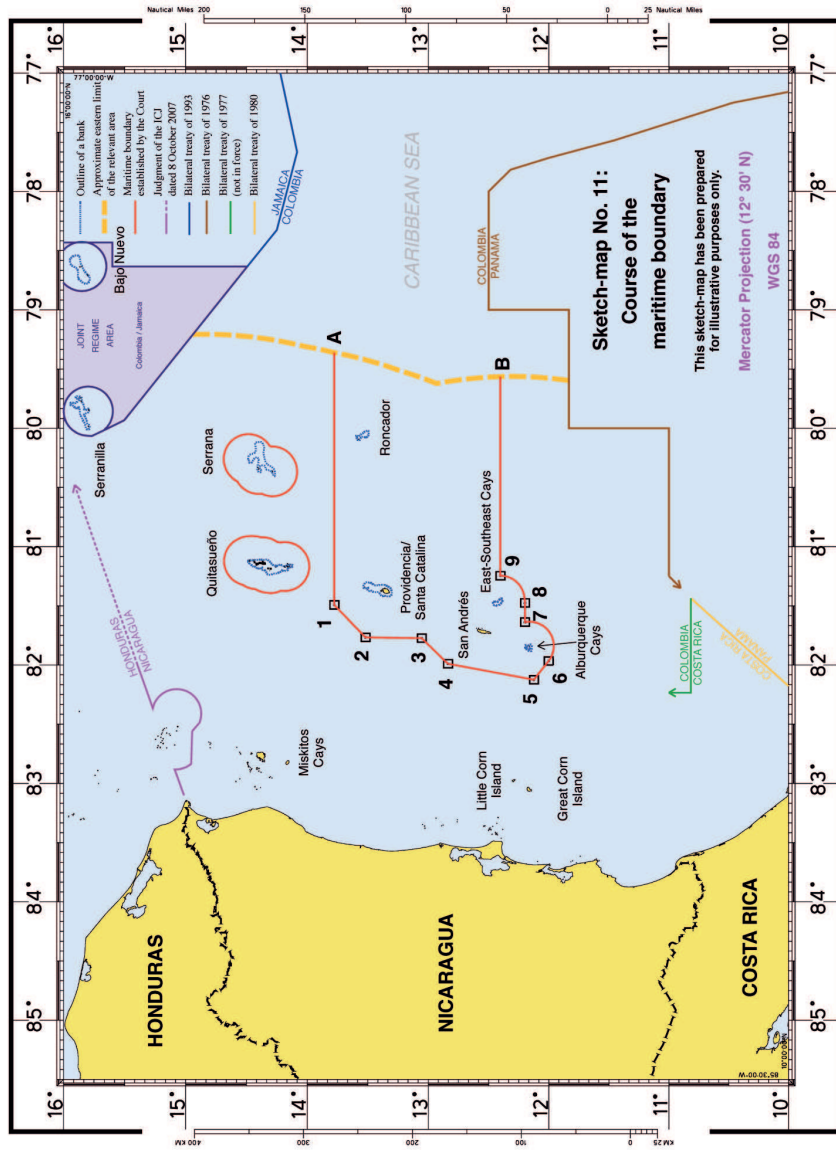
In order to effect the delimitation of the maritime boundary, the Court first determined what the relevant coasts of the Parties were, namely those coasts the projections of which overlapped. It found that Nicaragua's relevant coast was its whole coast, with the exception of the short stretch of coast near Punta de Perlas, and that Colombia's relevant coast was the entire coastline of the islands under Colombian sovereignty, except for Quitasueño, Serranilla and Bajo Nuevo. The Court next noted that the relevant maritime area, i.e., the area in which the potential entitlements of the Parties overlapped, extended 200 nautical miles east of the Nicaraguan coast. The boundaries to the north and to the south were determined by the Court in such a way as not to overlap with any existing boundaries or to extend into areas where the rights of third States might be affected.

To effect the delimitation, the Court followed the three-stage procedure previously laid down by and employed in its jurisprudence.

First, it selected the base points and constructed a provisional median line between the Nicaraguan coast and the western coasts of the relevant Colombian islands opposite the Nicaraguan coast.

Second, the Court considered any relevant circumstances which might have called for an adjustment or shifting of the provisional median line so as to achieve an equitable result. It observed that the substantial disparity between the relevant Colombian coast and that of Nicaragua (approximately 1:8.2), and the need to avoid a situation whereby the line of delimitation cut off one or other of the Par-

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ties from maritime areas into which its coasts projected, constituted relevant circumstances. The Court noted that, while legitimate security concerns had to be borne in mind in determining what adjustment should be made to the provisional median line or in what way that line should be shifted, the conduct of the Parties, issues of access to natural resources and delimitations already effected in the area were not relevant circumstances in this case. In the relevant area between the Nicaraguan mainland and the western coasts of the Alburquerque Cays, San Andrés, Providencia and Santa Catalina, where the relationship was one of opposite coasts, the relevant circumstances called for the provisional median line to be shifted eastwards. To that end, the Court determined that different weightings should be given to the base points situated on Nicaraguan and Colombian islands, namely a weighting of one to each of the Colombian base points and a weighting of three to each of the Nicaraguan base points. The Court considered, however, that extending the line thus constructed to the north or the south would not lead to an equitable result, since it would leave Colombia with a significantly larger share of the relevant area than that accorded to Nicaragua, notwithstanding the fact that Nicaragua's relevant coast was more than eight times the length of Colombia's relevant coast. Moreover, it would cut off Nicaragua from the areas to the east of the principal Colombian islands into which the Nicaraguan coast projected. In the view of the Court, an equitable result was to be achieved by continuing the boundary line out to the line 200 nautical miles from the Nicaraguan coast. To the north, that line would follow the parallel passing through the most northern point of the outer limit of the 12-nautical-mile territorial sea of Roncador. To the south, the maritime boundary would first follow the outer limit of the 12-nautical-mile territorial sea of the Alburquerque and East-Southeast Cays, then the parallel from the most eastern point of the territorial sea of the East-Southeast Cays. In order to prevent Quitasueño and Serrana from falling, under those circumstances, on the Nicaraguan side of the boundary line, the maritime boundary around each of those features would follow the outer limit of their 12-nautical-mile territorial sea.

Third, and finally, the Court checked that, taking account of all the circumstances of the case, the delimitation thus obtained did not create a disproportionality that would render the result inequitable. The Court observed that the boundary line had the effect of dividing the relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua's favour, while the ratio of relevant coasts was approximately 1:8.2. It concluded that that line did not entail such disproportionality as to create an inequitable result.

1.101. Frontier Dispute (Benin/Niger)

On 3 May 2002, Benin and Niger, by joint notification of a Special Agreement signed on 15 June 2001 at Cotonou and which entered into force on 11 April 2002, seised the Court of a dispute concerning "the definitive delimitation of the whole

boundary between them”. Under the terms of Article 1 of that Special Agreement, the Parties agreed to submit their frontier dispute to a Chamber of the Court, formed pursuant to Article 26, paragraph 2, of the Statute, and each to choose a judge *ad hoc*. By an Order of 27 November 2002, the Court unanimously decided to accede to the request of the two Parties for a special Chamber of five judges to be formed to deal with the case. It formed a Chamber composed as follows: President Guillaume; Judges Ranjeva, Kooijmans; Judges *ad hoc* Bedjaoui (chosen by Niger) and Bennouna (chosen by Benin). In the same Order, the Court also fixed 27 August 2003 as the time-limit for the filing of a Memorial by each Party. Those pleadings were filed within the time-limit thus prescribed. The Parties filed their Counter-Memorials within the time-limit fixed by the Order of the President of the Chamber of 11 September 2003. By an Order of 9 July 2004, the President of the Chamber authorized the filing of a Reply by each of the Parties and fixed 17 December 2004 as the time-limit for those filings. The Replies were filed within the time-limit thus prescribed.

By an Order of 16 February 2005, the Court declared that, on 16 February 2005, Judge Ronny Abraham had been elected a member of the Chamber to fill the vacancy which had arisen following the resignation from the Court of Judge Guillaume, the former President of that Chamber. The Court also declared that, as a result of Judge Guillaume’s resignation, the Vice-President of the Court, Judge Raymond Ranjeva, had become the new President of the Chamber, which was consequently composed as follows: President Ranjeva; Judges Kooijmans, Abraham; Judges *ad hoc* Bedjaoui and Bennouna.

Following public hearings held in March 2005, the Chamber delivered its Judgment on 12 July 2005. After briefly recalling the geographical and historical context of the dispute between these two former colonies, which had been part of French West Africa (FWA) until their accession to independence in August 1960, the Chamber considered the question of the law applicable to the dispute. It stated that this included the principle of the intangibility of the boundaries inherited from colonization, or the principle of *uti possidetis juris*, whose “primary aim is . . . securing respect for the territorial boundaries at the moment when independence is achieved”. The Chamber found that, on the basis of this principle, it had to determine in the case the boundary that had been inherited from the French administration. It noted that “the Parties agreed that the dates to be taken into account for this purpose were those of their respective independence, namely 1 and 3 August 1960”.

The Chamber then considered the course of the boundary in the River Niger sector. It first examined the various regulative or administrative acts invoked by the Parties in support of their respective claims and concluded that “neither of the Parties has succeeded in providing evidence of title on the basis of [those] acts during the colonial period”. In accordance with the principle that, where no legal title exists, the *effectivités* “must invariably be taken into consideration”, the

Chamber then proceeded to examine the evidence presented by the Parties regarding the effective exercise of authority on the ground during the colonial period, in order to determine the course of the boundary in the River Niger sector and to indicate to which of the two States each of the islands in the river belonged, in particular the island of Lété.

On the basis of this evidence in respect of the period 1914-1954, the Chamber concluded that there was a *modus vivendi* between the local authorities of Dahomey and Niger in the region concerned, whereby both Parties regarded the main navigable channel of the river as constituting the intercolonial boundary. The Chamber observed that, pursuant to this *modus vivendi*, Niger exercised its administrative authority over the islands located to the left of the main navigable channel (including the island of Lété) and Dahomey over those located to the right of that channel. The Chamber noted that “the entitlement of Niger to administer the island of Lété was sporadically called into question for practical reasons but was neither legally nor factually contested”. With respect to the islands located opposite the town of Gaya (Niger), the Chamber noted that, on the basis of the *modus vivendi*, these islands were considered to fall under the jurisdiction of Dahomey. According to the Chamber, it therefore followed that, in that sector of the river, the boundary was regarded as passing to the left of these three islands.

The Chamber found that “[t]he situation is less clear in the period between 1954 and 1960”. However, on the basis of the evidence submitted by the Parties, it “cannot conclude that the administration of the island of Lété, which before 1954 was undoubtedly carried out by Niger, was effectively transferred to or taken over by Dahomey”.

The Chamber concluded from the foregoing that the boundary between Benin and Niger in that sector follows the main navigable channel of the River Niger as it existed at the dates of independence, it being understood that, in the vicinity of the three islands opposite Gaya, the boundary passes to the left of those islands. Consequently, Benin has title to the islands situated between the boundary thus defined and the right bank of the river and Niger had title to the islands between that boundary and the left bank of the river.

In order to determine the precise location of the boundary line in the main navigable channel, namely the line of deepest soundings, as it existed at the dates of independence, the Chamber relied on a report prepared in 1970, at the request of the Governments of Dahomey, Mali, Niger and Nigeria, by the firm Netherlands Engineering Consultants (NEDECO). In its Judgment, the Chamber specified the co-ordinates of 154 points through which the boundary between Benin and Niger passes in that sector. It stated *inter alia* that Lété Goungou belongs to Niger. Finally, the Chamber concluded that the Special Agreement also conferred jurisdiction upon it to determine the boundary line on the bridges between Gaya and

Malanville. It found that the boundary on those structures follows the course of the boundary in the River Niger.

In the second part of its Judgment, dealing with the western section of the boundary between Benin and Niger, in the sector of the River Mekrou, the Chamber proceeded to examine the various documents invoked by the Parties in support of their respective arguments. It concluded that, notwithstanding the existence of a legal title of 1907 relied on by Niger in support of its claimed boundary, it was clear that,

“at least from 1927 onwards, the competent administrative authorities regarded the course of the Mekrou as the intercolonial boundary separating Dahomey from Niger, that those authorities reflected that boundary in the successive instruments promulgated by them after 1927, some of which expressly indicated that boundary, whilst others necessarily implied it, and that this was the state of the law at the dates of independence in August 1960”.

The Chamber concluded that, in the River Mekrou sector, the boundary between Benin and Niger was constituted by the median line of that river.

*1.102. Armed Activities on the Territory of the Congo
(New Application: 2002)
(Democratic Republic of the Congo v. Rwanda)*

On 28 May 2002, the Democratic Republic of the Congo (DRC) filed in the Registry of the Court an Application instituting proceedings against Rwanda for “massive, serious and flagrant violations of human rights and international humanitarian law” resulting

“from acts of armed aggression perpetrated by Rwanda on the territory of the Democratic Republic of the Congo in flagrant breach of the sovereignty and territorial integrity [of the DRC], as guaranteed by the United Nations Charter and the Charter of the Organization of African Unity”.

The DRC stated in its Application that the Court’s jurisdiction to deal with the dispute between it and Rwanda “deriv[ed] from compromissory clauses” in many international legal instruments, such as the 1979 Convention on the Elimination on All Forms of Discrimination against Women, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Constitution of the World Health Organization (WHO), the Constitution of UNESCO, the 1984 New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The DRC added that the jurisdiction of the Court also derived from the supremacy of peremptory norms (*jus cogens*), as reflected in certain international treaties and conventions, in the area of human rights.

On 28 May 2002, the date of the filing of the Application, the DRC also submitted a request for the indication of provisional measures. Public hearings were held on 13 and 14 June 2002 on that request. By an Order of 10 July 2002, the Court rejected that request, holding that it did not, in this case, have the *prima facie* jurisdiction necessary to indicate the provisional measures requested by the DRC. Further, “in the absence of a manifest lack of jurisdiction”, it also rejected Rwanda’s request for the case to be removed from the List. The Court also found that its findings in no way prejudged the question of its jurisdiction to deal with the merits of the case or any questions relating to the admissibility of the Application or relating to the merits themselves.

On 18 September 2002, the Court delivered an Order directing that the written pleadings should first be addressed to the questions of the jurisdiction of the Court and the admissibility of the Application, and fixed 20 January 2003 and 20 May 2003, respectively, as the time-limits for the filing of the Memorial of Rwanda and Counter-Memorial of the DRC. Those pleadings were filed within the time-limits thus prescribed.

In its Judgment of 3 February 2006, the Court ruled that it did not have jurisdiction to entertain the Application filed by the DRC. It found that the international instruments invoked by the DRC could not be relied on, either because Rwanda (1) was not a party to them (as in the case of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) or (2) had made reservations to them (as in the case of the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Elimination of All Forms of Racial Discrimination), or because (3) other preconditions for the seisin of the Court had not been satisfied (as in the case of the Convention on the Elimination of All Forms of Discrimination against Women, the Constitution of the WHO, the Constitution of UNESCO and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation).

Since the Court had no jurisdiction to entertain the Application, it was not required to rule on its admissibility. Mindful that the subject-matter of the dispute was very similar in nature to that in the case between the Congo and Uganda (see No. 1.92 above), and that the reasons as to why the Court would not proceed to an examination of the merits in the case between Congo and Rwanda needed to be carefully explained, the Court stated that it was precluded by a number of provisions in its Statute from taking any position on the merits of the claims made by the DRC. It recalled, however, “that there is a fundamental distinction between the acceptance by States of the Court’s jurisdiction and the conformity of their acts with international law”. Thus, “[w]hether or not States have accepted the jurisdiction of the Court, they are required to fulfil their obligations under the United Nations Charter and the other rules of international law, including international humanitarian and human rights law, and they remain responsible for acts attributable to them which are contrary to international law”.

1.103. *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)*

On 10 September 2002, El Salvador filed a request for revision of the Judgment delivered on 11 September 1992 by a Chamber of the Court in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*. El Salvador indicated that “the sole purpose of the Application [was] to seek revision of the course of the boundary decided by the Court for the sixth disputed sector of the land boundary between El Salvador and Honduras”. It was the first time that an Application had been made seeking a revision of a judgment rendered by one of the Court’s Chambers.

By an Order of 27 November 2002, the Court unanimously decided to accede to the request of the two Parties for it to form a special Chamber of five judges to deal with the case. It formed a Chamber composed as follows: President Guillaume; Judges Rezek and Buergenthal; Judges *ad hoc* Torres Bernárdez (chosen by Honduras) and Paolillo (chosen by El Salvador). In its Order, the Court also fixed 1 April 2003 as the time-limit for the filing of written observations by Honduras on the admissibility of the request for revision. That pleading having been filed within the time-limit so prescribed, the Chamber held public hearings on the admissibility of the Application from 8 to 12 September 2003.

The Chamber rendered its Judgment on 18 December 2003. In the earlier proceedings which had resulted in the 1992 Judgment, Honduras had contended that in the sixth sector the boundary followed the present course of the River Goascorán. El Salvador, however, had claimed that the boundary was defined by a previous course of the river, which it had abandoned as a result of an “avulsion” — an abrupt change in the riverbed. The Chamber began by recalling that at this stage of the proceedings it must determine whether the Application for revision was admissible in that it satisfied the requirements laid down by Article 61 of the Court’s Statute; that is to say, the application must, *inter alia*, be based on the “discovery” of a fact “of such a nature as to be a decisive factor” which, “when the judgment was given”, was “unknown to the Court and also to the party claiming revision”.

In support of its Application, El Salvador claimed, *inter alia*, to possess scientific, technical and historical evidence showing the existence of a previous bed of the Goascorán and of its avulsion in the mid-eighteenth century. El Salvador contended that this evidence constituted “new facts” within the meaning of Article 61, and that these were “decisive”, since in the 1992 Judgment, in the absence of proof of any avulsion, the boundary had been declared to follow the course of the Goascorán as it was in 1821 and not the course prior to avulsion. After examining the reasoning followed by the Chamber in 1992, the present Chamber found that the boundary had been determined by application of the principle of *uti*

possidetis juris, whereby the boundaries of States resulting from decolonization in Spanish America are to follow the colonial administrative boundaries. However, the 1992 Judgment had indicated that the situation resulting from *uti possidetis* was susceptible of modification as a result of the conduct of the Parties after independence in 1821. The Chamber found that the 1992 Chamber had rejected El Salvador's claims precisely because of that State's conduct subsequent to 1821. The Chamber accordingly held that it did not matter whether or not there had been an avulsion of the Goascorán, since, even if avulsion were now proved, findings to that effect would provide no basis for calling into question the decision taken by the Chamber in 1992 on different grounds. The facts asserted by El Salvador were accordingly not "decisive factors" in respect of the Judgment which it sought to have revised.

In regard to the second new fact relied on by El Salvador, namely the discovery of further copies of the "Carta Esférica" (a maritime chart of the Gulf of Fonseca prepared in or about 1796 by officers of the brigantine *El Activo*) and of the report of that vessel's expedition, which differed from those produced by Honduras in the original proceedings, El Salvador contended that the fact that these documents existed in a number of versions and contained discrepancies and anachronisms compromised the evidentiary value that the Chamber had attached to them in 1992. The Chamber accordingly considered whether the 1992 Chamber might have reached different conclusions if it had had before it the new versions of these documents produced by El Salvador. It concluded that this was not the case. The new versions in fact confirmed the conclusions reached by the Chamber in 1992 and were thus not "decisive factors".

Having found that none of the new facts alleged by El Salvador were "decisive factors" in relation to the Judgment of 11 September 1992, the Chamber held that it was unnecessary for it to ascertain whether the other conditions laid down by Article 61 of the Statute were satisfied.

*1.104. Avena and Other Mexican Nationals
(Mexico v. United States of America)*

On 9 January 2003, Mexico brought a case against the United States of America in a dispute concerning alleged violations of Articles 5 and 36 of the Vienna Convention on Consular Relations of 24 April 1963 with respect to 54 Mexican nationals who had been sentenced to death in certain states of the United States. At the same time as its Application, Mexico also submitted a request for the indication of provisional measures, among other things so that the United States would take all measures necessary to ensure that no Mexican national was executed and no action was taken that might prejudice the rights of Mexico or its nationals with regard to any decision the Court might render on the merits of the case. After hearing the Parties at public hearings on the provisional measures held on 21 January 2003, the Court, on 5 February 2003, made an Order, by which it decided that the:

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“United States of America sh[ould] take all measures necessary to ensure that Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera [three Mexican nationals] [we]re not executed pending final judgment in these proceedings”,

that the “United States of America sh[ould] inform the Court of all measures taken in implementation of [that] Order”, and that the Court would remain seised of the matters which formed the subject of that Order until the Court had rendered its final judgment. The same day, it issued another Order fixing 6 June 2003 as the time-limit for the filing of the Memorial by Mexico and 6 October 2003 as the time-limit for the filing of the Counter-Memorial by the United States of America. The President of the Court subsequently extended those dates respectively to 20 June 2003 and 3 November 2003. Those pleadings were filed within the time-limits thus extended.

After holding public hearings in December 2004, the Court rendered its Judgment on 31 March 2004. Mexico had amended its claims during the written phase of the proceedings and again at the oral proceedings, so that the Court ultimately ruled on the cases of 52 (rather than 54) Mexican nationals.

The Court first considered four objections by the United States to its jurisdiction and five objections to admissibility. Mexico had argued that all of these objections were inadmissible because they had been submitted outside the time-limit prescribed by the Rules of Court, but the Court did not accept this. The Court then dismissed the United States objections, whilst reserving certain of them for consideration at the merits stage.

Ruling on the merits of the case, the Court began by considering whether the 52 individuals concerned were solely of Mexican nationality. Finding that the United States had failed to show that certain of them were also United States nationals, the Court held that the United States was under an obligation to provide consular information pursuant to Article 36, paragraph 1 (*b*), of the Vienna Convention in respect of all 52 Mexican nationals. Regarding the meaning to be given to the phrase “without delay” in Article 36 (1) (*b*), the Court further held that there is an obligation to provide consular information as soon as it is realized that the arrested person is a foreign national, or that there are grounds for thinking that he is probably a foreign national. The Court found that, in all of the cases except one, the United States had violated its obligation to provide the required consular information. Taking note of the interrelated nature of the three subparagraphs (*a*), (*b*) and (*c*) of paragraph 1 of Article 36 of the Vienna Convention, the Court then went on to find that the United States had, in 49 cases, also violated the obligation to enable Mexican consular officers to communicate with, have access to and visit their nationals and, in 34 cases, to arrange for their legal representation.

In relation to Mexico’s arguments concerning paragraph 2 of Article 36 and the right of its nationals to effective review and reconsideration of convictions and

sentences impaired by a violation of Article 36 (1), the Court found that, in view of its failure to revise the procedural default rule since the Court's decision in the *LaGrand* case (see No. 1.80 above), the United States had in three cases violated paragraph 2 of Article 36, although the possibility of judicial re-examination was still open in the 49 other cases.

In regard to the legal consequences of the proven violations of Article 36 and to Mexico's requests for *restitutio in integrum*, through the partial or total annulment of convictions and sentences, the Court pointed out that what international law required was reparation in an adequate form, which in this case meant review and reconsideration by United States courts of the Mexican nationals' convictions and sentences. The Court considered that the choice of means for review and reconsideration should be left to the United States, but that it was to be carried out by taking account of the violation of rights under the Vienna Convention. After recalling that the process of review and reconsideration should occur in the context of judicial proceedings, the Court stated that the executive clemency process was not sufficient in itself to serve that purpose, although appropriate clemency procedures could supplement judicial review and reconsideration. Contrary to Mexico's claims, the Court found no evidence of a regular and continuing pattern of breaches of Article 36 by the United States. The Court moreover recognized the efforts of the United States to encourage compliance with the Vienna Convention, and took the view that that commitment provided a sufficient guarantee and assurance of non-repetition as requested by Mexico.

The Court further observed that, while the present case concerned only Mexican nationals, that should not be taken to imply that its conclusions did not apply to other foreign nationals finding themselves in similar situations in the United States. Finally, the Court recalled that the United States had violated paragraphs 1 and 2 of Article 36 in the case of the three Mexican nationals concerned by the Order of 5 February 2003 indicating provisional measures, and that no review and reconsideration of conviction and sentence had been carried out in those cases. The Court considered that it was therefore for the United States to find an appropriate remedy having the nature of review and reconsideration according to the criteria indicated in the Judgment.

*1.105. Certain Criminal Proceedings in France
(Republic of the Congo v. France)*

On 9 December 2002, the Republic of the Congo filed an Application instituting proceedings against France seeking the annulment of the investigation and prosecution measures taken by the French judicial authorities further to a complaint concerning crimes against humanity and torture allegedly committed in the Congo against individuals of Congolese nationality filed by various human rights associations against the President of the Republic of the Congo, Mr. Denis Sassou Nguesso, the Congolese Minister of the Interior, General Pierre Oba, and

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other individuals including General Norbert Dabira, Inspector-General of the Congolese Armed Forces, and General Blaise Adoua, Commander of the Presidential Guard. The Congo contended that, by

“attributing to itself universal jurisdiction in criminal matters and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed by him in connection with the exercise of his powers for the maintenance of public order in his country”,

France had violated “the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations . . . exercise its authority on the territory of another State”. The Congo further submitted that, in issuing a warrant instructing police officers to examine the President of the Republic of the Congo as witness in the case, France had violated “the criminal immunity of a foreign Head of State — an international customary rule recognized by the jurisprudence of the Court”.

In its Application, the Congo indicated that it sought to found the jurisdiction of the Court, pursuant to Article 38, paragraph 5, of the Rules of Court, “on the consent of the French Republic, which [would] certainly be given”. In accordance with that provision, the Congo’s Application was transmitted to the French Government and no action was taken in the proceedings. By a letter dated 8 April 2003, France indicated that it “consent[ed] to the jurisdiction of the Court to entertain the Application pursuant to Article 38, paragraph 5”, and the case was thus entered in the Court’s List. It was the first time, since the adoption of Article 38, paragraph 5, of the Rules of Court in 1978, that a State thus accepted the invitation of another State to recognize the jurisdiction of the Court to entertain a case against it.

The Application of the Congo was accompanied by a request for the indication of a provisional measure seeking “an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux *Tribunal de grande instance*”, and hearings on that request were held on 28 and 29 April 2003. In its Order of 17 June 2003, the Court concluded that no evidence had been placed before it of any irreparable prejudice to the rights in dispute and that, consequently, circumstances were not such as to require the exercise of its power to indicate provisional measures. By an Order of 11 July 2003, the President of the Court fixed 11 December 2003 and 11 May 2004, respectively, as the time-limits for the filing of the Memorial of the Republic of the Congo and the Counter-Memorial of France. Those pleadings were filed within the time-limits thus fixed.

By an Order dated 17 June 2004, the Court, taking account of the agreement of the Parties and of the particular circumstances of the case, authorized the submission of a Reply by the Congo and a Rejoinder by France and fixed the time-

limits for the filing of those pleadings. Following four successive requests to extend the time-limit for the filing of the Reply, the President of the Court fixed the time-limits for the filing of a Reply by the Congo and a Rejoinder by France as 11 July 2006 and 11 August 2008, respectively. Those pleadings were filed within the time-limits thus extended.

By an Order of 16 November 2009, the Court, referring in particular to Article 101 of its Rules and taking into account the agreement of the Parties and the exceptional circumstances of the case, authorized the submission of an additional pleading by the Congo, followed by an additional pleading by France. It fixed 16 February 2010 and 17 May 2010 as the respective time-limits for the filing of those pleadings. Those pleadings were filed within the time-limits thus fixed.

Hearings were scheduled to open in the case on 6 December 2010, when, by a letter dated 5 November 2010, the Agent of the Congo, referring to Article 89 of the Rules of Court, informed the Court that his Government was “withdraw[ing] its Application instituting proceedings” and requested the Court “to make an Order officially recording the discontinuance of the proceedings and directing the removal of the case from the List”. A copy of that letter was immediately communicated to the French Government, which responded in a letter dated 8 November 2010 that it had no objection to the discontinuance of the proceedings by the Congo. Accordingly, by an Order of 16 November 2010, the Court placed on record the discontinuance of the proceedings by the Congo and ordered that the case be removed from the List.

*1.106. Sovereignty over Pedra Branca/Pulau Batu Puteh,
Middle Rocks and South Ledge (Malaysia/Singapore)*

On 24 July 2003, Malaysia and Singapore jointly seized the Court of a dispute between them by notification of a Special Agreement signed on 6 February 2003 and which entered into force on 9 May 2003. Under the terms of that Special Agreement, the Parties requested the Court to “determine whether sovereignty over: (a) Pedra Branca/Pulau Batu Puteh; (b) Middle Rocks; and (c) South Ledge belongs to Malaysia or the Republic of Singapore”. They agreed in advance “to accept the Judgment of the Court . . . as final and binding upon them”. By an Order of 1 September 2003, taking account of Article 4 of that Special Agreement, the President of the Court fixed 25 March 2004 as the time-limit for the filing of a Memorial by each of the Parties and 25 January 2005 as the time-limit for the filing of a Counter-Memorial by each of the Parties. Those pleadings were duly filed within the time-limits thus fixed.

By an Order of 1 February 2005, the Court, taking into account the provisions of the Special Agreement, fixed 25 November 2005 as the time-limit for the filing of a Reply by each of the Parties. The Replies were duly filed within the time-limit thus fixed. By a joint letter of 23 January 2006, the Parties informed the Court that they had agreed that there was no need for an exchange of rejoinders in the case.

The Court itself subsequently decided that no further pleadings were necessary and thus that the written proceedings were closed.

Following public hearings which were held in November 2007, the Court rendered its Judgment on 23 May 2008. In that Judgment, the Court first indicated that the Sultanate of Johor (predecessor of Malaysia) had original title to Pedra Branca/Pulau Batu Puteh, a granite island on which Horsburgh lighthouse stands. It concluded, however, that, when the dispute crystallized (1980), title had passed to Singapore, as attested to by the conduct of the Parties (in particular certain acts performed by Singapore *à titre de souverain* and the failure of Malaysia to react to the conduct of Singapore). The Court consequently awarded sovereignty over Pedra Branca/Pulau Batu Puteh to Singapore. As for Middle Rocks, a maritime feature consisting of several rocks permanently above water, the Court observed that the particular circumstances which had led it to find that sovereignty over Pedra Branca/Pulau Batu Puteh rested with Singapore clearly did not apply to Middle Rocks. It therefore found that Malaysia, as the successor to the Sultan of Johor, should be considered to have retained original title to Middle Rocks. Finally, with respect to the low-tide elevation South Ledge, the Court noted that it fell within the apparently overlapping territorial waters generated by Pedra Branca/Pulau Batu Puteh and by Middle Rocks. Recalling that it had not been mandated by the Parties to delimit their territorial waters, the Court concluded that sovereignty over South Ledge belongs to the State in whose territorial waters it lies.

1.107. Maritime Delimitation in the Black Sea (Romania v. Ukraine)

On 16 September 2004, Romania filed an Application instituting proceedings against Ukraine in respect of a dispute concerning “the establishment of a single maritime boundary between the two States in the Black Sea, thereby delimiting the continental shelf and the exclusive economic zones appertaining to them”. The Memorial of Romania and the Counter-Memorial of Ukraine were filed within the time-limits fixed by an Order of 19 November 2004. By an Order of 30 June 2006, the Court authorized the filing of a Reply by Romania and a Rejoinder by Ukraine and fixed 22 December 2006 and 15 June 2007 as the respective time-limits for the filing of those pleadings. Romania filed its Reply within the time-limit thus fixed. By an Order of 8 June 2007, the Court extended to 6 July 2007 the time-limit for the filing of the Rejoinder by Ukraine. The Rejoinder was filed within the time-limit thus extended.

Following public hearings held in September 2008, the Court rendered its Judgment in the case on 3 February 2009. On the basis of established State practice and of its own jurisprudence, the Court declared itself bound by the three-step approach laid down by maritime delimitation law, which consisted first of establishing a provisional equidistance line, then of considering factors which might call for an adjustment of that line and adjusting it accordingly and, finally, of con-

firming that the line thus adjusted would not lead to an inequitable result by comparing the ratio of coastal lengths with the ratio of relevant maritime areas.

In keeping with this approach, the Court first established a provisional equidistance line. In order to do so, it was obliged to determine appropriate base points. After examining at length the characteristics of each base point chosen by the Parties for the establishment of the provisional equidistance line, the Court decided to use the Sacalin Peninsula and the landward end of the Sulina dyke on the Romanian coast, and Tsyganka Island, Cape Tarkhankut and Cape Khersones on the Ukrainian coast. It considered it inappropriate to select any base points on Serpents' Island (belonging to Ukraine). The Court then proceeded to establish the provisional equidistance line as follows:

"In its initial segment the provisional equidistance line between the Romanian and Ukrainian adjacent coasts is controlled by base points located on the landward end of the Sulina dyke on the Romanian coast and south-eastern tip of Tsyganka Island on the Ukrainian coast. It runs in a south-easterly direction, from a point lying midway between these two base points, until Point A (with co-ordinates 44°46'38.7" N and 30°58'37.3" E) where it becomes affected by a base point located on the Sacalin Peninsula on the Romanian coast. At Point A the equidistance line slightly changes direction and continues to Point B (with co-ordinates 44°44'13.4" N and 31°10'27.7" E) where it becomes affected by the base point located on Cape Tarkhankut on Ukraine's opposite coasts. At Point B the equidistance line turns south-south-east and continues to Point C (with co-ordinates 44°02'53.0" N and 31°24'35.0" E), calculated with reference to base points on the Sacalin Peninsula on the Romanian coast and Capes Tarkhankut and Khersones on the Ukrainian coast. From Point C the equidistance line, starting at an azimuth of 185°23'54.5", runs in a southerly direction. This line remains governed by the base points on the Sacalin Peninsula on the Romanian coast and Cape Khersones on the Ukrainian coast."

The Court then turned to the examination of relevant circumstances which might call for an adjustment of the provisional equidistance line, considering six potential factors: (1) the possible disproportion between coastal lengths; (2) the enclosed nature of the Black Sea and the delimitations already effected in the region; (3) the presence of Serpents' Island in the area of delimitation; (4) the conduct of the Parties (oil and gas concessions, fishing activities and naval patrols); (5) any potential curtailment of the continental shelf or exclusive economic zone entitlement of one of the Parties; and (6) certain security considerations of the Parties. The Court did not see in these various factors any reason that would justify the adjustment of the provisional equidistance line. In particular with respect to Serpents' Island, it considered that it should have no effect on the delimitation other than that stemming from the role of the 12-nautical-mile arc of its territorial sea.

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Finally, the Court confirmed that the line would not lead to an inequitable result by comparing the ratio of coastal lengths with the ratio of relevant maritime areas. The Court noted that the ratio of the respective coastal lengths for Romania and Ukraine was approximately 1:2.8 and the ratio of the relevant maritime areas was approximately 1:2.1.

In the operative clause of its Judgment, the Court found unanimously that:

“starting from Point 1, as agreed by the Parties in Article 1 of the 2003 State Border Régime Treaty, the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea shall follow the 12-nautical-mile arc of the territorial sea of Ukraine around Serpents’ Island until Point 2 (with co-ordinates 45°03′18.5″ N and 30°09′24.6″ E) where the arc intersects with the line equidistant from Romania’s and Ukraine’s adjacent coasts. From Point 2 the boundary line shall follow the equidistance line through Points 3 (with co-ordinates 44°46′38.7″ N and 30°58′37.3″ E) and 4 (with co-ordinates 44°44′13.4″ N and 31°10′27.7″ E) until it reaches Point 5 (with co-ordinates 44°02′53.0″ N and 31°24′35.0″ E). From Point 5 the maritime boundary line shall continue along the line equidistant from the opposite coasts of Romania and Ukraine in a southerly direction starting at a geodetic azimuth of 185°23′54.5″ until it reaches the area where the rights of third States may be affected.”

See the sketch-map on page 213 for an illustration of the maritime frontier.

*1.108. Dispute regarding Navigational and Related Rights
(Costa Rica v. Nicaragua)*

On 29 September 2005, Costa Rica filed an Application instituting proceedings against Nicaragua in a dispute concerning the navigational and related rights of Costa Rica on a section of the San Juan River, the southern bank of which forms the boundary between the two States provided for by an 1858 bilateral treaty. In its Application, Costa Rica affirmed that “Nicaragua has — in particular since the late 1990s — imposed a number of restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River”, in violation of Article VI of the 1858 Treaty, which “granted to Nicaragua sovereignty over the waters of the San Juan River, recognizing at the same time important rights to Costa Rica”.

Costa Rica filed its Memorial and Nicaragua its Counter-Memorial within the time-limits fixed by the Court’s Order of 29 November 2005. By an Order of 9 October 2007, the Court authorized the submission of a Reply by Costa Rica and a Rejoinder by Nicaragua. Those pleadings were filed within the prescribed time-limits.

Following public hearings held in March 2009, the Court rendered its Judgment on 13 July 2009.

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As regards Costa Rica's navigational rights on the San Juan River under the 1858 Treaty, in that part where navigation is common, the Court ruled that Costa Rica had the right of free navigation on the San Juan River for purposes of commerce; that the right of navigation for purposes of commerce enjoyed by Costa Rica included the transport of passengers; that the right of navigation for purposes of commerce enjoyed by Costa Rica included the transport of tourists; that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation were not required to obtain Nicaraguan visas; that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation were not required to purchase Nicaraguan tourist cards; that the inhabitants of the Costa Rican bank of the San Juan River had the right to navigate on the river between the riparian communities for the purposes of fulfilling essential needs of everyday life; that Costa Rica had the right of navigation on the San Juan River with official vessels used solely, in specific situations, to provide essential services for the inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants' requirements; that Costa Rica did not have the right of navigation on the San Juan River with vessels carrying out police functions; that Costa Rica did not have the right of navigation on the San Juan River for the purposes of the exchange of personnel among the police border posts along the right bank of the river or for the re-supply of these posts, with official equipment, including service arms and ammunition.

As regards Nicaragua's right to regulate navigation on the San Juan River, in that part where navigation is common, the Court found that Nicaragua had the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan River; that Nicaragua had the right to require persons travelling on the San Juan River to carry a passport or an identity document; that Nicaragua had the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica's right of free navigation but did not have the right to request the payment of a charge for the issuance of such certificates; that Nicaragua had the right to impose timetables for navigation on vessels navigating on the San Juan River; and that Nicaragua had the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag.

As regards subsistence fishing, the Court found that fishing by the inhabitants of the Costa Rican bank of the San Juan River for subsistence purposes from that bank must be respected by Nicaragua as a customary right.

As regards Nicaragua's compliance with its international obligations under the 1858 Treaty, the Court found that Nicaragua was not acting in accordance with its obligations under the 1858 Treaty when it required persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation to obtain Nicaraguan visas; that Nicaragua was not acting in accordance

with its obligations under the 1858 Treaty when it required persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation to purchase Nicaraguan tourist cards; and that Nicaragua was not acting in accordance with its obligations under the 1858 Treaty when it required the operators of vessels exercising Costa Rica's right of free navigation to pay charges for departure clearance certificates.

The Court rejected all the other submissions presented by Costa Rica and Nicaragua.

1.109. Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (Commonwealth of Dominica v. Switzerland)

On 26 April 2006, the Commonwealth of Dominica filed an Application instituting proceedings against Switzerland concerning alleged violations by the latter of the Vienna Convention on Diplomatic Relations, as well of other international instruments and rules, with respect to a diplomatic envoy of Dominica to the United Nations in Geneva.

In its Application, Dominica stated that the diplomat in question, Mr. Roman Lakschin, had been accredited to the United Nations and its Specialized Agencies and to the World Trade Organization (WTO) since March 1996 as a member of the Permanent Mission of Dominica to the United Nations in Geneva (first as Counsellor, later as *Chargé d'affaires* and Deputy Permanent Representative with the rank of Ambassador). Dominica further emphasized that this accreditation was "effected to the organizations and not to Switzerland", but that, nevertheless, Switzerland had "claimed the right to withdraw the accreditation" of the said envoy, "stating that [he] is a 'businessman' and [that] as such he would have no right to be a diplomat".

By letter of 15 May 2006, the Prime Minister of the Commonwealth of Dominica informed the Court that his Government "did not wish to go on with the proceedings instituted against Switzerland" and requested the Court to make an Order "officially recording [their] unconditional discontinuance" and "directing the removal of the case from the General List". By letter of 24 May 2006, the Swiss Ambassador in The Hague advised the Court that he had informed the competent Swiss authorities of the discontinuance as thus notified. Accordingly, on 9 June 2006, the Court made an Order in which, after noting that the Government of the Swiss Confederation had not taken any step in the proceedings in the case, it recorded the discontinuance of the proceedings by the Commonwealth of Dominica and ordered that the case be removed from the List.

1.110. Pulp Mills on the River Uruguay (Argentina v. Uruguay)

On 4 May 2006, Argentina filed an Application instituting proceedings against Uruguay concerning alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed by the two States on

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26 February 1975 (hereinafter “the 1975 Statute”) for the purpose of establishing the joint machinery necessary for the optimum and rational utilization of that part of the river which constitutes their joint boundary. In its Application, Argentina charged Uruguay with having unilaterally authorized the construction of two pulp mills on the River Uruguay without complying with the obligatory prior notification and consultation procedures under the 1975 Statute. Argentina claimed that those mills posed a threat to the river and its environment and were likely to impair the quality of the river’s waters and to cause significant transboundary damage to Argentina. As basis for the Court’s jurisdiction, Argentina invoked the first paragraph of Article 60 of the 1975 Statute, which provides that any dispute concerning the interpretation or application of that Statute which cannot be settled by direct negotiations may be submitted by either party to the Court.

Argentina’s Application was accompanied by a request for the indication of provisional measures, whereby Argentina asked that Uruguay be ordered to suspend the authorizations for construction of the mills and all building works pending a final decision by the Court; to co-operate with Argentina with a view to protecting and conserving the aquatic environment of the River Uruguay; and to refrain from taking any further unilateral action with respect to the construction of the two mills incompatible with the 1975 Statute, and from any other action which might aggravate the dispute or render its settlement more difficult. Public hearings on the request for the indication of provisional measures were held on 8 and 9 June 2006. By an Order of 13 July 2006, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

On 29 November 2006, Uruguay in turn submitted a request for the indication of provisional measures on the grounds that, from 20 November 2006, organized groups of Argentine citizens had blockaded a “vital international bridge” over the River Uruguay, that that action was causing it considerable economic prejudice and that Argentina had made no effort to end the blockade. At the end of its request, Uruguay asked the Court to order Argentina to take “all reasonable and appropriate steps . . . to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges or roads between the two States”; to abstain “from any measure that might aggravate, extend or make more difficult the settlement of this dispute”; and to abstain “from any other measure which might prejudice the rights of Uruguay in dispute before the Court”. Public hearings on the request for the indication of provisional measures were held on 18 and 19 December 2006. By an Order of 23 January 2007, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under Article 41 of the Statute.

Argentina filed its Memorial and Uruguay its Counter-Memorial within the time-limits fixed by the Order of 13 July 2006. By an Order of 14 September 2007,

the Court authorized the submission of a Reply by Argentina and a Rejoinder by Uruguay. Those pleadings were filed within the prescribed time-limits.

Following public hearings held between 14 September 2009 and 2 October 2009, the Court delivered its Judgment on 20 April 2010. With respect to Argentina's argument that projects had been authorized by Uruguay in violation of the mechanism for prior notification and consultation laid down by Articles 7 to 13 of the 1975 Statute (the procedural violations), the Court noted that Uruguay had not informed the Administrative Commission of the River Uruguay of the projects as prescribed in the Statute. The Administrative Commission of the River Uruguay — commonly referred to by its Spanish acronym "CARU" — is a body established under the Statute for the purpose of monitoring the river, including assessing the impact of proposed projects on the river. The Court concluded that, by not informing CARU of the planned works before the issuing of the initial environmental authorizations for each of the mills and for the port terminal adjacent to the Orion (Botnia) mill, and by failing to notify the plans to Argentina through CARU, Uruguay had violated the 1975 Statute.

With respect to Argentina's contention that the industrial activities authorized by Uruguay had had, or would have, an adverse impact on the quality of the waters of the river and the area affected by it, and had caused significant damage to the quality of the waters of the river and significant transboundary damage to Argentina (the substantive violations), the Court found, based on a detailed examination of the Parties' arguments, that there was

"no conclusive evidence in the record to show that Uruguay has not acted with the requisite degree of due diligence or that the discharges of effluent from the Orion (Botnia) mill have had deleterious effects or caused harm to living resources or to the quality of the water or the ecological balance of the river since it started its operations in November 2007".

Consequently, the Court concluded that Uruguay had not breached substantive obligations under the Statute. In addition to this finding, however, the Court emphasized that, under the 1975 Statute, "[t]he Parties have a legal obligation . . . to continue their co-operation through CARU and to enable it to devise the necessary means to promote the equitable utilization of the river, while protecting its environment".

*1.111. Certain Questions of Mutual Assistance in Criminal Matters
(Djibouti v. France)*

On 9 January 2006, the Republic of Djibouti filed an Application against the French Republic in respect of a dispute:

"concern[ing] the refusal by the French governmental and judicial authorities to execute an international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investi-

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gation in the Case against X for the murder of Bernard Borrel, in violation of the Convention on Mutual Assistance in Criminal Matters between the [Djiboutian] Government and the [French] Government, of 27 September 1986, and in breach of other international obligations borne by [France] to . . . Djibouti”.

In its Application, Djibouti also alleged that these acts constituted a violation of the Treaty of Friendship and Co-operation concluded between France and Djibouti on 27 June 1977. Djibouti indicated that it sought to found the jurisdiction of the Court on Article 38, paragraph 5, of the Rules of Court. This provision applies when a State submits a dispute to the Court, proposing to found the Court’s jurisdiction upon a consent yet to be given or manifested by the State against which the Application is made. This was the second occasion that the Court had been called upon to pronounce on a dispute brought before it by an Application based on Article 38, paragraph 5, of its Rules (*forum prorogatum*). France consented to the jurisdiction of the Court by a letter, dated 25 July 2006 in which it specified that this consent was “valid only for the purposes of the case, within the meaning of Article 38, paragraph 5, i.e., in respect of the dispute forming the subject of the Application and strictly within the limits of the claims formulated therein” by Djibouti. However, the Parties disagreed as to the exact extent of the consent given by France.

In a Judgment rendered on 4 June 2008, the Court, having read Djibouti’s Application together with France’s letter in order to determine the extent of the mutual consent of the Parties, concluded that (a) it had jurisdiction to adjudicate upon the dispute concerning the execution of the letter rogatory addressed by the Republic of Djibouti to the French Republic on 3 November 2004; (b) it had jurisdiction to adjudicate upon the dispute concerning the summons addressed to the President of the Republic of Djibouti on 17 May 2005 and the summonses addressed to two senior Djiboutian officials on 3 and 4 November 2004 and 17 June 2005; (c) it had jurisdiction to adjudicate upon the dispute concerning the summons addressed to the President of the Republic of Djibouti on 14 February 2007; and (d) it had no jurisdiction to adjudicate upon the dispute concerning the arrest warrants issued against two senior Djiboutian officials on 27 September 2006.

Having established the precise scope of its jurisdiction in the case, the Court turned first to the alleged violation by France of the Treaty of Friendship and Co-operation between France and Djibouti of 27 June 1977. While pointing out that the provisions of the said Treaty constituted relevant rules of international law having “a certain bearing” on relations between the Parties, the Court concluded that “the fields of co-operation envisaged in th[at] Treaty do not include co-operation in the judicial field” and thus that the above-mentioned relevant rules imposed no concrete obligations in this case.

The Court then turned to the allegation that France had violated its obligations under the 1986 Convention on Mutual Assistance in Criminal Matters. Under that Convention, judicial co-operation is envisaged, including the requesting and granting of “letters rogatory” (usually the passing, for judicial purposes, of information held by a party). The Convention also provides for exceptions to this envisaged co-operation. Since the French judicial authorities refused to transmit the requested case file, a key question in the case was whether that refusal fell within the permitted exceptions. Also at issue was whether France had complied with the provisions of the 1986 Convention in other respects. The Court held that the reasons given by the French investigating judge for refusing the request for mutual assistance fell within the scope of Article 2 (c) of the Convention, which entitles the requested State to refuse to execute a letter rogatory if it considers that that execution is likely to prejudice its sovereignty, its security, its *ordre public* or other of its essential interests. The Court did however conclude that, as no reasons were given in the letter dated 6 June 2005, whereby France informed Djibouti of its refusal to execute the letter rogatory presented by the latter on 3 November 2004, France had failed to comply with its international obligations under Article 17 of the 1986 Convention.

1.112. *Maritime Dispute (Peru v. Chile)*

On 16 January 2008, Peru filed an Application instituting proceedings against Chile concerning a dispute in relation to “the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia . . . the terminal point of the land boundary established pursuant to the Treaty . . . of 3 June 1929”, and also to the recognition in favour of Peru of a “maritime zone lying within 200 nautical miles of Peru’s coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas”. In its Application, Peru claimed that “the maritime zones between Chile and Peru have never been delimited by agreement or otherwise” and that, accordingly, “the delimitation is to be determined by the Court in accordance with customary international law”.

As basis for the Court’s jurisdiction, Peru invoked Article XXXI of the Pact of Bogotá of 30 April 1948, to which both States were parties without reservation.

By an Order of 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010 as the respective time-limits for the filing of a Memorial by Peru and a Counter-Memorial by Chile. Those pleadings were filed within the time-limits thus prescribed. Colombia and Ecuador, relying on Article 53, paragraph 1, of the Rules of Court, requested copies of the pleadings and annexed documents produced in the case. The Court, after ascertaining the views of the Parties, acceded to those requests.

By an Order of 27 April 2010, the Court authorized the submission of a Reply by Peru and a Rejoinder by Chile. It fixed 9 November 2010 and 11 July 2011 as

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the respective time-limits for the filing of those pleadings. On 10 January 2011, relying on Article 53, paragraph 1, of the Rules of Court, the Plurinational State of Bolivia requested that its Government be furnished with copies of the pleadings and annexed documents produced in the case. After ascertaining the views of the Parties, the Court acceded to that request.

Public hearings were held by the Court in December 2012, after which the Court began its deliberation.

1.113. Aerial Herbicide Spraying (Ecuador v. Colombia)

On 31 March 2008, Ecuador filed an Application instituting proceedings against Colombia in respect of a dispute concerning the alleged “aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador”. Ecuador maintained that “the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time”. It further contended that it had made “repeated and sustained efforts to negotiate an end to the fumigations” but that “these negotiations have proved unsuccessful”. As basis for the Court’s jurisdiction, Ecuador invoked Article XXXI of the Pact of Bogotá of 30 April 1948, to which both States were parties. Ecuador also relied on Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

By an Order of 30 May 2008, the Court fixed 29 April 2009 and 29 March 2010 as the respective time-limits for the filing of a Memorial by Ecuador and a Counter-Memorial by Colombia. Those pleadings were filed within the time-limits thus prescribed. By an Order of 25 June 2010, the Court directed the submission of a Reply by Ecuador and a Rejoinder by Colombia. It fixed 31 January 2011 and 1 December 2011, respectively, as the time-limits for the filing of those pleadings. The Reply of Ecuador was filed within the time-limit thus fixed. Further to a request from Colombia asking the Court to extend the time-limit fixed for the filing of the Rejoinder, by an Order of 19 October 2011, the President of the Court, taking into account the views of the Parties, extended the original time-limit to 1 February 2012. The Rejoinder of Colombia was filed within the time-limit thus extended.

By a letter dated 12 September 2013, the Agent of Ecuador, referring to Article 89 of the Rules of Court and to an Agreement between the Parties dated 9 September 2013 “that fully and finally resolves all of Ecuador’s claims against Colombia” in the case, notified the Court that his Government wished to discontinue the proceedings in the case. By a letter of the same date, the Agent of Colombia informed the Court, pursuant to Article 89, paragraph 2, of the Rules of Court, that it made no objection to the discontinuance of the case as requested by Ecuador.

According to the letters received from the Parties, the Agreement of 9 September 2013 established, *inter alia*, an exclusion zone, in which Colombia would not conduct aerial spraying operations, created a Joint Commission to ensure that spraying operations outside that zone had not caused herbicides to drift into Ecuador and, so long as they had not, provided a mechanism for the gradual reduction in the width of the said zone; according to the letters, the Agreement set out operational parameters for Colombia's spraying programme, recorded the agreement of the two Governments to ongoing exchanges of information in that regard, and established a dispute settlement mechanism.

In consequence, the President of the Court, on 13 September 2013, made an Order recording the discontinuance by Ecuador of the proceedings and directing the removal of the case from the Court's List.

1.114. Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)

On 5 June 2008, Mexico filed an Application instituting proceedings against the United States of America, requesting the Court to interpret paragraph 153 (9) of its Judgment of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)* (see No. 1.104 above), in which it had laid down the remedial obligations incumbent upon the United States, namely "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences" of the Mexican nationals at issue in that case. Mexico claimed that a dispute had arisen between the Parties as to the scope and meaning of paragraph 153 (9) and asked for an interpretation as to whether paragraph 153 (9) expressed an obligation of result and, pursuant to that obligation of result, requested the Court to order that the United States ensure that no Mexican national covered under the *Avena* Judgment would be executed unless and until the review and reconsideration was completed and it was determined that no prejudice resulted from the violation.

On the same day, Mexico also filed a Request for the indication of provisional measures in order "to preserve the rights of Mexico and its nationals" pending the Court's Judgment in the proceedings on the interpretation of the *Avena* Judgment. By an Order of 16 July 2008, the Court indicated the following provisional measures:

- “(a) The United States of America shall take all measures necessary to ensure that Messrs. José Ernesto Medellín Rojas, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending judgment on the Request for interpretation submitted by the United Mexican States, unless and until these five Mexican nationals receive review and reconsideration consistent with paragraphs 138 to 141 of the Court's

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Judgment delivered on 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*;

(b) The Government of the United States of America shall inform the Court of the measures taken in implementation of this Order.”

Following the submission of written observations by the United States of America and of further written explanations by both Parties, the Court delivered its Judgment on Mexico’s Request for interpretation on 19 January 2009. The Court stated that its interpretative jurisdiction was founded on Article 60 of the Court’s Statute, which provides that “[in] the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party”. A key question which arose in this case was whether a dispute did in fact exist between the Parties as to the meaning or scope of paragraph 153 (9) of the *Avena* Judgment. The United States argued that no dispute existed between it and Mexico for the purposes of Article 60, because the United States Executive Branch shared Mexico’s understanding that the *Avena* Judgment established an obligation of result. For its part, Mexico argued that the United States “does not share Mexico’s view of the *Avena* Judgment — that is, that the operative language establishes an obligation of result reaching all organs, including the federal and state judiciaries”.

In its Judgment on the Request for interpretation, the Court reviewed both of these positions in detail, finding certain merits to each argument. Ultimately, however, the Court concluded that “there would be a further obstacle to granting the request of Mexico even if a dispute in the present case were ultimately found to exist”. In particular, the Court explained that:

“[t]he *Avena* Judgment nowhere lays down or implies that the courts in the United States are required to give direct effect to paragraph 153 (9). The obligation laid down in that paragraph is indeed an obligation of result which clearly must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct. However, the Judgment leaves it to the United States to choose the means of implementation, not excluding the introduction within a reasonable time of appropriate legislation, if deemed necessary under domestic constitutional law. Nor moreover does the *Avena* Judgment prevent direct enforceability of the obligation in question, if such an effect is permitted by domestic law. In short, the question is not decided in the Court’s original Judgment and thus cannot be submitted to it for interpretation under Article 60 of the Statute.”

The Court thus found that Mexico’s Request for interpretation dealt not with the “meaning or scope” of the *Avena* judgment as Article 60 required, but rather with “the general question of the effects of a judgment of the Court in the domestic legal order of the States parties to the case in which the judgment was

delivered”. Thus, the Court considered that, “[b]y virtue of its general nature, the question underlying Mexico’s Request for interpretation is outside the jurisdiction specifically conferred upon the Court by Article 60” and that “[w]hether or not there is a dispute, it does not bear on the interpretation of the *Avena* Judgment, in particular of paragraph 153 (9).” The Court therefore concluded that it could not accede to Mexico’s Request for interpretation.

*1.115. Application of the International Convention
on the Elimination of All Forms of Racial Discrimination
(Georgia v. Russian Federation)*

On 12 August 2008, the Republic of Georgia instituted proceedings before the Court against the Russian Federation relating to “its actions on and around the territory of Georgia in breach of CERD [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination]”. Georgia claimed that

“the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under CERD, including Articles 2, 3, 4, 5 and 6”.

According to Georgia, the Russian Federation “has violated its obligations under CERD during three distinct phases of its interventions in South Ossetia and Abkhazia”, in the period from 1990 to August 2008. Georgia requested the Court to order “the Russian Federation to take all steps necessary to comply with its obligations under CERD”. As a basis for the jurisdiction of the Court, Georgia relied on Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination.

Georgia’s Application was accompanied by a request for the indication of provisional measures in order “to preserve [its] rights under CERD to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries”.

On 15 August 2008, having considered the gravity of the situation, the President of the Court, acting under Article 74, paragraph 4, of the Rules of Court, urgently called upon the Parties “to act in such a way as will enable any order the Court may take on the request for provisional measures to have its appropriate effects”.

Following public hearings that were held from 8 to 10 October 2008, the Court issued an Order on the request for the indication of provisional measures submitted by Georgia. The Court found that it had *prima facie* jurisdiction under Article 22 of CERD to deal with the case and could accordingly address the request for the indication of provisional measures. The Court ordered the Parties,

“within South Ossetia and Abkhazia and adjacent areas in Georgia, [to] refrain from any act of racial discrimination against persons, groups of

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persons or institutions; [to] abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations; [to] do all in their power . . . to ensure, without distinction as to national or ethnic origin, (i) security of persons; (ii) the right of persons to freedom of movement and residence within the border of the State; (iii) the protection of the property of displaced persons and of refugees . . . [and to] do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions”.

The Court also indicated that “[e]ach Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve”. Finally, the Court ordered each Party to “inform [it] as to its compliance with the . . . provisional measures”.

By an Order of 2 December 2008, the President fixed 2 September 2009 as the time-limit for the filing of a Memorial by Georgia and 2 July 2010 as the time-limit for the filing of a Counter-Memorial by the Russian Federation. On 1 December 2009, the Russian Federation filed four preliminary objections in respect of jurisdiction. By an Order of 11 December 2009, the Court fixed 1 April 2010 as the time-limit for the filing by Georgia of a written statement containing its observations and submissions on the preliminary objections raised by the Russian Federation.

In its Judgment of 1 April 2011, the Court began by considering the Russian Federation’s first preliminary objection, according to which there had been no dispute between the Parties regarding the interpretation or application of CERD at the date Georgia filed its Application. It concluded that none of the documents or statements provided any basis for a finding that there had been a dispute about racial discrimination by July 1999. It followed from the general finding of the Court and the specific findings made with regard to each document and statement that Georgia had not, in the Court’s opinion, cited any document or statement made before it became party to CERD in July 1999; which provided support for its contention that “the dispute with Russia over ethnic cleansing is long-standing and legitimate and not of recent invention”. The Court added that even if that had been the case, such dispute, though about racial discrimination, could not have been a dispute with respect to the interpretation or application of CERD, the only kind of dispute in respect of which the Court is given jurisdiction by Article 22 of that Convention. However, the Court concluded that the exchanges between the Georgian and Russian representatives in the Security Council on 10 August 2008, the claims made by the Georgian President on 9 and 11 August and the response on 12 August by the Russian Foreign Minister established that by that day, the day on which Georgia submitted its Application, there had been a dispute between Georgia and the Russian Federation about the latter’s compli-

ance with its obligations under CERD as invoked by Georgia in the case. The first preliminary objection of the Russian Federation was accordingly dismissed.

In its second preliminary objection, the Russian Federation had argued that the procedural requirements of Article 22 of CERD for recourse to the Court had not been fulfilled. According to this provision,

“[a]ny dispute between two or more States parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement”.

First of all, the Court noted that Georgia did not claim that, prior to seising the Court, it had used or attempted to use the procedures expressly provided for in CERD. The Court therefore limited its examination to the question of whether the precondition of negotiations had been fulfilled.

In determining what constitutes negotiations, the Court observed that negotiations are distinct from mere protests or disputations. Negotiations entail more than the plain opposition of legal views or interests between two parties, or the existence of a series of accusations and rebuttals, or even the exchange of claims and directly opposed counter-claims. As such, the concept of “negotiations” differs from the concept of “dispute”, and requires — at the very least — a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute. The Court further noted that evidence of such an attempt to negotiate — or of the conduct of negotiations — does not require the reaching of an actual agreement between the disputing parties.

Accordingly, the Court assessed whether Georgia had genuinely attempted to engage in negotiations with the Russian Federation, with a view to resolving their dispute concerning the Russian Federation’s compliance with its substantive obligations under CERD. The Court noted that, were it to find that Georgia had genuinely attempted to engage in such negotiations with the Russian Federation, it would subsequently examine whether Georgia had pursued those negotiations as far as possible with a view to settling the dispute. To make that determination, the Court said that it needed to ascertain whether the negotiations had failed, become futile, or reached a deadlock before Georgia submitted its claim to the Court. After considering the Parties’ arguments on the question, the Court recalled its conclusions regarding the Russian Federation’s first preliminary objection, as it was directly connected to the Russian Federation’s second preliminary objection. The Court observed that negotiations had taken place between Georgia and the Russian Federation before the start of the relevant dispute. Those negotiations had involved several matters of importance to the relationship between Georgia and the Russian Federation, namely, the status of South Ossetia and Abkhazia,

the territorial integrity of Georgia, the threat or use of force, the alleged breaches of international humanitarian law and of human rights law by Abkhaz or South Ossetian authorities and the role of the Russian Federation's peacekeepers. However, in the absence of a dispute relating to matters falling under CERD prior to 9 August 2008, those negotiations could not be said to have covered such matters, and were thus of no relevance to the Court's examination of the Russian Federation's second preliminary objection. The Court accordingly concluded that neither requirement contained in Article 22 had been satisfied. Article 22 of CERD thus could not serve to found the Court's jurisdiction in the case. The second preliminary objection of the Russian Federation was therefore upheld.

Having upheld the second preliminary objection of the Russian Federation, the Court found that it was required neither to consider nor to rule on the other objections to its jurisdiction raised by the Respondent and that the case could not proceed to the merits phase. Accordingly, the Order of 15 October 2008 indicating provisional measures ceased to be operative upon the delivery of the Judgment of the Court.

*1.116. Application of the Interim Accord of 13 September 1995
(the former Yugoslav Republic of Macedonia v. Greece)*

On 17 November 2008, the former Yugoslav Republic of Macedonia filed in the Registry of the Court an Application instituting proceedings against the Hellenic Republic in respect of a dispute concerning the interpretation and implementation of the Interim Accord of 13 September 1995. In particular, the Applicant sought to establish that, by objecting to the Applicant's admission to NATO, the Respondent had breached Article 11, paragraph 1, of the said Accord, which provides that:

“Upon entry into force of this Interim Accord, the Party of the First Part agrees not to object to the application by or the membership of the Party of the Second Part in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member; however, the Party of the First Part reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993).”

In paragraph 2 of resolution 817, the Security Council recommended that the Applicant be admitted to membership in the United Nations, being “provisionally referred to for all purposes within the United Nations as ‘the former Yugoslav Republic of Macedonia’ pending settlement of the difference that has arisen over the name of the State”. In the period following the adoption of the Interim Accord, the Applicant was granted membership in a number of international organizations of which the Respondent was already a member. The Applicant's NATO candidacy was considered in a meeting of NATO member States in Bucharest (hereinafter

the “Bucharest Summit”) on 2 and 3 April 2008 but the Applicant was not invited to begin talks on accession to the organization. The communiqué issued at the end of the Summit stated that an invitation would be extended to the Applicant “as soon as a mutually acceptable solution to the name issue has been reached”.

By an Order of 20 January 2009, the Court fixed 20 July 2009 as the time-limit for the filing of a Memorial by the former Yugoslav Republic of Macedonia and 20 January 2010 as the time-limit for the filing of a Counter-Memorial by Greece. By an Order of 12 March 2010, the Court authorized the submission of a Reply by the former Yugoslav Republic of Macedonia and a Rejoinder by Greece. It fixed 9 June 2010 and 27 October 2010 as the respective time-limits for the filing of those pleadings.

In its Judgment of 5 December 2011, the Court first addressed the Respondent’s claim that the Court had no jurisdiction to entertain the case and that the Application was inadmissible for several reasons. The Court upheld none of those objections and concluded that it had jurisdiction over the dispute and that the Application was admissible.

In respect of the first objection raised by the Respondent, the Court did not find that the dispute concerned the difference over the name of the Applicant referred to in Article 5, paragraph 1, of the Interim Accord and that, consequently, it was excluded from the Court’s jurisdiction by virtue of the exception provided in Article 21, paragraph 2. With regard to the second objection, the Court considered that the conduct forming the object of the Application was the Respondent’s alleged objection to the Applicant’s admission to NATO, and that, on the merits, the Court would only have to determine whether or not that conduct demonstrated that the Respondent had failed to comply with its obligations under the Interim Accord, irrespective of NATO’s final decision on the Applicant’s membership application. In respect of the third objection, the Court observed that the Applicant was not requesting it to reverse NATO’s decision in the Bucharest Summit, but to determine whether the Respondent had violated its obligations under the Interim Accord as a result of its conduct. It concluded therefore that a Judgment of the Court would be capable of being applied effectively, because it would affect the Parties’ existing rights and obligations under the Interim Accord, contrary to what had been alleged by the Respondent. As regards the fourth and last objection raised by the Respondent, the Court did not uphold the argument that the exercise of jurisdiction by the Court would interfere with ongoing diplomatic negotiations mandated by the Security Council concerning the difference over the name and thus would be incompatible with the Court’s judicial function. The Court noted that the Parties had included a provision conferring jurisdiction on the Court (Art. 21) in an agreement that also required them to continue negotiations on the dispute between them over the name of the Applicant (Art. 5, para. 1). It took the view that, had the Parties considered that a future ruling by the Court would interfere with diplomatic negotiations mandated by the Security

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Council, they would not have agreed to refer to it disputes concerning the interpretation or implementation of the Interim Accord.

Turning to the merits of the case, the Court considered whether the Respondent objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord. The Court considered that there was no indication that the Parties had intended to exclude from Article 11, paragraph 1, organizations like NATO which follow procedures which do not require a vote. The Court noted that the question before it was not whether the decision taken by NATO at the Bucharest Summit with respect to the Applicant's candidacy had been due exclusively, principally, or marginally to the Respondent's objection, but whether the Respondent, by its own conduct, had not complied with the obligation not to object contained in Article 11, paragraph 1, of the Interim Accord. In the view of the Court, the evidence submitted to it demonstrated that through formal diplomatic correspondence and through statements of its senior officials, the Respondent had made clear before, during and after the Bucharest Summit that the resolution of the difference over the name was the "decisive criterion" for the Respondent to accept the Applicant's admission to NATO. The Court therefore concluded that the Respondent had objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord.

The Court then turned to the question whether the Respondent's objection to the Applicant's admission to NATO at the Bucharest Summit fell within the exception contained in the second clause of Article 11, paragraph 1, of the Interim Accord. The Court noted that the Parties agreed that the Applicant intended to refer to itself within NATO, once admitted, by its constitutional name, not by the provisional designation set forth in resolution 817. It considered, however, that the Respondent did not have the right to object to the Applicant's admission to an organization based on the prospect that the Applicant would refer to itself in such organization with its constitutional name. It found, in effect, that the Applicant's intention to refer to itself in an international organization by its constitutional name did not mean that it was "to be referred to" in such organization "differently than in" paragraph 2 of resolution 817.

The Court thus concluded that the Respondent had failed to comply with its obligation under Article 11, paragraph 1, of the Interim Accord by objecting to the Applicant's admission to NATO at the Bucharest Summit.

The Court observed that, as an alternative to its main argument that it had complied with its obligations under the Interim Accord, the Respondent contended that the wrongfulness of any objection to the admission of the Applicant to NATO was precluded by the doctrine of *exception non adimpleti contractus*. The Court observed that, while the Respondent had presented separate arguments relating to the *exceptio*, partial suspension under Article 60 of the 1969 Vienna Convention

and countermeasures, it had advanced certain minimum conditions that were common to all three arguments, namely that the Applicant had breached several provisions of the Interim Accord and that the Respondent's objection to the Applicant's admission to NATO had been made in response to those breaches.

In light of the analysis of the Respondent's allegations that the Applicant had breached several of its obligations under the Interim Accord, the Court concluded that the Respondent had established only one such breach. Namely, the Respondent had demonstrated that the Applicant had used the symbol prohibited by Article 7, paragraph 2, of the Interim Accord in 2004. After the Respondent raised the matter with the Applicant in 2004, the use of the symbol had been discontinued during that same year. The Court found no breach by the Applicant of the second clause of Article 11, paragraph 1, considering that this provision does not impose an obligation upon the Applicant not to be referred to in an international organization or institution by any reference other than the provisional designation (as "the former Yugoslav Republic of Macedonia"). The Court also concluded that the Respondent had not met its burden of demonstrating that the Applicant had breached its obligation, pursuant to Article 5, paragraph 1, of the Interim Accord, to negotiate in good faith with a view to reaching agreement on the difference over the name of the Applicant.

The Court then returned to the Respondent's contention that the *exceptio* precluded the Court from finding that the Respondent had breached its obligation under Article 11, paragraph 1, of the Interim Accord. The Court recalled that in all but one instance (the use of the symbol prohibited by Article 7, paragraph 2), the Respondent had failed to establish any breach of the Interim Accord by the Applicant. In addition, the Respondent had failed to show a connection between the Applicant's use of the symbol in 2004 and the Respondent's objection in 2008 — that is, evidence that when the Respondent raised its objection to the Applicant's admission to NATO, it had done so in response to the apparent violation of Article 7, paragraph 2, or, more broadly, on the basis of any belief that the *exceptio* precluded the wrongfulness of its objection. The Court concluded that the Respondent had thus failed to establish that the conditions which it had itself asserted would be necessary for the application of the *exceptio* had been satisfied in the case. It was, therefore, unnecessary for the Court to determine whether that doctrine forms part of contemporary international law.

With respect to the suggestion by the Respondent that its objection to the Applicant's admission to NATO could have been regarded as a legitimate response to material breaches of the Interim Accord allegedly committed by the Applicant, the Court considered that the only breach which had been established could not be regarded as a material breach within the meaning of Article 60 of the 1969 Vienna Convention. Moreover, the Respondent had failed to establish that the action which it had taken in 2008 in connection with the Applicant's application to NATO had been a response to the breach of Article 7, paragraph 2, approximately four

years earlier. Finally, the Court did not accept that the objection to the Applicant's admission to NATO could be justified as a proportionate countermeasure in response to breaches of the Interim Accord by the Applicant. The Court therefore concluded that the additional justifications submitted by the Respondent as an alternative to its main argument that it had complied with its obligations under the Interim Accord failed.

As to possible remedies for the violation by the Respondent of its obligation under Article 11, paragraph 1, of the Interim Accord, the Court found that a declaration that the Respondent had violated its obligation not to object to the Applicant's admission to or membership in NATO was warranted and that such finding constituted appropriate satisfaction. The Court did not consider it necessary, however, to order the Respondent, as the Applicant requested, to refrain from any future conduct that violated its obligation under Article 11, paragraph 1, of the Interim Accord. As the Court had previously explained, "[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed" (*Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 267, para. 150).

*1.117. Jurisdictional Immunities of the State
(Germany v. Italy: Greece intervening)*

On 23 December 2008, the Federal Republic of Germany instituted proceedings against the Italian Republic, requesting the Court to declare that Italy had failed to respect the jurisdictional immunity which Germany enjoys under international law by allowing civil claims to be brought against it in the Italian courts seeking reparation for injuries caused by violations of international humanitarian law committed by the Third Reich during the Second World War. In addition, Germany asked the Court to find that Italy had also violated Germany's immunity by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory. Finally, Germany requested the Court to declare that Italy had breached Germany's jurisdictional immunity by declaring enforceable in Italy decisions of Greek civil courts rendered against Germany on the basis of acts similar to those which had given rise to the claims brought before Italian courts. Germany referred in particular to the judgment rendered against it in respect of the massacre committed by German armed forces during their withdrawal in 1944, in the Greek village of in the *Distomo* case.

As basis for the Court's jurisdiction, Germany invoked Article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961.

The Memorial of Germany and the Counter-Memorial of Italy were filed within the time-limits fixed by the Order of the Court of 29 April 2009. In its Counter-Memorial, Italy, referring to Article 80 of the Rules of Court, made a

counter-claim “with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich”. Italy based the Court’s jurisdiction to entertain that counter-claim on Article 1 of the European Convention, taken together with Article 36, paragraph 1, of the Statute of the Court. Italy further asserted that there was “a direct connection between the facts and law upon which [it] relies in rebutting Germany’s claim and the facts and law upon which [it] relies to support its counter-claim”. The Court found that the counter-claim presented by Italy was inadmissible, because the dispute that Italy intended to bring before the Court by way of its counter-claim related to facts and situations existing prior to the entry into force as between the parties of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, which formed the basis of the Court’s jurisdiction in the case (Order of 6 July 2010).

After the filing of the aforementioned Memorial and Counter-Memorial, the Court authorized the submission of a Reply by Germany and a Rejoinder by Italy.

On 13 January 2011, Greece filed an Application requesting permission to intervene in the case. In its Application, Greece stated that it wished to intervene in the aspect of the procedure relating to judgments rendered by its own courts on the *Distomo* massacre and enforced (*exequatur*) by the Italian courts. The Court, in an Order of 4 July 2011, considered that it might find it necessary to consider the decisions of Greek courts in the *Distomo* case, in light of the principle of State immunity, for the purposes of making findings with regard to Germany’s submission that Italy had breached its jurisdictional immunity by declaring enforceable in Italy decisions of Greek courts founded on violations of international humanitarian law committed by the German Reich during the Second World War. This permitted the conclusion that Greece had an interest of a legal nature which might have been affected by the judgment in the case and, consequently, that Greece could be permitted to intervene as a non-party “in so far as this intervention is limited to the decisions of Greek courts [in the *Distomo* case]”.

In its Judgment rendered on 3 February 2012, the Court first examined the question whether Italy had violated Germany’s jurisdictional immunity by allowing civil claims to be brought against that State in the Italian courts. The Court noted in this respect that the question which it was called upon to decide was not whether the acts committed by the Third Reich during the Second World War were illegal, but whether, in civil proceedings against Germany relating to those acts, the Italian courts were obliged to accord Germany immunity. The Court held that the action of the Italian courts in denying Germany immunity constituted a breach of Italy’s international obligations. It stated in this connection that, under customary international law as it presently stood, a State was not deprived of immunity by reason of the fact that it was accused of serious violations of international human rights law or the international law of armed conflict. The Court further observed that, assuming that the rules of the law of armed conflict which

prohibited murder, deportation and slave labour were rules of *jus cogens*, there was no conflict between those rules and the rules on State immunity. The two sets of rules addressed different matters. The rules of State immunity were confined to determining whether or not the courts of one State could exercise jurisdiction in respect of another State. They did not bear upon the question whether or not the conduct in respect of which the proceedings were brought was lawful or unlawful. Finally, the Court examined Italy's argument that the Italian courts were justified in denying Germany immunity, because all other attempts to secure compensation for the various groups of victims involved in the Italian proceedings had failed. The Court found no basis in the relevant domestic or international practice that international law made the entitlement of a State to immunity dependent upon the existence of effective alternative means of securing redress.

The Court then addressed the question whether a measure of constraint taken against property belonging to Germany located on Italian territory constituted a breach by Italy of Germany's immunity. Italy had registered a legal charge on the property in question following a decision by the Italian courts declaring that the judgments of the Greek courts were enforceable in Italy and awarding pecuniary damages against Germany. The Court noted that Villa Vigoni was being used for governmental purposes that were entirely non-commercial; that Germany had in no way consented to the registration of the legal charge in question, nor allocated Villa Vigoni for the satisfaction of the judicial claims against it. Since the conditions permitting a measure of constraint to be taken against property belonging to a foreign State had not been met in this case, the Court concluded that Italy had violated its obligation to respect Germany's immunity from enforcement.

Finally, the Court examined the question whether Italy had violated Germany's immunity by declaring enforceable in Italy civil judgments rendered by Greek courts against Germany in proceedings arising out of the massacre committed in the Greek village of *Distomo* by the armed forces of the Third Reich in 1944. It considered that the relevant question was whether the Italian courts had respected Germany's immunity in allowing the application for *exequatur*, and not whether the Greek court having rendered the judgment of which *exequatur* was sought had respected Germany's jurisdictional immunity. It observed that a court seised of an application for *exequatur* of a foreign judgment rendered against a third State had to ask itself whether, in the event that it had itself been seised of the merits of a dispute identical to that which was the subject of the foreign judgment, it would have been obliged under international law to accord immunity to the respondent State. It found that the decisions of the Italian courts declaring enforceable in Italy the civil judgments rendered against Germany by Greek courts in proceedings arising out of the massacre committed in Greece in 1944 constituted a violation by Italy of its obligation to respect the jurisdictional immunity of Germany.

Accordingly, the Court declared that Italy must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions

of its courts and those of other judicial authorities infringing the immunity which Germany enjoyed under international law cease to have effect.

It should be noted that, on 14 January 2013, the Italian Parliament adopted a draft law concerning the accession of Italy to the United Nations Convention on Jurisdictional Immunities of States and Their Property, and provisions adapting national law. This law was published in the *Official Journal of the Italian Republic* on 29 January 2013. Article 3 thereof, entitled “Compliance with the judgments of the International Court of Justice” states that the International Court of Justice having excluded the possibility of certain acts of another State being submitted to the Italian civil jurisdiction, the court hearing the dispute relating to those acts shall find on its own motion that it lacks jurisdiction, even when a preliminary judgment establishing its jurisdiction has already become *res judicata*, and whatever the state or phase of the proceedings. It adds that any ruling having the effect of *res judicata* which is not consonant with a judgment of the International Court of Justice, even where that judgment is rendered subsequently, may also be subject to revision for lack of civil jurisdiction.

1.118. Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)

On 19 February 2009, Belgium filed an Application instituting proceedings against Senegal relating to Mr. Hissène Habré, the former President of Chad and resident in Senegal since being granted political asylum by the Senegalese Government in 1990. Belgium submitted that, by failing to prosecute Mr. Habré for certain acts he was alleged to have committed during his presidency, including acts of torture and crimes against humanity, or to extradite him to Belgium, Senegal had violated the so-called obligation *aut dedere aut judicare* (that is to say, “to prosecute or extradite”) provided for in Article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in customary international law.

On the same day, Belgium filed a request for the indication of provisional measures, asking the Court to order “Senegal to take all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal so that the rules of international law with which Belgium requests compliance may be correctly applied”. Belgium justified this request by reference to certain statements made by Mr. Abdoulaye Wade, President of the Republic of Senegal, which, according to Belgium, indicated that, if Senegal could not secure the necessary funding to try Mr. Habré, it would “cease monitoring him or transfer him to another State”.

In its Order of 28 May 2009, referring to the assurances given by Senegal during the oral proceedings that it would not allow Mr. Habré to leave its territory while the case was pending, the Court concluded that there was no risk of irreparable prejudice to the rights claimed by Belgium and that there did not exist any urgency to justify the indication of provisional measures.

In its Judgment dated 20 July 2012, the Court began by examining the questions raised by Senegal relating to its jurisdiction and to the admissibility of Belgium's claims. Having pointed out that the existence of a dispute is a condition of its jurisdiction under both bases of jurisdiction invoked by Belgium — Article 30, paragraph 1, of the Convention against Torture and the declarations made by both States under Article 36, paragraph 2, of the Statute — the Court considered that, since any dispute that may have existed between the Parties with regard to the interpretation or application of Article 5, paragraph 2, of the Convention against Torture had ended by the time the Application was filed, it lacked jurisdiction to decide on Belgium's claim relating to that provision. Article 5, paragraph 2, of the said Convention obliges the States parties thereto to establish the universal jurisdiction of their courts over the crime of torture. The Court found, however, that it did have jurisdiction to entertain Belgium's claims based on the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention. It further considered, on the basis of the international arrest warrant issued against Mr. Habré by Belgium, the extradition request transmitted to Senegal and the diplomatic exchanges between the two Parties, that, at the time of the filing of the Application instituting proceedings, there was no dispute between the Parties regarding Senegal's obligation to prosecute or extradite Mr. Habré for crimes he was alleged to have committed under customary international law. The Court observed that, consequently, while the facts which constituted those alleged crimes may have been closely connected to the alleged acts of torture, it did not have jurisdiction to entertain the issue whether there existed an obligation for a State to prosecute crimes under customary international law allegedly committed by a foreign national abroad.

The Court then turned to the conditions which have to be met in order for it to have jurisdiction under Article 30, paragraph 1, of the Convention against Torture, namely that the dispute cannot be settled through negotiation and that, after a request for arbitration has been made by one of the parties, they have been unable to agree on the organization of the arbitration within six months from that request. Having found that these conditions had been met, the Court concluded that it had jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention. It ruled, however, that it was not necessary for it to establish whether its jurisdiction also existed with regard to the same dispute on the basis of the declarations made by the Parties under Article 36, paragraph 2, of its Statute.

With respect to the admissibility of Belgium's claims, the Court ruled that once any State party to the Convention against Torture was able to invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, i.e., obligations owed toward all States parties, Belgium, as a party to the said Convention, had standing to invoke the responsibility of Senegal for the alleged breaches of its obligations under Article 6,

paragraph 2, and Article 7, paragraph 1, of that Convention. The Court thus found that Belgium's claims based on those provisions were admissible.

As regards the alleged violation of Article 6, paragraph 2, of the Convention against Torture, which provides that a State party in whose territory a person alleged to have committed acts of torture is present must "immediately make a preliminary inquiry into the facts", the Court noted that Senegal had not included in the case file any material demonstrating that it had carried out such an inquiry. The Court further observed that, while the choice of means for conducting the inquiry remained in the hands of the States parties, taking account of the case in question, Article 6, paragraph 2, of the Convention requires that steps must be taken as soon as the suspect is identified in the territory of the State, in order to conduct an investigation of that case. In the present case, the establishment of the facts had become imperative at least since the year 2000, when a complaint was filed in Senegal against Mr. Habré. Nor had an investigation been initiated in 2008, when a further complaint against Mr. Habré was filed in Dakar, after the legislative and constitutional amendments made in 2007 and 2008, respectively. The Court concluded from the foregoing that Senegal had breached its obligation under the above-mentioned provision.

With respect to the alleged violation of Article 7, paragraph 1, of the Convention against Torture, the Court first examined the nature and meaning of the obligation laid down in that provision. It observed that the obligation to submit the case to the competent authorities for the purpose of prosecution (the "obligation to prosecute") deriving from that provision was formulated in such a way as to leave it to the said authorities to decide whether or not to initiate proceedings, thus respecting the independence of States parties' judicial systems: those authorities thus remain responsible for deciding on whether to initiate a prosecution, in the light of the evidence before them and of the relevant rules of criminal procedure. The Court further observed that the obligation to prosecute requires the State concerned to submit the case to its competent authorities for the purpose of prosecution, irrespective of the existence of a prior request for the extradition of the suspect. It noted, however, that, if the State in whose territory the suspect is present has received a request for extradition in any of the cases envisaged in the provisions of the Convention, it may relieve itself of its obligation to prosecute by acceding to that request. It thus concluded that extradition was an option offered to the State by the Convention, whereas prosecution was an international obligation under the Convention, the violation of which was a wrongful act engaging the responsibility of the State.

The Court then turned to the temporal scope of the obligation laid down in Article 7, paragraph 1, of the Convention. It noted in this respect that, while the prohibition of torture was part of customary international law and had become a peremptory norm (*jus cogens*), the obligation to prosecute the alleged perpetrators of acts of torture under the Convention applied only to facts having occurred after

its entry into force for the State concerned. The Court concluded from the foregoing that Senegal's obligation to prosecute pursuant to Article 7, paragraph 1, of the Convention did not apply to acts alleged to have been committed before the Convention entered into force for Senegal on 26 June 1987, although there was nothing in that instrument to prevent it from instituting proceedings concerning acts that were committed before that date. The Court found that Belgium, for its part, was entitled, with effect from 25 July 1999, the date when it became party to the Convention, to request the Court to rule on Senegal's compliance with its obligation under Article 7, paragraph 1, of the Convention.

Finally, the Court examined the question of the implementation of the obligation to prosecute. It concluded that the obligation laid down in Article 7, paragraph 1, required Senegal to take all measures necessary for its implementation as soon as possible, in particular once the first complaint had been filed against Mr. Habré in 2000. Having failed to do so, Senegal had breached and remained in breach of its obligations under Article 7, paragraph 1, of the Convention.

The Court found that, by failing to comply with its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention, Senegal had engaged its international responsibility. Therefore, it was required to cease that continuing wrongful act and to take, without further delay, the necessary measures to submit the case to its competent authorities for the purpose of prosecution, if it did not extradite Mr. Habré.

1.119. Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)

On 21 December 2009, the Kingdom of Belgium initiated proceedings against the Swiss Confederation in respect of a dispute concerning primarily the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters. In particular, the case related to a dispute between the main shareholders in Sabena, the former Belgian airline. Belgium argued that Switzerland was breaching the Lugano Convention and other international obligations by virtue of the decision of its courts to refuse to recognize a decision in a Belgian court on the liability of the Swiss shareholders to the Belgian shareholders (including the Belgian State and three companies owned by the Belgian State).

In its Order of 4 February 2010, the Court fixed time-limits for the filing of the Memorial of Belgium and the Counter-Memorial of Switzerland. In its Order of 10 August 2010, the Court subsequently extended the time-limits to 23 November 2010 for the filing of the Memorial of Belgium and 24 October 2011 for the filing of the Counter-Memorial of Switzerland. The Memorial of Belgium was filed within the time-limit thus extended. On 18 February 2011, Switzerland raised preliminary objections in respect of the jurisdiction of the Court and the admissibility of the Application.

By a letter dated 21 March 2011, the Agent of Belgium informed the Court that his Government “in concert with the Commission of the European Union, considers that it can discontinue the proceedings instituted [by Belgium] against Switzerland” and requested the Court “to make an order recording Belgium’s discontinuance of the proceedings and directing that the case be removed” from the Court’s General List.

In his letter, the Agent cited as the reason for the Belgian Government’s request to discontinue the proceedings the preliminary objections raised in the case by Switzerland. In the letter, the Belgian Government explained in particular that it had taken note of the fact that

“Switzerland states . . . that the reference by the [Swiss] Federal Supreme Court in its 30 September 2008 judgment to the ‘non-recognizability’ of a future Belgian judgment does not have the force of *res judicata* and does not bind either the lower cantonal courts or the Federal Supreme Court itself, and that there is therefore nothing to prevent a Belgian judgment, once handed down, from being recognized in Switzerland in accordance with the applicable treaty provision”.

Since Switzerland did not oppose the said discontinuance, the Court, placing on record the discontinuance by Belgium of the proceedings, ordered that the case be removed from its List (Order of 5 April 2011).

*1.120. Certain Questions concerning Diplomatic Relations
(Honduras v. Brazil)*

On 28 October 2009, the Ambassador of Honduras to the Netherlands filed in the Registry of the Court an Application instituting proceedings against Brazil in respect of a

“dispute between [the two States] relat[ing] to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations”.

It was alleged therein that Brazil had “breached its obligations under Article 2 (7) of the Charter and those under the 1961 Vienna Convention on Diplomatic Relations”.

At the end of the Application the Court was requested

“to adjudge and declare that Brazil does not have the right to allow the premises of its Mission in Tegucigalpa to be used to promote manifestly illegal activities by Honduran citizens who have been staying within it for some time now and that it shall cease to do so”.

To found the Court’s jurisdiction, Honduras invoked Article XXXI of the American Treaty on Pacific Settlement, signed on 30 April 1948 and, under the terms of

Article LX thereof, officially called the “Pact of Bogotá”, ratified without reservation by Honduras on 13 January 1950 and by Brazil on 9 November 1965.

An original copy of the Application was sent to the Government of Brazil on 28 October 2009. The Secretary-General of the United Nations was also informed about the filing of that Application.

By a letter dated 28 October 2009, received in the Registry on 30 October 2009 under the cover of a letter dated 29 October 2009 from Mr. Jorge Arturo Reina, Permanent Representative of Honduras to the United Nations, Ms Patricia Isabel Rodas Baca, Minister for External Relations in the Government headed by Mr. José Manuel Zelaya Rosales, informed the Court, *inter alia*, that the Ambassador of Honduras to the Netherlands was not the legitimate representative of Honduras before the Court and that “Ambassador Eduardo Enrique Reina is being appointed as the sole legitimate representative of the Government of Honduras to the International Court of Justice”. A copy of the communication, with annexes, from the Permanent Representative of Honduras to the United Nations was sent on 3 November 2009 to Brazil, as well as to the Secretary-General of the United Nations. The Court decided that, given the circumstances, no other action would be taken in the case until further notice.

By a letter dated 30 April 2010, received in the Registry on 3 May 2010, Mr. Mario Miguel Canahuati, Minister for External Relations of Honduras, informed the Court that the Honduran Government was “not going on with the proceedings initiated by the application” and that it “accordingly withdraws this application from the Registry”. Consequently, the President of the Court made an Order on 12 May 2010 in which, after noting that Brazil had not taken any step in the proceedings in the case, he recorded the discontinuance by Honduras of the proceedings and ordered that the case be removed from the List.

*1.121. Whaling in the Antarctic
(Australia v. Japan: New Zealand intervening)*

On 31 May 2010, Australia instituted proceedings against Japan in respect of “Japan’s continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic (‘JARPA II’), in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling (‘ICRW’), as well as its other international obligations for the preservation of marine mammals and the marine environment”.

Australia contended that whales taken as part of the JARPA II Program ended up on the commercial market and that the scale of whaling carried out under the program was in fact larger than it had been before the moratorium on commercial whaling under the ICRW. In its Application, it requested the Court to order that Japan:

“(a) cease implementation of JARPA II; (b) revoke any authorisations, permits or licences allowing the activities which are the subject of [the said] application to be undertaken; and (c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law”.

As basis for the jurisdiction of the Court, Australia invoked the provisions of Article 36, paragraph 2, of the Court’s Statute, referring to the declarations recognizing the Court’s jurisdiction as compulsory made by Australia and Japan on 22 March 2002 and 9 July 2007, respectively.

By an Order of 13 July 2010, the Court fixed 9 May 2011 as the time-limit for the filing of a Memorial by Australia and 9 March 2012 as the time-limit for the filing of a Counter-Memorial by Japan. Those pleadings were filed within the time-limits thus prescribed. The Court subsequently decided that the filing of a Reply by Australia and a Rejoinder by Japan was not necessary and that the written phase of the proceedings was therefore closed.

On 20 November 2012, New Zealand filed in the Registry a declaration of intervention in the case. Relying on Article 63, paragraph 2, of the Statute, it contended that, as a party to the ICRW, it had a direct interest in the construction that might be placed upon the Convention by the Court in its decision in the proceedings. In its declaration, New Zealand explained that its intervention was directed in particular to the question of the construction of Article VIII of the Convention, which provided, *inter alia*, that

“any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit”.

Finally, New Zealand underlined that, in intervening, it did not seek to become a party to the proceedings and that, in accordance with Article 63 of the Statute, it accepted that the construction given by the judgment in the case would be equally binding upon it.

In an Order of 13 February 2013, having noted that New Zealand met the requirements set out in the Statute and the Rules of Court, the Court found that the declaration of intervention was admissible and fixed 4 April 2013 as the time-limit for the filing by New Zealand of written observations on the subject-matter of its intervention. By the same Order, the Court authorized the filing by Australia and Japan, by 31 May 2013 at the latest, of written observations on the written observations of New Zealand. After the filing of those written observations within the time-limits prescribed, the Court held public hearings from 26 June to 16 July 2013, during which oral arguments were presented by Australia and Japan, and the experts that each Party had asked to be called were heard by the Court.

New Zealand presented oral observations on the subject-matter of its intervention. The Court began its deliberation following the conclusion of those hearings.

1.122. Frontier Dispute (Burkina Faso/Niger)

On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court, pursuant to a Special Agreement signed in Niamey on 24 February 2009 and which entered into force on 20 November 2009. In Article 2 of the Special Agreement, the Court was requested to determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend and to place on record the Parties' agreement [*leur entente*] on the results of the work of the Joint Technical Commission on Demarcation of the boundary.

In its Judgment of 16 April 2013, the Court indicated that, when it is seised on the basis of a Special Agreement, any request made by a party in its final submissions can fall within the jurisdiction of the Court only if it remains within the limits defined by the provisions of that Special Agreement. However, in the opinion of the Court, the request made by Burkina Faso in points 1 and 3 of its final submissions did not exactly correspond to the terms of the Special Agreement, since that State did not request the Court to "place on record the Parties' agreement" (*leur entente*) regarding the delimitation of the frontier in the two demarcated sectors, but rather to delimit itself the frontier according to a line that corresponds to the conclusions of the Joint Technical Commission. Although the Court has the power to interpret the final submissions of the Parties in such a way as to maintain them within the limits of its jurisdiction under the Special Agreement, that is not, however, sufficient to entertain such a request: the object of that request must also fall within the Court's judicial function, which is to decide, in accordance with international law, such disputes as are submitted to it. However, in the case in question, neither of the Parties had ever claimed that a dispute continued to exist between them concerning the delimitation of the frontier in the two sectors in question on the date when the proceedings were instituted — nor that such a dispute had subsequently arisen. Accordingly, the Court considered that Burkina Faso's request exceeded the limits of its judicial function.

The Court then turned to the dispute actually submitted to it. It observed that Article 6 of the Special Agreement, entitled "Applicable Law", highlighted, amongst the rules of international law applicable to the dispute, "the principle of the intangibility of boundaries inherited from colonization and the Agreement of 28 March 1987". It noted that the first two Articles of that Agreement specify the acts and documents of the French colonial administration which must be used to determine the delimitation line that existed when the two countries gained independence. It observed in that connection that it follows from the 1987 Agreement that the *Arrêté* of 31 August 1927 adopted by the Governor-General *ad interim* of French West Africa with a view to "fixing the boundaries of the colonies of Upper

Volta and Niger”, as clarified by its Erratum of 5 October 1927, is the instrument to be applied for the delimitation of the boundary. It further observed that the 1987 Agreement provides for the possibility of “the *Arrêté* and Erratum not suffic[ing]” and establishes that, in that event, “the course shall be that shown on the 1:200,000-scale map of the Institut géographique national de France, 1960 edition”.

The Court was of the opinion that a straight line connecting the Tong-Tong and Tao astronomic markers should be regarded as constituting the frontier between Burkina Faso and Niger in the sector in question, since the colonial administration officials interpreted the *Arrêté* in that manner.

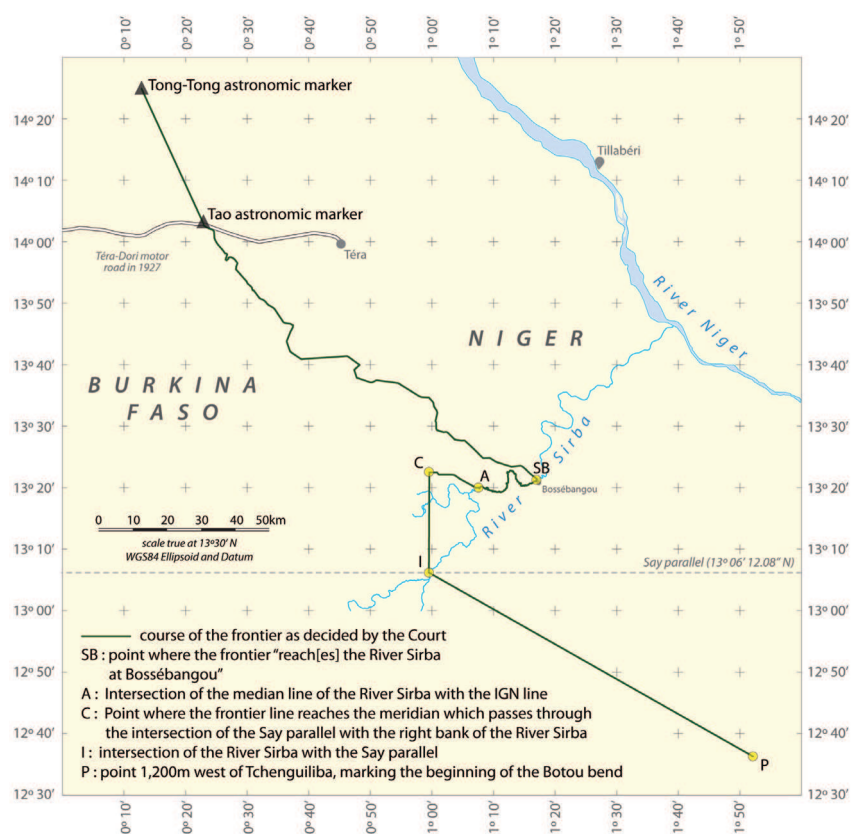
The Court further noted that it is not possible to determine from the *Arrêté* how to connect the Tao astronomic marker to “the River Sirba at Bossébangou”. Recourse must therefore be had to the line appearing on the 1960 map of the Institut géographique national de France (IGN). Moreover, the Court declared that it could not uphold Niger’s requests that the said line be shifted slightly at the level of the localities of Petelkolé and Oussaltane, on the ground that these were purportedly administered by Niger during the colonial period. According to the Court, once it had been concluded that the *Arrêté* was insufficient, and in so far as it was insufficient, the *effectivités* could no longer play a role in the case.

The Court further considered that, according to the description in the *Arrêté*, the frontier line, after reaching the median line of the River Sirba while heading towards Bossébangou, at the point called SB on the sketch-map attached to the Judgment, follows that line upstream until its intersection with the IGN line, at the point called point A on the sketch-map attached to the Judgment. From that point, since the *Arrêté* does not suffice to determine precisely the course of the frontier line, that line follows the IGN line, turning up towards the north-west until the point, called point B on the sketch-map attached to the Judgment, where the IGN line markedly changes direction, turning due south in a straight line. As this turning point B is situated some 200 m to the east of the meridian which passes through the intersection of the Say parallel with the River Sirba, the IGN line does not cut the River Sirba at the Say parallel. However — the Court noted — the *Arrêté* expressly requires that the boundary line cut the River Sirba at that parallel. The frontier line must therefore depart from the IGN line as from point B and, instead of turning there, continue due west in a straight line until the point, called point C on the sketch-map attached to the Judgment, where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba. According to the description in the Erratum, the frontier line then runs southwards along that meridian until the said intersection, at the point called point I on the sketch-map attached to the Judgment.

The Court finally observed that, according to the *Arrêté*, “[f]rom that point the frontier, following an east-south-east direction, continues in a straight line up to

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Sketch Map 4:
COURSE OF THE FRONTIER AS DECIDED BY THE COURT
This sketch map has been prepared for illustrative purposes only



a point located 1,200 m to the west of the village of Tchenguiliba”. It considered that the *Arrêté* is precise in this section of the frontier, in that it establishes that the frontier line is a straight-line segment between the intersection of the Say parallel with the Sirba and the point located 1,200 m to the west of the village of Tchenguiliba, which marks the start of the southern section of the already demarcated portion of the frontier.

The Court decided that, having regard to the circumstances of the case, it would nominate at a later date, by means of an Order, the experts requested by the Parties in Article 7, paragraph 4, of the Special Agreement to assist them in the demarcation of their frontier in the area in dispute. By an Order of 12 July 2013, the Court nominated the said three experts. The case was thus completed and was removed from the Court’s List.

1.123-1.124. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)

On 18 November 2010, the Republic of Costa Rica filed an Application instituting proceedings against the Republic of Nicaragua in respect of an alleged “incursion into, occupation of and use by Nicaragua’s Army of Costa Rican territory as well as [alleged] breaches of Nicaragua’s obligations towards Costa Rica”, namely the principle of territorial integrity and the prohibition of the threat or use of force in accordance with Article 2, paragraph 4, of the Charter, and endorsed between the Parties in Articles 1, 19 and 29 of the Charter of the Organization of American States.

In its Application, Costa Rica contended that Nicaragua had, in two separate incidents, occupied the territory of Costa Rica in connection with the construction of a canal from the San Juan River to Laguna los Portillos (also known as “Harbour Head Lagoon”), and carried out certain related works of dredging on the San Juan River. According to Costa Rica, the dredging and the construction of that canal would seriously affect the flow of water to the Colorado River of Costa Rica, and would cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region. As basis for the Court’s jurisdiction, the Applicant invoked Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 (“Pact of Bogotá”), as well as the declarations of acceptance made by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (modified on 23 October 2001), pursuant to Article 36, paragraph 2, of the Statute of the Court.

On 18 November 2010, Costa Rica also filed a request for the indication of provisional measures aimed at protecting its “right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River, its lands, its environmentally protected areas, as well as the integrity and flow of the

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Colorado River”. By its request, Costa Rica sought in particular to obtain the withdrawal of all Nicaraguan troops from the territory in dispute, the immediate cessation of the construction of the canal and the suspension of the dredging of the Colorado River. By an Order indicating provisional measures dated 8 March 2011, the Court asked the Parties to refrain from sending to, or maintaining in, the disputed territory any personnel, whether civilian, police or security. However, it did authorize Costa Rica to dispatch to the disputed territory, subject to certain conditions, civilian personnel charged with the protection of the environment. Finally, it asked the Parties to refrain from aggravating or extending the dispute.

On 22 December 2011, Nicaragua instituted proceedings against Costa Rica “for violations of Nicaraguan sovereignty and major environmental damages to its territory”. In its Application, Nicaragua contended that Costa Rica was carrying out major construction works along most of the border area between the two countries with grave environmental consequences. This case was entered in the General List of the Court under the title *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (hereinafter the “*Nicaragua v. Costa Rica* case”).

On 6 August 2012, Nicaragua filed its Counter-Memorial in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (hereinafter the “*Costa Rica v. Nicaragua* case”), in which it submitted four counter-claims.

In a letter dated 19 December 2012, submitted on the filing of Nicaragua’s Memorial in the *Nicaragua v. Costa Rica* case, Nicaragua requested the Court to join the proceedings in the *Costa Rica v. Nicaragua* and the *Nicaragua v. Costa Rica* cases.

By two Orders dated 17 April 2013, the Court, taking account of the circumstances and in conformity with the principle of the sound administration of justice and with the need for judicial economy, decided to join the proceedings in the two cases.

By an Order dated 18 April 2013, the Court ruled that the subject-matter of the first counter-claim presented by Nicaragua in the *Costa Rica v. Nicaragua* case (a claim relating to the damage that might result from the construction of the aforementioned road by Costa Rica) was identical in substance to its principal claim in the *Nicaragua v. Costa Rica* case and that, as a result of the joinder of the proceedings, there was no need for it to adjudicate on the admissibility of that counter-claim as such. The Court found the second and third counter-claims inadmissible, since there was no direct connection between those claims, which related to the question of sovereignty over the Bay of San Juan del Norte and Nicaragua’s right to navigation on the Colorado River, respectively, and the principal claims of Costa Rica. Finally, the Court found that there was no need for it to entertain the fourth counter-claim, relating to the implementation of the

provisional measures already indicated by the Court, since the Parties were free to take up that question in the further course of the proceedings.

On 23 May 2013, Costa Rica presented the Court with a request for the urgent modification of its Order of 8 March 2011, so as to prevent the presence of any individuals in the disputed territory other than those authorized to go there. In its written observations on that request, filed on 14 June 2013, Nicaragua considered it unjustified, contending that the individuals referred to by Costa Rica were part of a private group of young Nicaraguans who were participating in environmental sustainability programmes and who were staying in the disputed territory in order to carry out activities related to the preservation of the environment. Nicaragua in turn asked the Court to take account of the change in the situation as a result of the construction by Costa Rica of a road along the San Juan River and of the joinder of the proceedings in the two cases, and to modify or adapt its Order accordingly, in particular so as to allow both Parties (and not only Costa Rica) to despatch civilian personnel charged with the protection of the environment to the disputed territory. In its Order of 16 July 2013, the Court found that the presence of the group of young Nicaraguans in the disputed territory did indeed constitute a change in the situation compared to that which existed at the time of the adoption of the Order of 8 March 2011. It then examined whether that change in the situation was such as to justify the modification of the said Order. It considered that the presence of those Nicaraguan nationals did not appear to be causing irreparable harm to Costa Rica's alleged rights, and that nor did the evidence included in the case file establish the existence of a proven risk of irreparable damage to the environment. Finally, it declared that it did not see, in the facts as they were reported to it, the evidence of urgency that would justify the indication of further provisional measures. Consequently, it considered that the change in the situation that had occurred did not justify a modification of its earlier Order. The Court also considered that the arguments put forward by Nicaragua did not allow it to rely upon a change in the situation to found its request for a modification of the Order. Furthermore, it reaffirmed the measures indicated in its Order of 8 March 2011, in particular the requirement that the Parties "shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve".

On 24 September 2013, Costa Rica filed a request for the indication of new provisional measures in the *Costa Rica v. Nicaragua* case. This request followed the construction by Nicaragua of two new channels (*caños*) in the northern part of the disputed territory, the larger of the two being that to the east ("the eastern *caño*"). After holding public hearings in October 2013, the Court handed down its decision on 22 November 2013. In its Order, the Court considered that there was sufficient evidence for it to conclude that, in view of the length, breadth and position of the trench next to the eastern *caño*, there was a real risk that the trench could reach the Caribbean Sea, either as a result of natural elements or by human actions, or by a combination of both. It took the view that an alteration

of the course of the San Juan River could ensue, with serious consequences for the rights claimed by Costa Rica. The Court was therefore of the opinion that the situation in the disputed territory revealed the existence of a real risk of irreparable prejudice to the rights claimed by the Applicant in the case. Considering, moreover, that there was urgency, the Court decided not only to reaffirm the provisional measures indicated in its Order of 8 March 2011 (see above), but also to indicate new measures. The Court thus directed that Nicaragua must refrain from any dredging or other activities in the disputed territory, and, in particular, refrain from work of any kind on the two new *caños*, and must also fill the trench on the beach north of the eastern *caño*. The Court further directed that, except as needed for implementing this obligation, Nicaragua must cause the removal from the disputed territory of all personnel, whether civilian, police or security, and prevent any such personnel from entering the disputed territory; it must likewise cause the removal from and prevent the entrance into the disputed territory of any private persons under its jurisdiction or control. The Court further stated that, subject to certain conditions, Costa Rica might take appropriate measures related to the two new *caños*.

For its part, on 11 October 2013 Nicaragua filed a request for the indication of provisional measures in the *Nicaragua v. Costa Rica* case, stating that it was seeking to protect certain rights which were being prejudiced by the road construction works carried out by Costa Rica (see above), in particular the transboundary movement of sediments and other resultant debris. After holding hearings on that request at the beginning of November 2013, the Court decided, in an Order dated 13 December 2013, that the circumstances, as they now presented themselves to the Court, were not such as to require the exercise of its power to indicate provisional measures. In particular, the Court found that Nicaragua had not established that the construction works had led to a substantial increase in the sediment load in the river, and that it had not presented the Court with evidence as to any long term effect on the river of aggradations of the river channel allegedly caused by additional sediment from the construction of the road. Nor had Nicaragua explained how the road works could endanger individual species in the river's wetlands, or identified with precision which species were likely to be affected. The Court accordingly found that Nicaragua had not shown that there was any real and imminent risk of irreparable prejudice to the rights invoked by it in the case, and concluded that it could not therefore uphold its request for the indication of provisional measures.

*1.125. Request for Interpretation of the Judgment of 15 June 1962
in the Case concerning the Temple of Preah Vihear
(Cambodia v. Thailand) (Cambodia v. Thailand)*

On 28 April 2011, the Kingdom of Cambodia submitted to the Court, by an Application filed in the Registry, a Request for interpretation of the Judgment rendered by the Court on 15 June 1962 in the case concerning the *Temple of Preah*

Vibear (Cambodia v. Thailand). In that Judgment, the Court had ruled that “the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia” and that “Thailand is under an obligation to withdraw any military . . . forces . . . stationed . . . at the Temple, or in its vicinity on Cambodian territory” (see No. 1.34 above). In 2008, on Cambodia’s request, the Temple was included on the list of World Heritage sites by UNESCO. Following that inclusion, several armed incidents took place between the Parties in the frontier area close to the Temple. On the same day that it filed its Application, Cambodia, stressing the urgency and the risk of irreparable damage, also filed a Request for the indication of provisional measures. In its Order of 18 July 2011 on that Request, the Court ruled that it could exercise its power under Article 41 of the Statute and indicated provisional measures requiring, among other things, both Parties to withdraw their military personnel from a “provisional demilitarized zone” surrounding the Temple, as defined in the Order. In that Order, the Court observed in particular that “a difference of opinion or views appears to exist between [the Parties] as to the meaning or scope of the 1962 Judgment” and that “this difference appears to relate” to three specific aspects of the said Judgment: first, to the meaning and scope of the phrase “vicinity on Cambodian territory” used in the second paragraph of the operative clause of the Judgment; next, to the nature of the obligation imposed on Thailand in the second paragraph of the operative clause of the Judgment, to “withdraw any military or police forces, or other guards or keepers”, and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character; and, finally, to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties.

On 21 November 2011, within the time-limit fixed for this purpose, Thailand filed written observations on the Request for interpretation submitted by Cambodia. The Court then decided to afford each of the Parties the opportunity of furnishing further written explanations, pursuant to Article 98, paragraph 4, of the Rules of Court. It fixed 8 March 2012 and 21 June 2012 as the respective time-limits for the filing of such explanations by Cambodia and by Thailand. Those pleadings were filed within the time-limits thus prescribed. In accordance with the same provision, the Court also decided to afford the Parties the opportunity of furnishing further oral explanations at hearings held in April 2013. Following the conclusion of those hearings, the Court began its deliberation.

In the Judgment delivered by it on 11 November 2013, the Court recalled that Cambodia’s Request for interpretation was made by reference to Article 60 of the Statute, which provides that “[i]n the event of dispute as to the meaning or scope of [a] judgment, the Court shall construe it upon the request of any party”. After examining whether the conditions indicated in Article 60 were satisfied, the Court concluded that there was a dispute between the Parties as to the meaning and scope of the 1962 Judgment. The Court then turned to the interpretation of the

1962 Judgment. In determining the meaning and scope of the operative clause of the original Judgment, the Court first pointed out that, in accordance with its practice, it would have regard to the reasoning of that Judgment to the extent that it sheds light on the proper interpretation of the operative clause. The Court noted that the principal dispute between the Parties concerned the territorial scope of the second operative paragraph, namely the territorial extent of the “vicinity” of the Temple of Preah Vihear.

The Court considered that, in view of the reasoning in the 1962 Judgment, seen in the light of the pleadings in the original proceedings, the second operative paragraph of the 1962 Judgment required Thailand to withdraw from the whole territory of the promontory any Thai personnel stationed on that promontory at the time. Accordingly, the Court found that the term “vicinity on Cambodian territory” had to be construed as extending at least to the area where a police detachment had been stationed at the time of the original proceedings. The Court observed that that finding was confirmed by a number of other factors, and in particular by the fact that the area around the Temple is located on an easily identifiable geographical feature, namely a promontory. In the east, south and south-west, the promontory descends by a steep escarpment to the Cambodian plain. The Parties were in agreement in 1962 that this escarpment, and the land at its foot, were under Cambodian sovereignty in any event. To the west and north-west, the land drops in a slope, less steep than the escarpment but nonetheless pronounced, into the valley which separates Preah Vihear from the neighbouring hill of Phnom Trap, a valley which itself drops away in the south to the Cambodian plain. The Court considered that Phnom Trap lay outside the disputed area and the 1962 Judgment did not address the question whether it was located in Thai or Cambodian territory. Accordingly, the Court considered that the promontory of Preah Vihear ends at the foot of the hill of Phnom Trap, that is to say, where the ground begins to rise from the valley.

In the Court’s view, the reasoning followed in the 1962 Judgment showed that the Court considered that Cambodia’s territory extended in the north as far as the line on the map annexed to Cambodia’s pleadings in the original proceedings (the “Annex I map”), which the Parties had accepted. Accordingly, the Court found that, in the north, the limit of the promontory is the Annex I map line, from a point to the north-east of the Temple where that line abuts the escarpment to a point in the north-west where the ground begins to rise from the valley, at the foot of the hill of Phnom Trap.

The Court then examined the relationship between the second operative paragraph and the rest of the operative part. It considered that the territorial scope of the three operative paragraphs is the same: the finding in the first paragraph that “the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia” must be taken as referring, like the second and third paragraphs, to the promontory of Preah Vihear.

Lastly, the Court observed that the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site. In this respect, the Court recalls that under Article 6 of the World Heritage Convention, to which both States are parties, Cambodia and Thailand must co-operate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to “take any deliberate measures which might damage directly or indirectly” such heritage. In the context of these obligations, the Court emphasized the importance of ensuring access to the Temple from the Cambodian plain.

*1.126. Obligation to Negotiate Access to the Pacific Ocean
(Bolivia v. Chile)*

On 24 April 2013, the Plurinational State of Bolivia instituted proceedings against the Republic of Chile before the Court, concerning a dispute in relation to “Chile’s obligation to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean”. In its Application, Bolivia asserted that “beyond its general obligations under international law, Chile has committed itself, more specifically through agreements, diplomatic practice and a series of declarations attributable to its highest-level representatives, to negotiate a sovereign access to the sea for Bolivia”. According to Bolivia, “Chile has not complied with this obligation and . . . denies the existence of its obligation”. Bolivia presented a summary of the facts — starting from the independence of Bolivia in 1825 — which, according to Bolivia, are the main relevant facts on which its claim was based. It requested the Court to adjudge that Chile had the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean, that Chile had breached the said obligation and that it must perform the said obligation in good faith, promptly, formally, within a reasonable time and effectively. Finally, in its Application, as the basis for the jurisdiction of the Court, Bolivia invoked Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948, to which both States are parties.

By an Order of 18 June 2013, the Court fixed 17 April 2014 and 18 February 2015 as the respective time-limits for the filing of a Memorial by Bolivia and a Counter-Memorial by Chile.

*1.127. Question of the Delimitation of the Continental Shelf
between Nicaragua and Colombia beyond 200 Nautical Miles
from the Nicaraguan Coast (Nicaragua v. Colombia)*

On 16 September 2013, Nicaragua instituted proceedings against Colombia with regard to a “dispute [which] concerns the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia”.

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In its Application, Nicaragua requested the Court to determine “[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012” in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. The Applicant also requested the Court to indicate “[t]he principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua’s coast”.

Nicaragua recalled that “[t]he single maritime boundary between the continental shelf and the exclusive economic zones of Nicaragua and of Colombia within the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured was defined by the Court in paragraph 251 of its Judgment of 19 November 2012” (see No. 1.100 above).

It further recalled that “[i]n that case [it] had sought a declaration from the Court describing the course of the boundary of its continental shelf throughout the area of the overlap between its continental shelf entitlement and that of Colombia” but that “the Court considered that Nicaragua had not then established that it has a continental margin that extends beyond 200 nautical miles from the baselines from which its territorial sea is measured, and that it was therefore not then in a position to delimit the continental shelf as requested by Nicaragua”.

Nicaragua contended that its “final information” submitted to the Commission on the Limits of the Continental Shelf on 24 June 2013

“demonstrates that Nicaragua’s continental margin extends more than 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and both (i) traverses an area that lies more than 200 nautical miles from Colombia and also (ii) partly overlaps with an area that lies within 200 nautical miles of Colombia’s coast”.

The Applicant also maintained that the two States “have not agreed upon a maritime boundary between them in the area beyond 200 nautical miles from the coast of Nicaragua” and that “Colombia has objected to continental shelf claims [from other States] in that area”.

As the basis for the jurisdiction of the Court, Nicaragua invoked Article XXXI of the American Treaty on Pacific Settlement (officially known as the “Pact of Bogotá”), signed on 30 April 1948, to which “[b]oth Nicaragua and Colombia are parties”. Nicaragua asserted that it was “constrained . . . into taking action upon this matter rather sooner than later in the form of the present application” as, “on 27 November 2012, Colombia gave notice that it denounced as of that date the Pact of Bogotá”, and as, “in accordance with Article LVI of the Pact, that denun-

ciation will take effect after one year, so that the Pact remains in force for Colombia until 27 November 2013”.

In addition, Nicaragua submitted that

“the subject-matter of the . . . Application remains within the jurisdiction of the Court established in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* . . . in as much as the Court did not in its Judgment dated 19 November 2012 definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast, which question was and remains before the Court in that case”.

By an Order of 9 December 2013, the Court fixed 9 December 2014 and 9 December 2015 as respective time-limits for the filing of Nicaragua’s Memorial and Colombia’s Counter-Memorial.

1.128. Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)

On 26 November 2013, Nicaragua instituted proceedings against Colombia concerning a dispute in relation to “the violations of Nicaragua’s sovereign rights and maritime zones declared by the Court’s Judgment of 19 November 2012 [in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (see above 1.100)] and the threat of the use of force by Colombia in order to implement these violations”.

In its Application, Nicaragua quotes various declarations allegedly made by the highest Colombian authorities since the Court’s Judgment of 19 December 2012, culminating in “the enactment of a [Presidential] Decree that openly violated Nicaragua’s sovereign rights over its maritime areas in the Caribbean”. Nicaragua further claims that these declarations show Colombia’s “rejection of the Court’s Judgment”, and its decision to regard that Judgment as “not applicable”. Nicaragua accordingly requests the Court to adjudge and declare that Colombia is in breach of a number of its obligations, in particular the obligation not to use or to threaten to use force, and its obligation not to violate Nicaragua’s maritime zones as delimited in the Court’s Judgment of 19 November 2012, as well as Nicaragua’s sovereign rights and jurisdiction in those zones.

As basis for the jurisdiction of the Court, Nicaragua invokes Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948 (the “Pact of Bogotá”), to which “[b]oth Nicaragua and Colombia are parties”. Nicaragua stresses in that regard that, although Colombia denounced the Pact on 27 November 2012, that denunciation would only take effect, in accordance with Article LVI of the Pact, after one year, “so that the Pact would [cease] to be in force for Colombia after 27 November 2013”. Nicaragua further submits, in the alternative, that “the

jurisdiction of the Court lies in its inherent power to pronounce on the actions required by its Judgment”.

*1.129. Questions relating to the Seizure and Detention
of Certain Documents and Data (Timor-Leste v. Australia)*

On 17 December 2013 Timor-Leste instituted proceedings against Australia with regard to the seizure and subsequent detention “by Agents of Australia of documents, data and other property which belongs to Timor-Leste and/or which Timor-Leste has the right to protect under international law”. Timor-Leste contends that these items were seized in the offices of one of its legal advisers in Narrabundah, Australian Capital Territory, allegedly under a warrant issued under Article 25 of the Australian Security Intelligence Organisation Act of 1979. Timor-Leste claims that the items seized include documents and data containing correspondence between the Government of Timor-Leste and its legal advisers relating to a pending arbitration under the 2002 Timor Sea Treaty between Timor-Leste and Australia. As basis for jurisdiction of the Court, Timor-Leste invokes its declaration of 21 September 2012 under Article 36, paragraph 2, of the Statute, and that made by Australian on 22 March 2002 under the same provision.

On 17 December 2013 Timor-Leste also filed a request for the indication of provisions measures in order to protect its rights and to prevent the use of the seized documents and data by Australia against its interests and rights in the pending arbitration and with regard to other matters relating to the Timor Sea and its resources. Timor-Leste further requested the President of the Court to exercise his power under Article 74, paragraph 4, of the Rules of Court.

In a letter dated 18 December 2013, the President of the Court, acting pursuant to Article 74, called on Australia to “act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects, in particular to refrain from any act which might cause prejudice to the rights claimed by the Democratic Republic of Timor-Leste in the present proceedings”.

The Parties were subsequently informed that the Court would hold hearings on the request for provisional measures presented by Timor-Leste on 20, 21 and 22 January 2014.

Advisory cases

*2.1. Conditions of Admission of a State to Membership
in the United Nations (Article 4 of the Charter)*

From the creation of the United Nations some 12 States had unsuccessfully applied for admission. Their applications were rejected by the Security Council in consequence of a veto imposed by one or other of the States which are permanent members of the Council. A proposal was then made for the admission of all the

candidates at the same time. The General Assembly referred the question to the Court. In the interpretation it gave of Article 4 of the Charter of the United Nations, in its Advisory Opinion of 28 May 1948, the Court declared that the conditions laid down for the admission of States were exhaustive and that if these conditions were fulfilled by a State which was a candidate, the Security Council ought to make the recommendation which would enable the General Assembly to decide upon the admission.

2.2. Competence of the General Assembly for the Admission of a State to the United Nations

The above Advisory Opinion (see No. 2.1) given by the Court did not lead to a settlement of the problem in the Security Council. A Member of the United Nations then proposed that the word “recommendation” in Article 4 of the Charter should be construed as not necessarily signifying a favourable recommendation. In other words, a State might be admitted by the General Assembly even in the absence of a recommendation — this being interpreted as an unfavourable recommendation — thus making it possible, it was suggested, to escape the effects of the veto. In the Advisory Opinion which it delivered on 3 March 1950, the Court pointed out that the Charter laid down two conditions for the admission of new Members: a recommendation by the Security Council and a decision by the General Assembly. If the latter body had power to decide without a recommendation by the Council, the Council would be deprived of an important function entrusted to it by the Charter. The absence of a recommendation by the Council, as the result of a veto, could not be interpreted as an unfavourable recommendation, since the Council itself had interpreted its own decision as meaning that no recommendation had been made.

2.3. Reparation for Injuries Suffered in the Service of the United Nations

As a consequence of the assassination in September 1948, in Jerusalem, of Count Folke Bernadotte, the United Nations Mediator in Palestine, and other members of the United Nations Mission to Palestine, the General Assembly asked the Court whether the United Nations had the capacity to bring an international claim against the State responsible with a view to obtaining reparation for damage caused to the Organization and to the victim. If this question were answered in the affirmative, it was further asked in what manner the action taken by the United Nations could be reconciled with such rights as might be possessed by the State of which the victim was a national. In its Advisory Opinion of 11 April 1949, the Court held that the Organization was intended to exercise functions and rights which could only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon the international plane. It followed that the Organization had the capacity to bring a claim and to give it the character of an international action for reparation for the damage that had been caused to it. The Court further declared that the Organization can claim

reparation not only in respect of damage caused to itself, but also in respect of damage suffered by the victim or persons entitled through him. Although, according to the traditional rule, diplomatic protection had to be exercised by the national State, the Organization should be regarded in international law as possessing the powers which, even if they are not expressly stated in the Charter, are conferred upon the Organization as being essential to the discharge of its functions. The Organization may require to entrust its agents with important missions in disturbed parts of the world. In such cases, it is necessary that the agents should receive suitable support and protection. The Court therefore found that the Organization has the capacity to claim appropriate reparation, including also reparation for damage suffered by the victim or by persons entitled through him. The risk of possible competition between the Organization and the victim's national State could be eliminated either by means of a general convention or by a particular agreement in any individual case.

2.4. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania

This case concerned the procedure to be adopted in regard to the settlement of disputes between the States signatories of the Peace Treaties of 1947 (Bulgaria, Hungary, Romania, on the one hand, and the Allied States, on the other). In the first Advisory Opinion (30 March 1950), the Court stated that the countries, which had signed a Treaty providing an arbitral procedure for the settlement of disputes relating to the interpretation or application of the Treaty, were under an obligation to appoint their representatives to the arbitration commissions prescribed by the Treaty. Notwithstanding this Advisory Opinion, the three States, which had declined to appoint their representatives on the arbitration commissions, failed to modify their attitude. A time-limit was given to them within which to comply with the obligation laid down in the Treaties as they had been interpreted by the Court. After the expiry of the time-limit, the Court was requested to say whether the Secretary-General, who, by the terms of the Treaties, was authorized to appoint the third member of the arbitration commission in the absence of agreement between the parties in respect of this appointment, could proceed to make this appointment, even if one of the parties had failed to appoint its representative. In a further Advisory Opinion of 18 July 1950, the Court replied that this method could not be adopted since it would result in creating a commission of two members, whereas the Treaty provided for a commission of three members, reaching its decision by a majority.

2.5. International Status of South West Africa

This Advisory Opinion, given on 11 July 1950, at the request of the General Assembly, was concerned with the determination of the legal status of the Territory, the administration of which had been placed by the League of Nations after the First World War under the Mandate of the Union of South Africa. The League

had disappeared, and with it the machinery for the supervision of the Mandates. Moreover, the Charter of the United Nations did not provide that the former mandated Territories should automatically come under trusteeship. The Court held that the dissolution of the League of Nations and its supervisory machinery had not entailed the lapse of the Mandate, and that the mandatory Power was still under an obligation to give an account of its administration to the United Nations, which was legally qualified to discharge the supervisory functions formerly exercised by the League of Nations. The degree of supervision to be exercised by the General Assembly should not, however, exceed that which applied under the Mandates System and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. On the other hand, the mandatory Power was not under an obligation to place the Territory under trusteeship, although it might have certain political and moral duties in this connection. Finally, it had no competence to modify the international status of South West Africa unilaterally.

*2.6. Voting Procedure on Questions relating to Reports
and Petitions concerning the Territory of South West Africa*

Following the preceding Advisory Opinion (see No. 2.5 above) the General Assembly, on 11 October 1954, adopted a special Rule F on voting procedure to be followed by the Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South West Africa. According to this Rule, such decisions were to be regarded as important questions within the meaning of Article 18, paragraph 2, of the United Nations Charter and would therefore require a two-thirds majority of Members of the United Nations present and voting. In its Advisory Opinion of 7 June 1955, the Court considered that Rule F was a correct application of its earlier Advisory Opinion. It related only to procedure, and procedural matters were not material to the degree of supervision exercised by the General Assembly. Moreover, the Assembly was entitled to apply its own voting procedure and Rule F was in accord with the requirement that the supervision exercised by the Assembly should conform as far as possible to the procedure followed by the Council of the League of Nations.

*2.7. Admissibility of Hearings of Petitioners by the Committee
on South West Africa*

In this Advisory Opinion of 1 June 1956, the Court considered that it would be in accordance with its Advisory Opinion of 1950 on the international status of South West Africa (see No. 2.5 above) for the Committee on South West Africa, established by the General Assembly, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa if such a course was necessary for the maintenance of effective international supervision of the mandated Territory. The General Assembly was legally qualified to carry out an effective and adequate supervision of the administration of the mandated Territory. Under the League of Nations, the Council would have been competent to authorize such

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hearings. Although the degree of supervision to be exercised by the Assembly should not exceed that which applied under the Mandates System, the granting of hearings would not involve such an excess in the degree of supervision. Under the circumstances then existing, the hearing of petitioners by the Committee on South West Africa might be in the interest of the proper working of the Mandates System.

2.8. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)

On 27 October 1966, the General Assembly decided that the Mandate for South West Africa (see Nos. 2.5-2.7 above and Contentious cases, Nos. 1.35-1.36) was terminated and that South Africa had no other right to administer the Territory. In 1969 the Security Council called upon South Africa to withdraw its administration from the Territory, and on 30 January 1970 it declared that the continued presence of the South African authorities in Namibia was illegal and that all acts taken by the South African Government on behalf of or concerning Namibia after the termination of the Mandate were illegal and invalid; it further called upon all States to refrain from any dealings with the South African Government that were incompatible with that declaration. On 29 July 1970, the Security Council decided to request of the Court an advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia. In its Advisory Opinion of 21 June 1971, the Court found that the continued presence of South Africa in Namibia was illegal and that South Africa was under an obligation to withdraw its administration immediately. It found that States Members of the United Nations were under an obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts implying recognition of the legality of, or lending support or assistance to, such presence and administration. Finally, it stated that it was incumbent upon States which were not Members of the United Nations to give assistance in the action which had been taken by the United Nations with regard to Namibia.

2.9. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

In November 1950, the General Assembly asked the Court a series of questions as to the position of a State which attached reservations to its signature of the multilateral Convention on Genocide if other States, signatories of the same Convention, objected to these reservations. The Court considered, in its Advisory Opinion of 28 May 1951, that, even if a convention contained no article on the subject of reservations, it did not follow that they were prohibited. The character of the convention, its purposes and its provisions must be taken into account. It was the compatibility of the reservation with the purpose of the convention which must furnish the criterion of the attitude of the State making the reservation, and

of the State which objected thereto. The Court did not consider that it was possible to give an absolute answer to the abstract question put to it. As regards the effects of the reservation in relations between States, the Court considered that a State could not be bound by a reservation to which it had not consented. Every State was therefore free to decide for itself whether the State which formulated the reservation was or was not a party to the convention. The situation presented real disadvantages, but they could only be remedied by the insertion in the convention of an article on the use of reservations. A third question referred to the effects of an objection by a State which was not yet a party to the convention, either because it had not signed it or because it had signed but not ratified it. The Court was of the opinion that, as regards the first case, it would be inconceivable that a State which had not signed the convention should be able to exclude another State from it. In the second case, the situation was different: the objection was valid, but it would not produce an immediate legal effect; it would merely express and proclaim the attitude which a signatory State would assume when it had become a party to the convention. In all the foregoing, the Court adjudicated only on the specific case referred to it, namely, the Genocide Convention.

*2.10. Effect of Awards of Compensation Made
by the United Nations Administrative Tribunal*

The United Nations Administrative Tribunal was established by the General Assembly to hear applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of the terms of appointment of such staff members. In its Advisory Opinion of 13 July 1954, the Court considered that the Assembly was not entitled on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal in favour of a staff member of the United Nations whose contract of service had been terminated without his assent. The Court found that the Tribunal was an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions and not merely an advisory or subordinate organ. Its judgments were therefore binding on the United Nations Organization and thus also on the General Assembly.

*2.11. Judgments of the Administrative Tribunal
of the ILO upon Complaints Made against Unesco*

The Statute of the Administrative Tribunal of the International Labour Organization (ILO) (the jurisdiction of which had been accepted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the purpose of settling certain disputes which might arise between the Organization and its staff members) provides that the Tribunal's judgments shall be final and without appeal, subject to the right of the Organization to challenge them. It further provides that in the event of such a challenge, the question of the validity of the decision shall be referred to the Court for an advisory opinion, which will be binding. When four UNESCO staff members holding fixed-term appointments

complained of the Director-General's refusal to renew their contracts on expiry, the Tribunal gave judgment in their favour. UNESCO challenged these judgments, contending that the staff members concerned had no legal right to such renewal and that the Tribunal was competent only to hear complaints alleging non-observance of terms of appointment or staff regulations. In its Advisory Opinion of 23 October 1956, the Court said that an administrative memorandum which had announced that all holders of fixed-term contracts would, subject to certain conditions, be offered renewals might reasonably be regarded as binding on the organization and that it was sufficient to establish the jurisdiction of the Tribunal, that the complaints should appear to have a substantial and not merely artificial connection with the terms and provisions invoked. It was therefore the Court's opinion that the Administrative Tribunal had been competent to hear the complaints in question.

*2.12. Constitution of the Maritime Safety Committee
of the Inter-Governmental Maritime Consultative Organization*

The Inter-Governmental Maritime Consultative Organization (IMCO) (now the International Maritime Organization (IMO)) comprises, among other organs, an Assembly and a Maritime Safety Committee. Under the terms of Article 28 (a) of the Convention for the establishment of the organization, this Committee consists of 14 members elected by the Assembly from the members of the organization having an important interest in maritime safety, "of which not less than eight shall be the largest ship-owning nations". When, on 15 January 1959, the IMCO Assembly, for the first time, proceeded to elect the members of the Committee, it elected neither Liberia nor Panama, although those two States were among the eight members of the organization which possessed the largest registered tonnage. Subsequently, the Assembly decided to ask the Court whether the Maritime Safety Committee had been constituted in accordance with the Convention for the establishment of the organization. In its Advisory Opinion of 8 June 1960, the Court replied to this question in the negative.

*2.13. Certain Expenses of the United Nations
(Article 17, paragraph 2, of the Charter)*

Article 17, paragraph 2, of the Charter of the United Nations provides that: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." On 20 December 1961, the General Assembly adopted a resolution requesting an advisory opinion on whether the expenditures authorized by it relating to United Nations operations in the Congo and to the operations of the United Nations Emergency Force in the Middle East constituted "expenses of the Organization" within the meaning of this Article of the Charter. The Court, in its Advisory Opinion of 20 July 1962, replied in the affirmative that these expenditures were expenses of the United Nations. The Court pointed out that under Article 17, paragraph 2, of the Charter, the "expenses of the Organization" are the amounts paid out to defray the costs of carrying out the purposes of the Organization. After examining the resolutions authorizing the expenditures in question,

the Court concluded that they were so incurred. The Court also analysed the principal arguments which had been advanced against the conclusion that these expenditures should be considered as “expenses of the Organization” and found these arguments to be unfounded.

*2.14. Application for Review of Judgement No. 158
of the United Nations Administrative Tribunal*

On 28 April 1972, the United Nations Administrative Tribunal gave, in Judgement No. 158, its ruling on a complaint by a former United Nations staff member concerning the non-renewal of his fixed-term contract. The staff member resorted to the machinery set up by the General Assembly in 1955, and applied for the review of this ruling to the Committee on Applications for Review of Administrative Tribunal Judgements, which decided that there was a substantial basis for the application and requested the Court to give an advisory opinion on two questions arising from the Applicant’s contentions. In its Advisory Opinion of 12 July 1973, the Court decided to comply with the Committee’s request considering that the review procedure was not incompatible with the general principles of litigation. It expressed the opinion that, contrary to those contentions, the Tribunal had not failed to exercise the jurisdiction vested in it and had not committed a fundamental error in procedure having occasioned a failure of justice.

2.15. Western Sahara

On 13 December 1974, the General Assembly requested an advisory opinion on the following questions:

“I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?”

If the answer to the first question is in the negative,

“II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?”

In its Advisory Opinion, delivered on 16 October 1975, the Court replied to Question I in the negative. In reply to Question II, it expressed the opinion that the materials and information presented to it showed the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally showed the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court’s conclusion was that the materials and information presented to it did not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court did not find any legal ties of such a nature as might affect the application of the General Assembly’s 1960 resolution 1514 (XV) — containing the Declaration on the Granting of Inde-

pendence to Colonial Countries and Peoples — in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory.

*2.16. Interpretation of the Agreement of 25 March 1951
between the WHO and Egypt*

Having considered a possible transfer from Alexandria of the World Health Organization's Regional Office for the Eastern Mediterranean Region, the World Health Assembly in May 1980 submitted a request to the Court for an advisory opinion on the following questions:

- “1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?
2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?”

The Court expressed the opinion that, in the event of a transfer of the seat of the Regional Office to another country, the WHO and Egypt were under mutual obligation to consult together in good faith as to the conditions and modalities of the transfer, and to negotiate the various arrangements needed to effect the transfer with a minimum of prejudice to the work of the Organization and to the interests of Egypt. The party wishing to effect the transfer had a duty, despite the specific period of notice indicated in the 1951 Agreement, to give a reasonable period of notice to the other party, and during this period the legal responsibilities of the WHO and of Egypt would be to fulfil in good faith their mutual obligations as set out above.

*2.17. Application for Review of Judgement No. 273
of the United Nations Administrative Tribunal*

A former staff member of the United Nations Secretariat had challenged the Secretary-General's refusal to pay him a repatriation grant unless he produced evidence of having relocated upon retirement. By a judgment of 15 May 1981, the United Nations Administrative Tribunal had found that the staff member was entitled to receive the grant and, therefore, to compensation for the injury sustained through its non-payment. The injury had been assessed at the amount of the repatriation grant of which payment had been refused. The United States Government addressed an application for review of this judgment to the Committee on Applications for Review of Administrative Tribunal Judgements, and the Committee requested an advisory opinion of the Court on the correctness of the decision in question. In its Advisory Opinion of 20 July 1982, the Court,

after pointing out that a number of procedural and substantive irregularities had been committed, decided nevertheless to comply with the Committee's request, whose wording it interpreted as really seeking a determination as to whether the Administrative Tribunal had erred on a question of law relating to the provisions of the United Nations Charter, or had exceeded its jurisdiction or competence. As to the first point, the Court said that its proper role was not to retry the case already dealt with by the Tribunal, and that it need not involve itself in the question of the proper interpretation of United Nations Staff Regulations and Rules further than was strictly necessary in order to judge whether the interpretation adopted by the Tribunal had been in contradiction with the provisions of the Charter. Having noted that the Tribunal had only applied what it had found to be the relevant Staff Regulations and Staff Rules made under the authority of the General Assembly, the Court found that the Tribunal had not erred on a question of law relating to the provisions of the Charter. As to the second point, the Court considered that the Tribunal's jurisdiction included the scope of Staff Regulations and Rules and that it had not exceeded its jurisdiction or competence.

*2.18. Application for Review of Judgement No. 333
of the United Nations Administrative Tribunal*

This case concerns a refusal by the Secretary-General of the United Nations to renew the appointment of a staff member of the Secretariat beyond the date of expiry of his fixed-term contract, the reasons given being that the staff member had been seconded from a national administration, that his secondment had come to an end and that his contract with the United Nations was limited to the duration of the secondment. In a judgment delivered on 8 June 1984, the Administrative Tribunal rejected the staff member's appeal against the Secretary-General's refusal. The staff member in question applied for a review of the judgment to the Committee on Applications for Review of Administrative Tribunal Judgements, which requested the Court to give an advisory opinion on the merits of that decision. In its Advisory Opinion, rendered on 27 May 1987, the Court found that the Administrative Tribunal had not failed to exercise jurisdiction vested in it by not responding to the question whether a legal impediment existed to the further employment in the United Nations of the applicant after the expiry of his fixed-term contract, and that it did not err on any question of law relating to the provisions of the Charter of the United Nations. In that regard, the Court found that the Tribunal had established that there had been "reasonable consideration" of the applicant's case, and by implication that the Secretary-General had not been under a misapprehension as to the effect of secondment, and that the provision of Article 101, paragraph 3, of the Charter must have been present in the mind of the Tribunal when it considered the question. In the view of the Court, those findings could not be disturbed on the ground of error on a question of law relating to the provisions of the Charter.

2.19. *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*

On 2 March 1988, the General Assembly of the United Nations adopted a resolution whereby it requested the Court to give an advisory opinion on the question of whether the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, was under an obligation to enter into arbitration in accordance with Section 21 of the Agreement. That resolution had been adopted in the wake of the signature and imminent entry into force of a law of the United States, entitled Foreign Relations Authorization Act, Title X of which established certain prohibitions regarding the Palestine Liberation Organization (PLO), *inter alia*, a prohibition

“to establish or maintain an office, headquarters, premises or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization”.

The PLO, in accordance with the Headquarters Agreement, had a Permanent Mission to the United Nations. The Secretary-General of the United Nations invoked the dispute settlement procedure set out in Section 21 of the Agreement and proposed that the negotiations phase of the procedure commence on 20 January 1988. The United States, for its part, informed the United Nations that it was not in a position and was not willing to enter formally into that dispute settlement procedure, in that it was still evaluating the situation and as the Secretary-General had sought assurances that the arrangements in force at the time for the Permanent Observer Mission of the Palestine Liberation Organization would not be curtailed or otherwise affected. On 11 February 1988, the United Nations informed the Department of State that it had chosen its arbitrator and pressed the United States to do the same. The Court, having regard to the fact that the decision to request an advisory opinion had been made “taking into account the time constraint”, accelerated its procedure. Written statements were filed, within the time-limits fixed, by the United Nations, the United States of America, the German Democratic Republic and the Syrian Arab Republic, and on 11 and 12 April 1988 the Court held hearings at which the United Nations Legal Counsel took part. The Court rendered its Advisory Opinion on 26 April 1988. It began by engaging in a detailed review of the events that took place before and after the filing of the request for an advisory opinion, in order to determine whether there was, between the United Nations and the United States, a dispute of the type contemplated in the Headquarters Agreement. In so doing, the Court pointed out that its sole task was to determine whether the United States was obliged to enter into arbitration under that Agreement, not to decide whether the measures adopted by the United States in regard to the PLO Observer Mission did or did not run counter to that Agreement. The Court pointed out, *inter alia*, that the United States had stated

that “it had not yet concluded that a dispute existed” between it and the United Nations “because the legislation in question had not been implemented”. Then, subsequently, referring to “the current dispute over the status of the PLO Observer Mission” it had expressed the view that arbitration would be premature. After initiating litigation in its domestic courts, the United States, in its written statement, had informed the Court of its belief that arbitration would not be “appropriate or timely”. After saying that it could not allow considerations as to what might be “appropriate” to prevail over the obligations deriving from Section 21, the Court found that the opposing attitudes of the United Nations and the United States showed the existence of a dispute, whatever the date on which it might be deemed to have arisen. It further qualified that dispute as a dispute concerning the application of the Headquarters Agreement, and then found that, taking into account the United States’ attitude, the Secretary-General had in the circumstances exhausted such possibilities of negotiation as were open to him, nor had any “other agreed mode of settlement” within the meaning of Section 21 of the Agreement been contemplated by the United Nations and the United States. The Court accordingly concluded that the United States was bound to respect the obligation to enter into arbitration, under Section 21. In so doing, it recalled the fundamental principle of international law that international law prevailed over domestic law, a principle long endorsed by a body of judicial decisions.

2.20. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations

On 24 May 1989, the Economic and Social Council of the United Nations (ECOSOC) adopted a resolution whereby it requested the Court to give, on a priority basis, an advisory opinion on the question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Dumitru Mazilu, Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights. Mr. Mazilu, a Romanian national, had been entrusted, by a resolution of the Sub-Commission, with the task of drawing up a report on “Human Rights and Youth” in connection with which the Secretary-General was asked to provide him with all the assistance he might need. Mr. Mazilu was absent from the 1987 session of the Sub-Commission, during which he was to have filed his report, and Romania let it be known that he had been taken into hospital. Mr. Mazilu’s mandate finally expired on 31 December 1987, but without his being relieved of the task of Rapporteur that had been assigned to him. Mr. Mazilu was able to get various messages through to the United Nations, in which he complained that the Romanian authorities were refusing him a travel permit. Moreover, those authorities, further to contacts initiated by the Under-Secretary-General for Human Rights at the request of the Sub-Commission, had let it be known that any intervention of the United Nations Secretariat would be considered as interference in Romania’s internal affairs. Those authorities subsequently informed the

United Nations of their position with regard to the applicability to Mr. Mazilu of the Convention on the Privileges and Immunities of the United Nations, asserting, *inter alia*, that the Convention did not equate Rapporteurs, whose activities were only occasional, with experts on missions for the United Nations; that they could not, even if granted some of that status, enjoy anything more than functional immunities and privileges; that those privileges and immunities began to apply only at the moment when the expert left on a journey connected with the performance of his mission; and that in the country of which he was a national an expert enjoyed privileges and immunities only in respect of actual activities relating to his mission. The Court rendered its Advisory Opinion on 15 December 1989, and began by rejecting Romania's contention that the Court lacked jurisdiction to entertain the Request. Moreover, the Court did not find any compelling reasons that might have led it to consider it inappropriate to render an opinion. It then engaged in a detailed analysis of Article VI, Section 22, of the Convention, which relates to "Experts on missions for the United Nations". It reached the conclusion, *inter alia*, that Section 22 of the Convention was applicable to persons (other than United Nations officials) to whom a mission had been entrusted by the Organization and who were therefore entitled to enjoy the privileges and immunities provided for in that Section with a view to the independent exercise of their functions; that during the whole period of such missions, experts enjoyed these functional privileges and immunities whether or not they travelled; and that those privileges and immunities might be invoked against the State of nationality or of residence unless a reservation to Section 22 of the Convention had been validly made by that State. Turning to the specific case of Mr. Mazilu, the Court expressed the view that he continued to have the status of Special Rapporteur, that as a consequence he should be regarded as an expert on mission within the meaning of Section 22 of the Convention and that that Section was accordingly applicable in his case.

*2.21. Legality of the Use by a State of Nuclear Weapons
in Armed Conflict*

By a letter dated 27 August 1993, filed in the Registry on 3 September 1993, the Director-General of the World Health Organization officially communicated to the Registrar a decision taken by the World Health Assembly to submit to the Court the following question, set forth in resolution WHA46.40 adopted on 14 May 1993

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

The Court decided that the WHO and the member States of that organization entitled to appear before the Court were likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute. Written statements were filed by 35 States, and subsequently written observations on those

written statements were presented by nine States. In the course of the oral proceedings, which took place in October and November 1995, the WHO and 20 States presented oral statements. On 8 July 1996, the Court found that it was not able to give the advisory opinion requested by the World Health Assembly.

It considered that three conditions had to be satisfied in order to found the jurisdiction of the Court when a request for advisory opinion was submitted to it by a specialized agency: the agency requesting the opinion had to be duly authorized, under the Charter, to request opinions of the Court; the opinion requested had to be on a legal question; and that question had to be one arising within the scope of the activities of the requesting agency. The first two conditions had been met. With regard to the third, however, the Court found that although according to its Constitution the WHO is authorized to deal with the health effects of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in, the question put to the Court in the present case related not to the effects of the use of nuclear weapons on health, but to the legality of the use of such weapons in view of their health and environmental effects.

The Court further pointed out that international organizations did not, like States, possess a general competence, but were governed by the “principle of speciality”, that is to say, they were invested by the States which created them with powers, the limits of which were a function of the common interests whose promotion those States entrusted to them. Besides, the WHO was an international organization of a particular kind — a “specialized agency” forming part of a system based on the Charter of the United Nations, which was designed to organize international co-operation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers. The Court therefore concluded that the responsibilities of the WHO were necessarily restricted to the sphere of “public health” and could not encroach on the responsibilities of other parts of the United Nations system. There was no doubt that questions concerning the use of force, the regulation of armaments and disarmament were within the competence of the United Nations and lay outside that of the specialized agencies. The Court accordingly found that the request for an advisory opinion submitted by the WHO did not relate to a question arising “within the scope of [the] activities” of that organization.

2.22. Legality of the Threat or Use of Nuclear Weapons

By a letter dated 19 December 1994, filed in the Registry on 6 January 1995, the Secretary-General of the United Nations officially communicated to the Registry a decision taken by the General Assembly, by its resolution 49/75 K adopted on 15 December 1994, to submit to the Court, for advisory opinion, the

following question: “Is the threat or use of nuclear weapons in any circumstance permitted under international law?” The resolution asked the Court to render its advisory opinion “urgently”. Written statements were filed by 28 States, and subsequently written observations on those statements were presented by two States. In the course of the oral proceedings, which took place in October and November 1995, 22 States presented oral statements.

On 8 July 1996, the Court rendered its Advisory Opinion. Having concluded that it had jurisdiction to render an opinion on the question put to it and that there was no compelling reason to exercise its discretion not to render an opinion, the Court found that the most directly relevant applicable law was that relating to the use of force, as enshrined in the United Nations Charter, and the law applicable in armed conflict, together with any specific treaties on nuclear weapons that the Court might find relevant.

The Court then considered the question of the legality or illegality of the use of nuclear weapons in the light of the provisions of the Charter relating to the threat or use of force. It observed, *inter alia*, that those provisions applied to any use of force, regardless of the weapons employed. In addition it stated that the principle of proportionality might not in itself exclude the use of nuclear weapons in self-defence in all circumstances. However at the same time, a use of force that was proportionate under the law of self-defence had, in order to be lawful, to meet the requirements of the law applicable in armed conflict, including, in particular, the principles and rules of humanitarian law. It pointed out that the notions of a “threat” and “use” of force within the meaning of Article 2, paragraph 4, of the Charter stood together in the sense that if the use of force itself in a given case was illegal — for whatever reason — the threat to use such force would likewise be illegal.

The Court then turned to the law applicable in situations of armed conflict. From a consideration of customary and conventional law, it concluded that the use of nuclear weapons could not be seen as specifically prohibited on the basis of that law, nor did it find any specific prohibition of the use of nuclear weapons in the treaties that expressly prohibited the use of certain weapons of mass destruction. The Court then turned to an examination of customary international law to determine whether a prohibition of the threat or use of nuclear weapons as such flowed from that source of law. Noting that the members of the international community were profoundly divided on the matter of whether non-recourse to nuclear weapons over the past 50 years constituted the expression of an *opinio juris*, it did not consider itself able to find that there was such an *opinio juris*. The emergence, as *lex lata*, of a customary rule specifically prohibiting the use of nuclear weapons as such was hampered by the continuing tensions between the nascent *opinio juris* on the one hand, and the still strong adherence to the doctrine of deterrence on the other. The Court then dealt with the question whether recourse to nuclear weapons ought to be considered as illegal in the light of the principles and rules of international humanitarian law applicable in armed conflict and of

the law of neutrality. It laid emphasis on two cardinal principles: (a) the first being aimed at the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets while (b) according to the second of those principles, unnecessary suffering should not be caused to combatants. It follows that States do not have unlimited freedom of choice in the weapons they use. The Court also referred to the Martens Clause, according to which civilians and combatants remained under the protection and authority of the principles of international law derived from established custom, the principles of humanity and the dictates of public conscience.

The Court indicated that, although the applicability to nuclear weapons of the principles and rules of humanitarian law and of the principle of neutrality was not disputed, the conclusions to be drawn from it were, on the other hand, controversial. It pointed out that, in view of the unique characteristics of nuclear weapons, the use of such weapons seemed scarcely reconcilable with respect for the requirements of the law applicable in armed conflict. The Court was led to observe that “in view of the current state of international law and of the elements of fact at its disposal, [it] cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”. The Court added, lastly, that there was an obligation to pursue in good faith and to conclude negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

*2.23. Difference relating to Immunity from Legal Process
of a Special Rapporteur of the Commission on Human Rights*

By a letter dated 7 August 1998, the Secretary-General of the United Nations officially communicated to the Registry Decision 1998/297 of 5 August 1998, by which the Economic and Social Council requested the Court for an advisory opinion on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations to a Special Rapporteur of the Commission on Human Rights, and on the legal obligations of Malaysia in that case. The Special Rapporteur, Mr. Kumaraswamy, was facing several lawsuits filed in Malaysian courts by plaintiffs who asserted that he had used defamatory language in an interview published in a specialist journal and who were seeking damages for a total amount of US\$112 million. However, according to the United Nations Secretary-General, Mr. Kumaraswamy had been speaking in his official capacity as Special Rapporteur and was thus immune from legal process by virtue of the above-mentioned Convention.

Written statements having been filed by the Secretary-General and by various States, public sittings were held on 7, 8 and 10 December 1998, during which the Court heard oral statements by the representative of the United Nations and three

States, including Malaysia. In its Advisory Opinion of 29 April 1999, having concluded that it had jurisdiction to render such an opinion, the Court noted that a Special Rapporteur entrusted with a mission for the United Nations must be regarded as an expert on mission within the meaning of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations. It observed that Malaysia had acknowledged that Mr. Kumaraswamy was an expert on mission and that such experts enjoyed the privileges and immunities provided for under the Convention in their relations with States parties, including those of which they were nationals. The Court then considered whether the immunity applied to Mr. Kumaraswamy in the specific circumstances of the case. It emphasized that it was the Secretary-General, as the chief administrative officer of the Organization, who had the primary responsibility and authority to assess whether its agents had acted within the scope of their functions and, where he so concluded, to protect those agents by asserting their immunity. The Court observed that, in the case concerned, the Secretary-General had been reinforced in his view that Mr. Kumaraswamy had spoken in his official capacity by the fact that the contentious Article several times explicitly referred to his capacity as Special Rapporteur, and that in 1997 the Commission on Human Rights had extended his mandate, thereby acknowledging that he had not acted outside his functions by giving the interview. Considering the legal obligations of Malaysia, the Court indicated that, when national courts are seised of a case in which the immunity of a United Nations agent is in issue, they must immediately be notified of any finding by the Secretary-General concerning that immunity and that they must give it the greatest weight. Questions of immunity are preliminary issues which must be expeditiously decided by national courts *in limine litis*. As the conduct of an organ of a State, including its courts, must be regarded as an act of that State, the Court concluded that the Government of Malaysia had not acted in accordance with its obligations under international law in the case concerned.

*2.24. Legal Consequences of the Construction
of a Wall in the Occupied Palestinian Territory*

By resolution ES-10/14, adopted on 8 December 2003 at its Tenth Emergency Special Session, the General Assembly decided to request the Court for an advisory opinion on the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the Report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

The resolution requested the Court to render its opinion “urgently”. The Court decided that all States entitled to appear before it, as well as Palestine, the United

Nations and subsequently, at their request, the League of Arab States and the Organization of the Islamic Conference, were likely to be able to furnish information on the question in accordance with Article 66, paragraphs 2 and 3, of the Statute. Written statements were submitted by 45 States and four international organizations, including the European Union. At the oral proceedings, which were held from 23 to 25 February 2004, 12 States, Palestine and two international organizations made oral submissions. The Court rendered its Advisory Opinion on 9 July 2004.

The Court began by finding that the General Assembly, which had requested the advisory opinion, was authorized to do so under Article 96, paragraph 1, of the Charter. It further found that the question asked of it fell within the competence of the General Assembly pursuant to Articles 10, paragraph 2, and 11 of the Charter. Moreover, in requesting an opinion of the Court, the General Assembly had not exceeded its competence, as qualified by Article 12, paragraph 1, of the Charter, which provides that while the Security Council is exercising its functions in respect of any dispute or situation the Assembly must not make any recommendation with regard thereto unless the Security Council so requests. The Court further observed that the General Assembly had adopted resolution ES-10/14 during its Tenth Emergency Special Session, convened pursuant to resolution 377 A (V), whereby, in the event that the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly may consider the matter immediately with a view to making recommendations to Member States. Rejecting a number of procedural objections, the Court found that the conditions laid down by that resolution had been met when the Tenth Emergency Special Session was convened, and in particular when the General Assembly decided to request the opinion, as the Security Council had at that time been unable to adopt a resolution concerning the construction of the wall as a result of the negative vote of a permanent member. Lastly, the Court rejected the argument that an opinion could not be given in the present case on the ground that the question posed was not a legal one, or that it was of an abstract or political nature.

Having established its jurisdiction, the Court then considered the propriety of giving the requested opinion. It recalled that lack of consent by a State to its contentious jurisdiction had no bearing on its advisory jurisdiction, and that the giving of an opinion in the present case would not have the effect of circumventing the principle of consent to judicial settlement, since the subject-matter of the request was located in a much broader frame of reference than that of the bilateral dispute between Israel and Palestine, and was of direct concern to the United Nations. Nor did the Court accept the contention that it should decline to give the advisory opinion requested because its opinion could impede a political, negotiated settlement to the Israeli-Palestinian conflict. It further found that it had before it sufficient information and evidence to enable it to give its opinion, and empha-

sized that it was for the General Assembly to assess the opinion's usefulness. The Court accordingly concluded that there was no compelling reason precluding it from giving the requested opinion.

Turning to the question of the legality under international law of the construction of the wall by Israel in the Occupied Palestinian Territory, the Court first determined the rules and principles of international law relevant to the question posed by the General Assembly. After recalling the customary principles laid down in Article 2, paragraph 4, of the United Nations Charter and in General Assembly resolution 2625 (XXV), which prohibit the threat or use of force and emphasize the illegality of any territorial acquisition by such means, the Court further cited the principle of self-determination of peoples, as enshrined in the Charter and reaffirmed by resolution 2625 (XXV). In relation to international humanitarian law, the Court then referred to the provisions of the Hague Regulations of 1907, which it found to have become part of customary law, as well as to the Fourth Geneva Convention of 1949, holding that these were applicable in those Palestinian territories which, before the armed conflict of 1967, lay to the east of the 1949 Armistice demarcation line (or "Green Line") and were occupied by Israel during that conflict. The Court further established that certain human rights instruments (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, United Nations Convention on the Rights of the Child) were applicable in the Occupied Palestinian Territory.

The Court then sought to ascertain whether the construction of the wall had violated the above-mentioned rules and principles. Noting that the route of the wall encompassed some 80 per cent of the settlers living in the Occupied Palestinian Territory, the Court, citing statements by the Security Council in that regard in relation to the Fourth Geneva Convention, recalled that those settlements had been established in breach of international law. After considering certain fears expressed to it that the route of the wall would prejudice the future frontier between Israel and Palestine, the Court observed that the construction of the wall and its associated régime created a "fait accompli" on the ground that could well become permanent, and hence tantamount to a *de facto* annexation. Noting further that the route chosen for the wall gave expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements and entailed further alterations to the demographic composition of the Occupied Palestinian Territory, the Court concluded that the construction of the wall, along with measures taken previously, severely impeded the exercise by the Palestinian people of its right to self-determination and was thus a breach of Israel's obligation to respect that right.

The Court then went on to consider the impact of the construction of the wall on the daily life of the inhabitants of the Occupied Palestinian Territory, finding that the construction of the wall and its associated régime were contrary to the relevant provisions of the Hague Regulations of 1907 and of the Fourth Geneva Convention and that they impeded the liberty of movement of the inhabitants of

the territory as guaranteed by the International Covenant on Civil and Political Rights, as well as their exercise of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child. The Court further found that, coupled with the establishment of settlements, the construction of the wall and its associated régime were tending to alter the demographic composition of the Occupied Palestinian Territory, thereby contravening the Fourth Geneva Convention and the relevant Security Council resolutions. The Court then considered the qualifying clauses or provisions for derogation contained in certain humanitarian law and human rights instruments, which might be invoked *inter alia* where military exigencies or the needs of national security or public order so required. The Court found that such clauses were not applicable in the present case, stating that it was not convinced that the specific course Israel had chosen for the wall was necessary to attain its security objectives, and that accordingly the construction of the wall constituted a breach by Israel of certain of its obligations under humanitarian and human rights law. Lastly, the Court concluded that Israel could not rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall, and that such construction and its associated régime were accordingly contrary to international law.

The Court went on to consider the consequences of these violations, recalling Israel's obligation to respect the right of the Palestinian people to self-determination and its obligations under humanitarian and human rights law. The Court stated that Israel must put an immediate end to the violation of its international obligations by ceasing the works of construction of the wall and dismantling those parts of that structure situated within Occupied Palestinian Territory and repealing or rendering ineffective all legislative and regulatory acts adopted with a view to construction of the wall and establishment of its associated régime. The Court further made it clear that Israel must make reparation for all damage suffered by all natural or legal persons affected by the wall's construction. As regards the legal consequences for other States, the Court held that all States were under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction. It further stated that it was for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination be brought to an end. In addition, the Court pointed out that all States parties to the Fourth Geneva Convention were under an obligation, while respecting the Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention. Finally, in regard to the United Nations, and especially the General Assembly and the Security Council, the Court indicated that they should consider

what further action was required to bring to an end the illegal situation in question, taking due account of the present Advisory Opinion.

The Court concluded by observing that the construction of the wall must be placed in a more general context, noting the obligation on Israel and Palestine to comply with international humanitarian law, as well as the need for implementation in good faith of all relevant Security Council resolutions, and drawing the attention of the General Assembly to the need for efforts to be encouraged with a view to achieving a negotiated solution to the outstanding problems on the basis of international law and the establishment of a Palestinian State.

2.25. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo

On 8 October 2008 (resolution 63/3), the General Assembly decided to ask the Court to render an advisory opinion on the following question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”

Thirty-six Member States of the United Nations filed written statements and the authors of the unilateral declaration of independence filed a written contribution. Fourteen States submitted written comments on the written statements of States and on the written contribution of the authors of the declaration of independence. Twenty-eight States and the authors of the unilateral declaration of independence participated in the oral proceedings, which took place from 1 to 11 December 2009.

In its Advisory Opinion delivered on 22 July 2010, the Court concluded that “the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law”. Before reaching this conclusion, the Court first addressed the question of whether it possessed jurisdiction to give the advisory opinion requested by the General Assembly. Having established that it did have jurisdiction to render the advisory opinion requested, the Court examined the question, raised by a number of participants, as to whether it should nevertheless decline to exercise that jurisdiction as a matter of discretion. It concluded that, in light of its jurisprudence, there were “no compelling reasons for it to decline to exercise its jurisdiction” in respect of the request.

With regard to the scope and meaning of the question, the Court ruled that the reference to the “Provisional Institutions of Self-Government of Kosovo” in the question put by the General Assembly did not prevent it from deciding for itself whether the declaration of independence had been promulgated by that body or another entity. It also concluded that it was not required by the question posed to decide whether international law conferred a positive entitlement upon Kosovo to declare independence; rather, it had to determine whether a rule of international law prohibited such a declaration.

The Court first sought to determine whether the declaration of independence was in accordance with general international law. It noted that State practice during the eighteenth, nineteenth and early twentieth centuries “points clearly to the conclusion that international law contained no prohibition of declarations of independence”. In particular, the Court concluded that “the scope of the principle of territorial integrity is confined to the sphere of relations between States”. It also determined that no general prohibition of declarations of independence could be deduced from Security Council resolutions condemning other declarations of independence, because those declarations of independence had been made in the context of an unlawful use of force or a violation of a *jus cogens* norm. The Court thus concluded that the declaration of independence in respect of Kosovo had not violated general international law.

The Court then considered whether the declaration of independence was in accordance with Security Council resolution 1244 of 10 June 1999. It concluded that the object and purpose of that resolution was to establish “a temporary, exceptional legal régime which . . . superseded the Serbian legal order . . . on an interim basis”. It then examined the identity of the authors of the declaration of independence. An analysis of the content and form of the declaration, and of the context in which it was made, led the Court to conclude that its authors were not the Provisional Institutions of Self-Government, but rather “persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration”. The Court concluded that the declaration of independence did not violate resolution 1244 for two reasons. First, it emphasized the fact that the two instruments “operate on a different level”: resolution 1244 was silent on the final status of Kosovo, whereas the declaration of independence was an attempt to finally determine that status. Second, it noted that resolution 1244 imposed only very limited obligations on non-State actors, none of which entailed any prohibition of a declaration of independence. Finally, in view of its conclusion that the declaration of independence did not emanate from the Provisional Institutions of Self-Government of Kosovo, the Court held that its authors were not bound by the Constitutional Framework established under resolution 1244, and thus that the declaration of independence did not violate that framework.

Consequently, the Court concluded that the adoption of the declaration of independence had not violated any applicable rule of international law. On 9 September 2010, the General Assembly adopted a resolution in which it acknowledged the content of the advisory opinion of the Court rendered in response to its request (resolution 64/298).

2.26. Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development

In April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (“IFAD”), a specialized agency

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of the United Nations, concerning a judgment of the Administrative Tribunal of the International Labour Organization (“ILOAT”) rendered on 3 February 2010. In its judgment, the Tribunal had ordered IFAD to pay a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification — which is housed by IFAD — monetary compensation equivalent to two years’ salary, as well as moral damages and costs, on account of the abolishment of her post and refusal to renew her contract.

In its Advisory Opinion rendered on 1 February 2012, the Court first considered whether it had jurisdiction to reply to the request and whether or not it should exercise that jurisdiction in the case in question. With respect to its jurisdiction, the Court, citing its earlier opinions, recalled that its power to review a judgment of the ILOAT by reference to Article XII of the Annex to the Statute of the ILOAT was limited to two grounds: either the Tribunal had wrongly confirmed its jurisdiction or the decision was vitiated by a fundamental fault in the procedure followed. As for whether or not it should reply to the request for an opinion, the Court drew attention to the difficulties arising from the review process in respect of ILOAT judgments, both in terms of equality of access to the Court and equality in the proceedings before the Court, since only the body employing the staff member has access to the Court. It found, in particular, that the principle of equality, which follows from the requirements of good administration of justice, should now be understood as including access on an equal basis to available appellate or similar remedies unless an exception may be justified on objective and reasonable grounds. Although the review system in place at the time did not appear effectively to satisfy the modern principle of equality of access to courts and tribunals, the Court, which is not in a position to reform this system, concluded that it need not refuse to reply to the request on such grounds. Furthermore, in accordance with the practice followed in previous review requests, the Court sought to alleviate the unequal position before it of the employing institution and its official arising from provisions of the Court’s Statute by deciding that the President of the Fund was to transmit to it any statement setting forth the views of Ms Saez García which she might wish to bring to the attention of the Court, and by deciding that no oral proceedings would be held (since the Court’s Statute does not allow individuals to appear in hearings in such cases). The Court thus ruled on these various points, maintaining its concern regarding the inequality of access to the Court but considering nevertheless that, taking account of the circumstances of the case as a whole, and in particular the steps it had taken to reduce the inequality in the proceedings before it, that the reasons that could have led it to decline to give an advisory opinion were not sufficiently compelling as to require it to do so.

As regards the merits of the request, the Court examined and confirmed the validity of the judgment rendered by ILOAT relating to Ms Saez García’s contract of employment. In particular, the Court was asked to give its opinion on the com-

petence of the ILOAT to hear the complaint brought against the Fund by Ms Saez García. The former argued that Ms Saez García was a staff member of the Global Mechanism, which was not an organ of the Fund, and consequently that its acceptance of the jurisdiction of the Tribunal did not extend to the applicant's complaint. On this point, the Court ruled that Ms Saez García was an official of the Fund and that the Tribunal was therefore competent *ratione personae* to consider her complaint. Moreover, it considered that Ms Saez García's complaints fell within the category of allegations of non-observance of her terms of appointment or of the provisions of the staff regulations and rules of the Fund, as prescribed by Article II, paragraph 5, of the Statute of the Tribunal. Having concluded that the Tribunal was justified in confirming its jurisdiction *ratione personae* and *ratione materiae*, the Court considered that it need not reply to the other questions raised by the Fund, either because they sought to ascertain the Court's opinion on the reasoning of the Tribunal or on its judgment on the merits, in respect of which the Court has no power of review, or because they constituted nothing more than a repetition of the question on jurisdiction, which the Court had already answered.

The texts of decisions in both contentious and advisory cases are reproduced in the series entitled *Reports of Judgments, Advisory Opinions and Orders (I.C.J. Reports)*.

Annexes

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**Resolution 171 (II)
of the United Nations General Assembly**

14 November 1947

**Need for greater use by the United Nations and its organs
of the International Court of Justice**

A

The General Assembly,

Considering that it is a responsibility of the United Nations to encourage the progressive development of international law;

Considering that it is of paramount importance that the interpretation of the Charter of the United Nations and the constitutions of the specialized agencies should be based on recognized principles of international law;

Considering that the International Court of Justice is the principal judicial organ of the United Nations;

Considering that it is also of paramount importance that the Court should be utilized to the greatest practicable extent in the progressive development of international law, both in regard to legal issues between States and in regard to constitutional interpretation,

Recommends that organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized according to Article 96, paragraph 2, of the Charter, should refer them to the International Court of Justice for an advisory opinion.

.....

C

The General Assembly,

Considering that, in virtue of Article 1 of the Charter, international disputes should be settled in conformity with the principles of justice and international law;

Considering that the International Court of Justice could settle or assist in settling many disputes in conformity with these principles if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services,

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1. *Draws the attention* of the States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible;

2. *Draws the attention* of States Members to the advantage of inserting in conventions and treaties arbitration clauses providing, without prejudice to Article 95 of the Charter, for the submission of disputes which may arise from the interpretation or application of such conventions or treaties, preferably and as far as possible to the International Court of Justice;

3. *Recommends* as a general rule that States should submit their legal disputes to the International Court of Justice.

**Resolution 3232 (XXIX)
of the United Nations General Assembly**

12 November 1974

Review of the role of the International Court of Justice

The General Assembly,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

Bearing in mind that, in conformity with Article 10 of the Charter of the United Nations, the role of the International Court of Justice remains an appropriate matter for the attention of the General Assembly,

Recalling further that, in accordance with Article 2, paragraph 3, of the Charter, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Taking note of the views expressed by Member States during the debates in the Sixth Committee on the question of the review of the role of the International Court of Justice at the twenty-fifth, twenty-sixth, twenty-seventh and twenty-ninth sessions of the General Assembly,

Taking note also of the comments transmitted by Member States and by Switzerland in answer to a questionnaire of the Secretary-General in accordance with General Assembly resolutions 2723 (XXV) of 15 December 1970 and 2818 (XXVI) of 15 December 1971, and of the text of the letter dated 18 June 1971 addressed to the Secretary-General by the President of the International Court of Justice,

Considering that the International Court of Justice has recently amended the Rules of Court, with a view to facilitating recourse to it for the judicial settlement of disputes, *inter alia* by simplifying the procedure, reducing the likelihood of undue delays and costs and allowing for greater influence of parties on the composition of *ad hoc* chambers,

Recalling the increasing development and codification of international law in conventions open for universal participation and the consequent need for their uniform interpretation and application,

Recognizing that the development of international law may be reflected, *inter alia*, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice,

Recalling further the opportunities afforded by the power of the International Court of Justice, under Article 38, paragraph 2, of its Statute, to decide a case *ex aequo et bono* if the parties agree thereto,

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1. *Recognizes* the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;
2. *Draws the attention* of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;
3. *Calls upon* States to keep under review the possibility of identifying cases in which use can be made of the International Court of Justice;
4. *Draws the attention* of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute of the International Court of Justice and in the Rules of Court, including those which would deal with particular categories of cases;
5. *Recommends* that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that have arisen or will arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they are duly authorized to do so;
6. *Reaffirms* that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered as an unfriendly act between States.

**Resolution 44/23
of the United Nations General Assembly**

17 November 1989

United Nations Decade of International Law

The General Assembly,

Recognizing that one of the purposes of the United Nations is to maintain international peace and security, and to that end to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,

Recalling the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Manila Declaration on the Peaceful Settlement of International Disputes.

Recognizing the role of the United Nations in promoting greater acceptance of and respect for the principles of international law and in encouraging the progressive development of international law and its codification.

Convinced of the need to strengthen the rule of law in international relations,

Stressing the need to promote the teaching, study, dissemination and wider appreciation of international law,

Noting that, in the remaining decade of the twentieth century, important anniversaries will be celebrated that are related to the adoption of international legal documents, such as the centenary of the first International Peace Conference, held at The Hague in 1899, which adopted the Convention for the Pacific Settlement of International Disputes and created the Permanent Court of Arbitration, the fiftieth anniversary of the signing of the Charter of the United Nations and the twenty-fifth anniversary of the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

1. *Declares* the period 1990-1999 as the United Nations Decade of International Law;
2. *Considers* that the main purposes of the Decade should be, *inter alia*:
 - (a) To promote acceptance of and respect for the principles of international law;
 - (b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;

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- (c) To encourage the progressive development of international law and its codification;
- (d) To encourage the teaching, study, dissemination and wider appreciation of international law;

3. *Requests* the Secretary-General to seek the views of Member States and appropriate international bodies, as well as of non-governmental organizations working in the field, on the programme for the Decade and on appropriate action to be taken during the Decade, including the possibility of holding a third international peace conference or other suitable international conference at the end of the Decade, and to submit a report thereon to the Assembly at its forty-fifth session;

4. *Decides* to consider this question at its forty-fifth session in a working group of the Sixth Committee with a view to preparing generally acceptable recommendations for the Decade;

5. *Also decides* to include in the provisional agenda of its forty-fifth session the item entitled "United Nations Decade of International Law".

**Resolution A/RES/61/37
of the United Nations General Assembly**

4 December 2006

**Commemoration of the sixtieth anniversary of
the International Court of Justice**

The General Assembly,

Mindful that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Bearing in mind the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations³⁴ and the Manila Declaration on the Peaceful Settlement of International Disputes³⁵,

Recognizing the need for universal adherence to and implementation of the rule of law at both the national and international levels,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

Noting that 2006 marks the sixtieth anniversary of the inaugural sitting of the International Court of Justice,

Noting with appreciation the special commemorative event held at The Hague in April 2006 to celebrate the anniversary,

1. *Solemnly commends* the International Court of Justice for the important role that it has played as the principal judicial organ of the United Nations over the past sixty years in adjudicating disputes among States, and recognizes the value of its work;

2. *Expresses its appreciation* to the Court for the measures adopted to operate an increased workload with maximum efficiency;

3. *Stresses* the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its workload;

4. *Encourages* States to continue considering recourse to the Court by means available under its Statute, and calls upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute;

³⁴ Resolution 2625 (XXV), Annex.

³⁵ Resolution 37/10, Annex.

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5. *Calls upon* States to consider means of strengthening the Court's work, including by supporting the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis, in order to enable the Fund to carry on and to strengthen its support to the countries which submit their disputes to the Court;

6. *Stresses* the importance of promoting the work of the International Court of Justice, and urges that efforts be continued through available means to encourage public awareness in the teaching, study and wider dissemination of the activities of the Court in the peaceful settlement of disputes, in view of both its judiciary and advisory functions.

Members and former Members of the ICJ

The following persons have been or are still Members of the Court (the names of current Members appear in bold face; the names of those who have died are preceded by an asterisk):

Name	Country	Period of office
R. Abraham	France	2005-
* R. Ago	Italy	1979-1995
* A. Aguilar-Mawdsley	Venezuela	1991-1995
B. A. Ajibola	Nigeria	1991-1994
* R. J. Alfaro	Panama	1959-1964
A. S. Al-Khasawneh	Jordan	2000-2011
* A. Alvarez	Chile	1946-1955
* F. Ammoun	Lebanon	1965-1976
* E. C. Armand-Ugon	Uruguay	1952-1961
* P. Azevedo	Brazil	1946-1951
* A. H. Badawi	Egypt	1946-1965
* J. Basdevant	France	1946-1964
* R. R. Baxter	United States of America	1979-1980
M. Bedjaoui	Algeria	1982-2001
* C. Bengzon	Philippines	1967-1976
M. Bennouna	Morocco	2006-
D. Bhandari	India	2012-
T. Buergenthal	United States of America	2000-2010
* J. L. Bustamante y Rivero	Peru	1961-1970
A. A. Cançado Trindade	Brazil	2009-
* L. F. Carneiro	Brazil	1951-1955
* F. de Castro	Spain	1970-1979
* R. Córdova	Mexico	1955-1964
* C. De Visscher	Belgium	1946-1952
* H. C. Dillard	United States of America	1970-1979
J. E. Donoghue	United States of America	2010-
N. Elaraby	Egypt	2001-2006
* A. El-Erian	Egypt	1979-1981
* T. O. Elias	Nigeria	1976-1991
A. El-Khani	Syria	1981-1985
* J. Evensen	Norway	1985-1994
* I. Fabela	Mexico	1946-1952
L. Ferrari Bravo	Italy	1995-1997
* Sir Gerald Fitzmaurice	United Kingdom	1960-1973
* C.-A. Fleischhauer	Germany	1994-2003
* I. Forster	Senegal	1964-1982
G. Gaja	Italy	2012-
* S. A. Golunsky	USSR	1952-1953

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Name	Country	Period of office
Sir Christopher Greenwood	United Kingdom	2009-
* A. Gros	France	1964-1984
* J. G. Guerrero	El Salvador	1946-1958
G. Guillaume	France	1987-2005
* G. H. Hackworth	United States of America	1946-1961
* G. Herczegh	Hungary	1993-2003
Dame Rosalyn Higgins	United Kingdom	1995-2009
* Hsu Mo	China	1946-1956
* L. Ignacio-Pinto	Benin	1970-1979
* Sir Robert Jennings	United Kingdom	1982-1995
* P. C. Jessup	United States of America	1961-1970
* E. Jiménez de Aréchaga	Uruguay	1970-1979
K. Keith	New Zealand	2006-
* H. Klaestad	Norway	1946-1961
* F. I. Kojevnikov	USSR	1953-1961
* P. H. Kooijmans	Netherlands	1997-2006
* V. M. Koretsky	USSR	1961-1970
A. G. Koroma	Sierra Leone	1994-2012
* S. B. Krylov	USSR	1946-1952
* M. Lachs	Poland	1967-1993
* G. Ladreit de Lacharrière	France	1982-1987
* Sir Hersch Lauterpacht	United Kingdom	1955-1960
* Sir Arnold McNair	United Kingdom	1946-1955
* K. Mbaye	Senegal	1982-1991
* G. Morelli	Italy	1961-1970
* L. M. Moreno Quintana	Argentina	1955-1964
* P. D. Morozov	USSR	1970-1985
* H. Mosler	Federal Republic of Germany	1976-1985
* Nagendra Singh	India	1973-1988
* Ni Zhengyu	China	1985-1994
S. Oda	Japan	1976-2003
* C. D. Onyeama	Nigeria	1967-1976
H. Owada	Japan	2003-
* L. Padilla Nervo	Mexico	1964-1973
G. Parra-Aranguren	Venezuela	1996-2009
* R. S. Pathak	India	1989-1991
* S. Petré	Sweden	1967-1976
R. Ranjeva	Madagascar	1991-2009
* Sir Benegal Rau	India	1952-1953
* J. E. Read	Canada	1946-1958
F. Rezek	Brazil	1997-2006
* J. M. Ruda	Argentina	1973-1991

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Name	Country	Period of office
S. M. Schwebel	United States of America	1981-2000
J. Sebutinde	Uganda	2012-
B. Sepúlveda-Amor	Mexico	2006-
* J. Sette-Camara	Brazil	1979-1988
M. Shahabuddeen	Guyana	1988-1997
Shi Jiuyong	China	1994-2010
B. Simma	Germany	2003-2012
L. Skotnikov	Russian Federation	2006-
* Sir Percy Spender	Australia	1958-1967
* J. Spiropoulos	Greece	1958-1967
* K. Tanaka	Japan	1961-1970
* N. K. Tarassov	Russian Federation	1985-1995
* S. E. D. Tarazi	Syria	1976-1980
P. Tomka	Slovakia	2003-
V. S. Vereshchetin	Russian Federation	1995-2006
* Sir Humphrey Waldock	United Kingdom	1973-1981
C. G. Weeramantry	Sri Lanka	1991-2000
* V. K. Wellington Koo	China	1957-1967
* B. Winarski	Poland	1946-1967
Xue Hanqin	China	2010-
A. A. Yusuf	Somalia	2009-
* Sir Muhammad Zafrulla Khan	Pakistan	1954-1961; 1964-1973
* M. Zoričić	Yugoslavia	1946-1958

Judges *ad hoc* who have sat with the ICJ

Since the institution of the Court, judges *ad hoc* have been chosen in the following cases (unless otherwise indicated, they held the nationality of the appointing party):

Corfu Channel (United Kingdom v. Albania). Albania chose Mr. I. Daxner (Czechoslovakia), who sat upon the Bench when the preliminary objection was heard, and Mr. B. Ečer (Czechoslovakia), who sat when the case was heard on the merits and also for the assessment of amount of compensation.

Asylum (Colombia/Peru), Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru) and Haya de la Torre (Colombia v. Peru). Mr. J. J. Caicedo Castilla was chosen by Colombia and Mr. L. Alayza y Paz Soldán by Peru.

Ambatielos (Greece v. United Kingdom). Mr. J. Spiropoulos was chosen by Greece. *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*. Mr. K. Sandjabi was chosen by Iran.

Nottebohm (Liechtenstein v. Guatemala). Mr. P. Guggenheim (Switzerland) was chosen by Liechtenstein and Mr. C. García Bauer³⁶ by Guatemala.

Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America). Mr. G. Morelli was chosen by Italy.

Right of Passage over Indian Territory (Portugal v. India). Mr. M. Fernandes was chosen by Portugal and the Hon. M. A. C. Chagla by India.

Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden). Mr. J. Offerhaus was chosen by the Netherlands and Mr. F. J. C. Sterzel by Sweden.

Interhandel (Switzerland v. United States of America). Mr. P. Carré was chosen by Switzerland.

Aerial Incident of 27 July 1955 (Israel v. Bulgaria). Mr. Justice Goitein was chosen by Israel and Mr. J. Žourek (Czechoslovakia) by Bulgaria.

*Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)*³⁷. Mr. J. Žourek (Czechoslovakia) was chosen by Bulgaria.

Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua). Mr. R. Ago (Italy) was chosen by Honduras and Mr. F. Urrutia Holguín (Colombia) by Nicaragua.

*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*³⁸. Mr. W. J. Ganshof van der Meersch was chosen by Belgium and Mr. F. de Castro by Spain.

³⁶ The Government of Guatemala first chose Mr. J. C. Herrera as judge *ad hoc*, then Mr. J. Matos, before choosing Mr. García Bauer.

³⁷ The case was removed from the List before the Court had occasion to sit.

³⁸ The case was removed from the List before the Court had occasion to sit.

South West Africa (Ethiopia v. South Africa; Liberia v. South Africa). Sir Louis Mbanefo (Nigeria)³⁹ was chosen by Ethiopia and Liberia and the Hon. J. T. van Wyk by South Africa.

Northern Cameroons (Cameroon v. United Kingdom). Mr. P. Beb à Don was chosen by Cameroon.

Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain). Belgium chose Mr. W. J. Ganshof van der Meersch, who sat upon the Bench when the preliminary objections were heard, and Mr. W. Riphagen (Netherlands), who sat in the second phase. Spain chose Mr. E. C. Armand-Ugon (Uruguay).

North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands). Mr. H. Mosler was chosen by the Federal Republic of Germany and Mr. M. Sørensen (Denmark) by Denmark and the Netherlands.

Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan). Mr. Nagendra Singh was chosen by India.

Nuclear Tests (Australia v. France). Sir Garfield Barwick was chosen by Australia.

Nuclear Tests (New Zealand v. France). Sir Garfield Barwick (Australia) was chosen by New Zealand.

Trial of Pakistani Prisoners of War (Pakistan v. India). Pakistan chose Sir Muhammad Zafrulla Khan, who sat in the proceedings on the request for interim measures up to 2 July 1973, and Mr. Muhammad Yaqub Ali Khan⁴⁰.

Western Sahara. Mr. A. Boni (Côte d'Ivoire) was chosen by Morocco.

Aegean Sea Continental Shelf (Greece v. Turkey). Mr. M. Stassinopoulos was chosen by Greece.

Continental Shelf (Tunisia/Libyan Arab Jamahiriya). Mr. J. Evensen (Norway) was chosen by Tunisia and Mr. E. Jiménez de Aréchaga (Uruguay) by the Libyan Arab Jamahiriya.

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) (case referred to a Chamber). Mr. M. Cohen was chosen by Canada.

Continental Shelf (Libyan Arab Jamahiriya/Malta). Mr. E. Jiménez de Aréchaga (Uruguay) was chosen by the Libyan Arab Jamahiriya. Mr. J. Castañeda (Mexico)

³⁹ The Governments of Ethiopia and Liberia had first chosen as judge *ad hoc* the Hon. J. Chesson, subsequently Sir Muhammad Zafrulla Khan and then Sir Adetokunboh A. Ademola, before choosing Sir Louis Mbanefo.

⁴⁰ This case was removed from the List before the Court had occasion to hear argument on the question of its jurisdiction.

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was chosen by Malta and sat in the proceedings culminating in the Judgment on Italy's Application for permission to intervene. Mr. N. Valticos (Greece) was chosen by Malta to sit when the case was heard on the merits.

Frontier Dispute (Burkina Faso/Republic of Mali) (case referred to a Chamber). Mr. F. Luchaire (France) was chosen by Burkina Faso and Mr. G. M. Abi-Saab (Egypt) by the Republic of Mali.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Mr. C.-A. Colliard (France) was chosen by Nicaragua.

Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya). Ms S. Bastid (France) was chosen by Tunisia and Mr. E. Jiménez de Aréchaga (Uruguay) by the Libyan Arab Jamahiriya.

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (case referred to a Chamber). Mr. N. Valticos (Greece) was chosen by El Salvador and Mr. M. Virally (France) was chosen by Honduras. Following the death of Mr. Virally, Mr. S. Torres Bernárdez (Spain) was chosen by Honduras.

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway). Mr. P. H. Fischer was chosen by Denmark.

*Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)*⁴¹. Mr. M. Aghahosseini was chosen by the Islamic Republic of Iran.

Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal). Mr. H. Thierry (France) was chosen by Guinea-Bissau. Following the expiry of Judge Mbaye's term of office on 5 February 1991, Senegal no longer had a judge of its nationality on the Bench. It therefore chose Mr. K. Mbaye to sit as judge *ad hoc*.

Territorial Dispute (Libyan Arab Jamahiriya/Chad). Mr. J. Sette-Camara (Brazil) was chosen by the Libyan Arab Jamahiriya and Mr. G. M. Abi-Saab (Egypt) by Chad.

East Timor (Portugal v. Australia). Mr. A. de Arruda Ferrer-Correia was chosen by Portugal. Following his resignation, on 14 July 1994, Mr. K. J. Skubiszewski (Poland) was chosen by Portugal. Sir Ninian Stephen was chosen by Australia.

Passage through the Great Belt (Finland v. Denmark). Mr. B. Broms was chosen by Finland and Mr. P. H. Fischer by Denmark.

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain). Mr. J. M. Ruda (Argentina) was chosen by Qatar. Following the death of Mr. Ruda, Mr. S. Torres Bernárdez (Spain) was chosen by Qatar. Mr. N. Valticos (Greece) was chosen by Bahrain. He resigned for health reasons

⁴¹ The case was removed from the List before the Court had occasion to sit.

as from the end of the jurisdiction and admissibility phase of the case. Bahrain subsequently chose Mr. M. Shahabuddeen (Guyana). After the resignation of Mr. Shahabuddeen, Bahrain chose Mr. Yves L. Fortier (Canada) to sit as judge *ad hoc*.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom). Mr. A. S. El-Kosheri (Egypt) was chosen by the Libyan Arab Jamahiriya. Dame Rosalyn Higgins having recused herself, the United Kingdom chose Sir Robert Jennings to sit as judge *ad hoc*. The latter had been sitting in that capacity in the jurisdiction and admissibility phase of the proceedings.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America). Mr. A. S. El-Kosheri (Egypt) was chosen by the Libyan Arab Jamahiriya.

Oil Platforms (Islamic Republic of Iran v. United States of America). Mr. F. Rigaux (Belgium) was chosen by the Islamic Republic of Iran.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). Sir Elihu Lauterpacht (United Kingdom) was chosen by Bosnia and Herzegovina. Following his resignation, on 22 February 2002, Mr. A. Mahiou (Algeria) was chosen by Bosnia and Herzegovina. Mr. M. Kreća was chosen by Serbia and Montenegro.

Gabčíkovo-Nagymaros Project (Hungary/Slovakia). H.E. K. J. Skubiszewski (Poland) was chosen by Slovakia. Professor Skubiszewski, President of the Iran/US Claims Tribunal and judge *ad hoc* at the Court died on 8 February 2010, while the case was still pending.

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening). Mr. K. Mbaye (Senegal) was chosen by Cameroon and Prince B. A. Ajibola by Nigeria.

Fisheries Jurisdiction (Spain v. Canada). Mr. S. Torres Bernárdez was chosen by Spain and Mr. M. Lalonde by Canada.

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case. Sir Geoffrey Palmer was chosen by New Zealand.

Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon). Prince B. A. Ajibola was chosen by Nigeria and Mr. K. Mbaye (Senegal) by Cameroon.

Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia). Mr. M. Shahabuddeen (Guyana) was chosen by Indonesia. Following the resignation of Mr. Shahabuddeen, Mr. Thomas Franck (United States of America)

was chosen by Indonesia. Mr. C. G. Weeramantry (Sri Lanka) was chosen by Malaysia.

Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo).

Mr. Mohammed Bedjaoui (Algeria) was chosen by the Republic of Guinea and Mr. Auguste Mampuya Kanunk'A-Tshiabo by the Democratic Republic of the Congo. Following the resignation of Mr. Bedjaoui, on 10 September 2002, Mr. A. Mahiou (Algeria) was chosen by the Republic of Guinea.

Legality of Use of Force (Serbia and Montenegro v. Belgium) (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) (Yugoslavia v. Spain) (Serbia and Montenegro v. United Kingdom) (Yugoslavia v. United States of America).

In all ten cases Serbia and Montenegro [Yugoslavia] chose Mr. M. Kreća; in the case of *Serbia and Montenegro v. Belgium*, Mr. P. Duinslaeger was chosen by Belgium; in the case of *Serbia and Montenegro v. Canada*, Mr. M. Lalonde was chosen by Canada; in the case of *Serbia and Montenegro v. Italy*, Mr. G. Gaja was chosen by Italy and in the case of *Yugoslavia v. Spain*, Mr. S. Torres Bernárdez was chosen by Spain. These judges *ad hoc* sat during the examination of Serbia and Montenegro's requests for the indication of provisional measures. In March 2000 Portugal announced its intention to appoint a judge *ad hoc*. However, the Court decided that, taking into account the presence upon the Bench of judges of British, Dutch and French nationality, the judges *ad hoc* chosen by the respondent States should not sit during the preliminary objections phase. The Court observed that this decision did not in any way prejudice the question whether, if the Court should reject the preliminary objections of the respondents, judges *ad hoc* might sit in subsequent stages of the cases.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v.

Burundi) (Democratic Republic of the Congo v. Uganda) (Democratic Republic of the Congo v. Rwanda). In all three cases Mr. Joe Verhoeven (Belgium) was chosen by the Democratic Republic of the Congo; in the case of *Democratic Republic of the Congo v. Burundi*, Mr. J. J. A. Salmon (Belgium) was chosen by Burundi; in the case of *Democratic Republic of the Congo v. Uganda*, Mr. James L. Kateka (Tanzania) was chosen by Uganda; and, in the case of *Democratic Republic of the Congo v. Rwanda*, Mr. C. J. R. Dugard (South Africa) was chosen by Rwanda.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia). Mr. B. Vukas was chosen by Croatia and Mr. M. Kreća by Serbia.

Aerial Incident of 10 August 1999 (Pakistan v. India). Mr. S. S. U. Pirzada was chosen by Pakistan and Mr. B. P. J. Reddy by India.

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Mr. Giorgio Gaja (Italy) was chosen by Nicaragua and Mr. Julio González Campos (Spain) by Honduras. Following the resignation of Mr. González Campos, Honduras chose Mr. S. Torres Bernárdez to sit as judge *ad hoc*.

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). Mr. Sayeman Bula-Bula was chosen by the Democratic Republic of the Congo and Ms Christine Van den Wyngaert by Belgium.

Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina). Mr. Vojin Dimitrijević was chosen by Yugoslavia. Mr. Sead Hodžić was chosen by Bosnia and Herzegovina. Following the resignation of Mr. Hodžić, on 9 April 2002, Bosnia and Herzegovina chose Mr. A. Mahiou (Algeria).

Certain Property (Liechtenstein v. Germany). Mr. Ian Brownlie (United Kingdom) was chosen by Liechtenstein. Following his resignation, Sir Franklin Berman (United Kingdom) was chosen by Liechtenstein. Mr. Carl-August Fleischhauer was chosen by Germany, Judge Simma having recused himself.

Territorial and Maritime Dispute (Nicaragua v. Colombia). Mr. Mohammed Bedjaoui (Algeria) was chosen by Nicaragua and Mr. Yves L. Fortier (Canada) by Colombia. Following the resignation of Mr. Fortier on 7 September 2010, Colombia chose Mr. Jean-Pierre Cot (France). Following the resignation of Mr. Bedjaoui on 2 May 2006, Nicaragua chose Mr. Giorgio Gaja (Italy)⁴². Following Mr. Gaja's election as Member of the Court, it chose Mr. T. A. Mensah.

Frontier Dispute (Benin/Niger). Mr. Mohamed Bennouna (Morocco) was chosen by Benin and Mr. Mohammed Bedjaoui (Algeria) by Niger.

Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda). Mr. Jean-Pierre Mavungu Mvumbidi-Ngoma was chosen by the Democratic Republic of the Congo and Mr. C. J. R. Dugard (South Africa) by Rwanda.

Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras). Mr. Felipe H. Paolillo (Uruguay) was chosen by El Salvador and Mr. S. Torres Bernárdez (Spain) by Honduras.

Avena and Other Mexican Nationals (Mexico v. United States of America). Mr. Bernardo Sepúlveda-Amor was chosen by Mexico.

⁴² In view of that choice, Judge Gaja considered it appropriate for him not to take part in any other proceedings concerning the case.

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Certain Criminal Proceedings in France (Republic of the Congo v. France).

Mr. Jean-Yves de Cara (France) was chosen by the Republic of the Congo. Judge Abraham having recused himself, Mr. G. Guillaume was chosen by France.

Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore). Mr. C. J. R. Dugard (South Africa) was chosen by Malaysia and Mr. P. Sreenivasa Rao (India) by Singapore.

Maritime Delimitation in the Black Sea (Romania v. Ukraine). Mr. Jean-Pierre Cot (France) was chosen by Romania and Mr. Bernard H. Oxman (United States) by Ukraine.

Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua).

Mr. Antônio Augusto Cançado Trindade (Brazil) was chosen as judge *ad hoc* by Costa Rica. Mr. Cançado Trindade was later elected as a Member of the Court, as of 6 February 2009. He continued to sit on that case until its conclusion on 13 July 2009. Mr. Gilbert Guillaume (France) was chosen by Nicaragua.

Pulp Mills on the River Uruguay (Argentina v. Uruguay). Mr. Raúl Emilio Vinuesa was chosen by Argentina and Mr. Santiago Torres Bernárdez (Spain) by Uruguay.

Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France).

Mr. Abdulqawi Ahmed Yusuf (Somalia) was chosen by Djibouti. Judge Abraham having recused himself under Article 24 of the Statute of the Court, Mr. G. Guillaume was chosen by France.

Maritime Dispute (Peru v. Chile). Mr. G. Guillaume (France) was chosen by Peru.

Mr. Francisco Orrego Vicuña was chosen by Chile.

Aerial Herbicide Spraying (Ecuador v. Colombia). Mr. Raúl Emilio Vinuesa

(Argentina) was chosen by Ecuador. Mr. Jean-Pierre Cot (France) was chosen by Colombia⁴³.

Application of the International Convention on the Elimination of All Forms of

Racial Discrimination (Georgia v. Russian Federation). Mr. Giorgio Gaja (Italy) was chosen by Georgia.

Application of the Interim Accord of 13 September 1995 (the former Yugoslav

Republic of Macedonia v. Greece). Mr. Budislav Vukas (Croatia) was chosen by Macedonia and Mr. Emmanuel Roucounas was chosen by Greece.

Jurisdictional Immunities of the State (Germany v. Italy). Mr. Giorgio Gaja was

chosen by Italy.

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal).

Mr. Philippe Kirsch (Belgium/Canada) was chosen by Belgium and Mr. Serge Sur (France) was chosen by Senegal.

⁴³ The case was removed from the List before the Court had occasion to sit.

Whaling in the Antarctic (Australia v. Japan: New Zealand intervening).

Ms H. Charlesworth was chosen by Australia.

Frontier Dispute (Burkina Faso/Niger). Mr. Jean-Pierre Cot (France) was chosen by Burkina Faso. Following the resignation of Mr. Cot, Burkina Faso chose Mr. Y. Daudet (France). Niger chose Mr. A. Mahiou (Algeria).

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). Costa Rica chose Mr. C. J. R. Dugard (South Africa). Nicaragua chose Mr. G. Guillaume (France).

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand). Cambodia chose Mr. G. Guillaume (France). Thailand chose Mr. Jean-Pierre Cot (France).

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). Nicaragua chose Mr. G. Guillaume (France). Costa Rica chose Mr. Bruno Simma (Germany). Following the decision of the Court to join the proceedings in this case and in that concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Mr. Simma resigned.

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile). Bolivia chose Mr. Y. Daudet (France).
