

## International Court of Justice

In 2007, the International Court of Justice (ICJ) delivered four Judgments, made five Orders and had 12 contentious cases pending before it. In a 1 November address to the General Assembly, the ICJ President, Judge Rosalyn Higgins, reported that after prodigious efforts, the backlog of cases before the Court was expected to be cleared by 2008. States that were considering bringing cases before the Court could be confident that it would respond promptly. She recalled that 2007 marked the one hundredth anniversary of the Hague Peace Conference, where the idea of a standing international court was born. She noted that the previous two decades had seen the burgeoning of international courts and tribunals equipped to deal with disputes arising under the growing reach of international law, and the interest of States in the Court had continued to flourish. The ICJ President also expressed concern regarding the adoption of a General Assembly resolution on the conditions of service and compensation for officials other than Secretariat officials, which, she stated, would create inequality among judges.

### Judicial work of the Court

During 2007, the Court delivered a Judgment on the merits of the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; a Judgment on the admissibility of the Application of Guinea in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*; a Judgment in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (revised case title); and a Judgment on the preliminary objections raised by the Respondent in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.

It held public hearings in the cases concerning *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*; and *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*.

The Court made an Order on a request for the indication of provisional measures submitted by the Respondent in the case concerning *Pulp Mills on the*

*River Uruguay (Argentina v. Uruguay)*. The Court or its President also made Orders on the conduct of the proceedings in the cases concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*; and *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*.

In the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, pleadings were submitted within the fixed time limits.

During the year, there were no new developments in the cases concerning *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* [YUN 1998, p. 1186]; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* [YUN 1999, p. 1209]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)* [ibid., p. 1210]; and *Certain Criminal Proceedings in France (Republic of the Congo v. France)* [YUN 2002, p. 1263].

ICJ activities in 2007 were covered in two reports to the General Assembly, for the periods 1 August 2006 to 31 July 2007 [A/62/4] and 1 August 2007 to 31 July 2008 [A/63/4]. On 1 November 2007, the Assembly took note of the 2006/07 report (**decision 62/509**).

### Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)

Bosnia and Herzegovina instituted proceedings in 1993 [YUN 1993, p. 1138] against Serbia and Montenegro, then known as the Federal Republic of Yugoslavia, for alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly in resolution 260A (III) [YUN 1948-49, p. 959]. The Court delivered its Judgment in 1996 [YUN 1996, p. 1179], rejecting the preliminary objections raised by Serbia and Montenegro in 1995 [YUN 1995, p. 1307]. In 1997, Serbia and Montenegro filed a Counter-Memorial that included counterclaims against Bosnia and Herzegovina [YUN 1997, p. 1315]. Bosnia and Herzegovina filed a Reply in 1998 [YUN 1998, p. 1186], and Serbia and Montenegro filed a Rejoinder in 1999 [YUN 1999, p. 1204].

By an Order of 10 September 2001, the President of the Court placed on record the withdrawal by Serbia and Montenegro of the counterclaims submitted in its Counter-Memorial [YUN 2001, p. 1184].

Serbia and Montenegro had submitted to the Court, on 4 May 2001, a document entitled “Initiative to the Court to reconsider *ex officio* Jurisdiction over Yugoslavia”. Submissions presented in the document were, firstly, that the Court had no jurisdiction *ratione personae* over Serbia and Montenegro and, secondly, that the Court should suspend proceedings on the merits of the case until a decision on the jurisdictional issue had been rendered. In a 12 June 2003 letter, the ICJ Registrar informed the Parties that the Court had decided that it could not effect a suspension of the proceedings in the circumstances of the case [YUN 2003, p. 1302].

Public hearings on the merits of the case were held from 27 February to 9 May 2006 [YUN 2006, p. 1478]. At the conclusion of the hearings, the Parties presented submissions to the Court. Bosnia and Herzegovina requested the Court to adjudge and declare that Serbia and Montenegro had violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by: intentionally destroying in part, through its organs or entities under its control, the non-Serb national, ethnic or religious group within, but not limited to, the territory of Bosnia and Herzegovina, including in particular the Muslim population; complicity in genocide and/or aiding and abetting individuals, groups and entities engaged in acts of genocide; conspiring and inciting to commit genocide; failing to prevent genocide; failing to punish acts of genocide or any other act prohibited by the Convention; and failing to transfer individuals accused of genocide or any other act prohibited by the Convention to the International Criminal Tribunal for the Former Yugoslavia, and to cooperate fully with the Tribunal. It also asked the Court to adjudge and declare that the violations of international law set out in the submission constituted wrongful acts attributable to Serbia and Montenegro that entailed its international responsibility and, accordingly, that Serbia and Montenegro should take steps immediately to ensure full compliance with its obligations to punish acts of genocide under the Convention or any other acts prohibited by the Convention and transfer individuals accused of such acts to the International Criminal Tribunal for the Former Yugoslavia (ICTY) and cooperate fully with the Tribunal; that Serbia and Montenegro must redress the consequences of its international wrongful acts and pay; and that Bosnia and Herzegovina had the right to receive, in its own right and as *parens patriae* for its citizens, full compensation for the damages and losses caused. The nature, form and amount of the compensation should be determined by the Court, failing agreement thereon between the Parties one year

after the Court’s Judgment, and the Court should reserve the subsequent procedure for that purpose; and Serbia and Montenegro should provide guarantees and assurances that it would not repeat the wrongful acts. Bosnia and Herzegovina further asked the Court to adjudge and declare that, in failing to comply with the Orders for indication of provisional measures rendered by the Court on 8 April 1993 [YUN 1993, p. 1138] and 13 September 1993 [*ibid.*, p. 1139], Serbia and Montenegro had been in breach of its international obligations and was under an obligation to Bosnia and Herzegovina to provide for the latter violation symbolic compensation, the amount of which was to be determined by the Court.

Serbia and Montenegro requested the Court to adjudge and declare that it had no jurisdiction because Serbia and Montenegro, as the respondent State, had no access to the Court at the relevant moment, or, in the alternative, that the Court had no jurisdiction over Serbia and Montenegro because Serbia and Montenegro never remained or became bound by article IX of the Convention, and because there was no other ground on which jurisdiction over Serbia and Montenegro could be based. Serbia and Montenegro further requested that, in case the Court determined that jurisdiction existed, the Court should adjudge and declare that the submissions of Bosnia and Herzegovina relating to alleged violations of the obligations under the Convention be rejected as lacking a basis either in law or in fact; that the acts and/or omissions for which Serbia and Montenegro was alleged to be responsible were not attributable to it; that, without prejudice to the foregoing, the relief available to Bosnia and Herzegovina as the applicant State in the proceedings, in accordance with the appropriate interpretation of the Convention, was limited to the rendering of a declaratory judgment; that any question of legal responsibility for alleged breaches of the Orders for the indication of provisional measures did not fall within the competence of the Court to provide appropriate remedies to an applicant State in the context of contentious proceedings; and that the request in the submissions of Bosnia and Herzegovina be rejected.

In its Judgment delivered on 26 February 2007, the Court, by 10 votes to 5, rejected the objections contained in the final submissions made by Serbia and Montenegro to the effect that it had no jurisdiction. It affirmed that it had jurisdiction to adjudicate upon the dispute on the basis of article IX of the Convention. By two separate votes of 13 votes to 2, it found that Serbia—the successor state to Serbia and Montenegro following Montenegro’s independence in 2006 [YUN 2006, p. 472]—had not committed genocide, through its organs or persons whose acts engaged its responsibility under customary international law, in violation of its obligations under the Convention; and that

Serbia had not conspired to commit genocide, nor incited the commission of genocide, in violation of its obligations under the Convention. By 11 votes to 4, the Court found that Serbia had not been complicit in genocide, in violation of its obligations under the Convention. By 12 votes to 3, it found that Serbia had violated the obligation to prevent genocide, under the Convention, in respect of the genocide that occurred in Srebrenica in July 1995 [YUN 1995, p. 529]. By 14 votes to 1, the Court found that Serbia had violated its obligations under the Convention by having failed to transfer Ratko Mladić, indicted for genocide and complicity in genocide, for trial by ICTY, and thus had failed to cooperate fully with the Tribunal. By 13 votes to 2, it found that Serbia had violated its obligation to comply with the provisional measures ordered by the Court on 8 April and 13 September 1993, inasmuch as it failed to take all measures within its power to prevent genocide in Srebrenica in July 1995. By 14 votes to 1, it decided that Serbia should immediately take steps to ensure full compliance with its obligation under the Convention to punish acts of genocide as defined by article II of the Convention, or any of the other acts proscribed by article III of the Convention, and to transfer individuals accused of genocide or any of those other acts for trial by the Tribunal, and to cooperate fully with the Tribunal. By 13 votes to 2, it found that, with regard to the breaches by Serbia of the obligations to prevent genocide and to comply with the provisional measures ordered by the Court in 1993, the Court's findings constituted appropriate satisfaction, and that the case was not one in which an order for payment of compensation or, in respect of the violation of the obligation to prevent genocide, a direction to provide assurances and guarantees of non-repetition would be appropriate.

Appended to the Judgment were: dissenting opinions by Vice-President Al-Khasawneh and Judge ad hoc Mahiou; a joint dissenting opinion by Judges Ranjeva, Shi and Koroma; separate opinions by Judges Ranjeva, Owada and Tomka and Judge ad hoc Kreća; declarations by Judges Keith, Bennouna and Skotnikov; and a joint declaration by Judges Shi and Koroma.

### **Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo)**

In 1998 [YUN 1998, p. 1190], Guinea instituted proceedings against the Democratic Republic of the Congo (DRC) by an "Application with a view to diplomatic protection" in which it requested the Court to condemn the DRC for grave breaches of international law perpetrated upon the person of a Guinean national, Ahmadou Sadio Diallo.

According to Guinea, Mr. Diallo, a businessman who had been a resident of the DRC for 32 years, was "unlawfully imprisoned by the authorities of that State" for two and a half months, "divested from his important investments, companies, bank accounts, movable and immovable properties, then expelled". The expulsion took place on 2 February 1996, as a result of his attempts to recover sums owed to him by the DRC (especially by Gécamines, a State enterprise and mining monopoly) and by oil companies operating in that country (Zaire Shell, Zaire Mobil and Zaire Fina) by virtue of contracts concluded with businesses owned by him, namely Africom-Zaire and Africacontainers-Zaire.

As a basis of the Court's jurisdiction, Guinea invoked its own declaration of acceptance of the compulsory jurisdiction of the Court of 11 November 1998 and a declaration of the DRC of 8 February 1989.

In November 1999 [YUN 1999, p. 1206], the Court, taking into account the agreement of the Parties, fixed 11 September 2000 as the time limit for the filing of a Memorial by Guinea and 11 September 2001 for the filing of a Counter-Memorial by the DRC.

By an Order of 8 September 2000 [YUN 2000, p. 1213], the President of the Court extended to 23 March 2001 and 4 October 2002 the respective time limits for the Memorial and Counter-Memorial. The Memorial was filed within the extended time limit.

On 3 October 2002 [YUN 2002, p. 1266], within the time limit for the deposit of its Counter-Memorial as extended, the DRC filed certain preliminary objections to the Court's jurisdiction and the admissibility of the Application; the proceedings on the merits were accordingly suspended. By an Order of 7 November 2002 [ibid.], the Court fixed 7 July 2003 as the time limit within which Guinea might present a written statement of its observations and submissions on the preliminary objections raised by the DRC; the written statement was filed within the time limit [YUN 2003, p. 1303].

Public hearings on the preliminary objections were held from 27 November to 1 December 2006 [YUN 2006, p. 1479], during which the Parties presented final submissions to the Court. The DRC requested the Court to adjudge and declare that the Application of Guinea was inadmissible on the grounds that Guinea had no status to exercise diplomatic protection in the proceedings, and neither the companies in question nor Mr. Diallo had exhausted the effective local remedies available in the DRC. Guinea requested the Court to reject the preliminary objections raised by the DRC; declare its Application admissible; and fix time limits for further proceedings.

On 24 May 2007, the Court rendered its Judgment on the preliminary objections. The Court unanimously rejected the preliminary objection to admissi-

bility raised by the DRC for lack of standing by Guinea to exercise diplomatic protection in the case, insofar as it concerned protection of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire. By 14 votes to 1, it upheld the objection insofar as it concerned protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire. On the preliminary objection to admissibility raised by the DRC on account of non-exhaustion by Mr. Diallo of local remedies, the Court unanimously rejected the objection insofar as it concerned protection of Mr. Diallo's rights as an individual. By 14 votes to 1, the Court rejected the objection insofar as it concerned protection of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire. Consequently, it unanimously declared the Application of Guinea to be admissible insofar as it concerned protection of Mr. Diallo's rights as an individual. By two separate votes of 14 to 1, the Court declared the Application of Guinea to be admissible insofar as it concerned protection of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire; and declared the Application of Guinea to be inadmissible insofar as it concerned protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire.

Judge ad hoc Mahiou appended a declaration to the Judgment, and Judge ad hoc Mampuya appended a separate opinion.

By an Order of 27 June 2007, the Court fixed 27 March 2008 as the time limit for the filing of a Counter-Memorial by the DRC.

### **Maritime delimitation (Nicaragua v. Honduras)**

In 1999 [YUN 1999, p. 1210], Nicaragua instituted proceedings against Honduras in respect of a dispute concerning the delimitation of the maritime zones appertaining to each of those States in the Caribbean Sea. In its Application, Nicaragua stated that it had maintained for decades the position that its maritime Caribbean border with Honduras had not been determined, while the position of Honduras allegedly was that a delimitation line was fixed by the King of Spain in an Arbitral Award of 23 December 1906 that was found valid and binding by ICJ on 18 November 1960 [YUN 1960, p. 536]. According to Nicaragua, the position adopted by Honduras had brought repeated confrontations and mutual capture of vessels of both nations in and around the general border area, and diplomatic negotiations had failed. Nicaragua founded the jurisdiction of the Court on declarations under Article 36, paragraph 2, of the Court's Statute, by which both States accepted the compulsory jurisdiction of the Court, and also article XXXI of the American

Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), signed on 30 April 1948, to which both Nicaragua and Honduras were parties.

Nicaragua requested the Court to determine the course of the single maritime boundary between territorial sea, continental shelf and exclusive economic zones appertaining to Nicaragua and Honduras.

By an Order of 21 March 2000 [YUN 2000, p. 1219], the Court, taking into account the agreement of the Parties, fixed 21 March 2001 as the time limit for the filing of a Memorial by Nicaragua and 21 March 2002 for the filing of the Counter-Memorial by Honduras. The Memorial [YUN 2001, p. 1193] and Counter-Memorial [YUN 2002, p. 1269] were filed within the prescribed time limits. Copies of the pleadings and annexed documents were made available to Colombia [YUN 2001, p. 1193] and Jamaica [YUN 2002, p. 1269] at their request.

By an Order of 13 June 2002 [ibid.], the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Honduras and fixed 13 January 2003 and 13 August 2003, respectively, as the time limits for the filing of those pleadings. The Reply of Nicaragua and the Rejoinder of Honduras were filed within the fixed time limits [YUN 2003, p. 1304].

Public hearings on the merits were held from 5 to 23 March 2007. At the conclusion of the oral proceedings, the Parties presented their final submissions to the Court. Nicaragua requested the Court to adjudge and declare that the bisector of the lines representing the coastal fronts of the two Parties, as described in the pleadings, constituted the single maritime boundary for the purposes of the delimitation of the disputed areas of the territorial sea, continental shelf and exclusive economic zones in the region of the Nicaraguan Rise; that the starting point of the delimitation was the thalweg of the main mouth of the river Coco, such as it might be at any given moment, as determined by the Award of the King of Spain of 1906; and that the Court was required to decide the question of sovereignty over the islands and cays within the area in dispute.

Honduras requested the Court to adjudge and declare that the islands of Bobel Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs claimed by Nicaragua that lay north of the 15th parallel, were under the sovereignty of Honduras; that the starting point of the maritime boundary to be delimited by the Court should be located at the coordinates set out by Honduras in its final submission; that the boundary from the point determined by the Mixed Commission in 1962 to the starting point of the maritime boundary to be delimited by the Court should be agreed between the Parties on the basis of the Award of the King of Spain of 1906, which was binding upon the Parties, and

taking into account the changing geographical characteristics of the mouth of the river Coco, also known as the river Segovia or Wanks; and that East of the starting point set out by Honduras, the single maritime boundary that divided the respective territorial seas, exclusive economic zones and continental shelves of Honduras and Nicaragua followed the latitude coordinate of the starting point, as the existing maritime boundary, or an adjusted equidistance line, until the jurisdiction of a third State was reached.

In its Judgment of 8 October 2007, recorded under the revised case title *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, the Court unanimously found that Honduras had sovereignty over Bobel Cay, Savanna Cay, Port Royal Cay and South Cay. By 15 votes to 2, the Court decided that the starting point of the single maritime boundary that divided the territorial sea, continental shelf and exclusive economic zones of Nicaragua and Honduras should be located at a point with the coordinates 15° 00' 52" N and 83° 05' 58" W. By 14 votes to 3, the Court decided that starting from the coordinates of the starting point, the single maritime boundary should be defined by connecting lines between points A-F with the following coordinates:

	Latitude North	Longitude West
A	15° 05' 25"	82° 52' 54"
B	14° 57' 13"	82° 50' 03"
C	14° 56' 45"	82° 33' 56"
D	14° 56' 35"	82° 33' 20"
E	14° 53' 15"	82° 29' 24"
F	15° 16' 08"	82° 21' 56"

From point F, the boundary line should continue along the line having the azimuth 70° 14' 41.25" until it reached the area where the rights of third States might be affected. By 16 votes to 1, the Court found that the Parties must negotiate in good faith with a view to agreeing on the delimitation line of that portion of the territorial sea located between the end point of the land boundary as established by the 1906 Arbitral Award and the starting point of the single maritime boundary determined by the Court.

Appended to the Judgment were separate opinions by Judges Ranjeva and Koroma; declarations by Judge Parra-Aranguren and Judge ad hoc Gaja; and a dissenting opinion by Judge ad hoc Torres Bernárdez.

### **Territorial and maritime dispute (Nicaragua v. Colombia)**

In 2001 [YUN 2001, p. 1195], Nicaragua instituted proceedings against 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". In its Application, Nicaragua first requested the Court to adjudge and declare that Nicaragua had sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (insofar as they were capable of appropriation); and second, in the light of the determinations concerning the title requested above, asked the Court to determine the course of the single maritime boundary between the continental shelf and the exclusive economic zones appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary. Nicaragua reserved the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the islands of San Andrés and Providencia, as well as the keys and maritime spaces up to the 82nd meridian west, in the absence of lawful title. It also reserved the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.

By an Order of 26 February 2002 [YUN 2002, p. 1271], the Court fixed 28 April 2003 and 28 June 2004, respectively, as the time limits for the filing of a Memorial by Nicaragua and of a Counter-Memorial by Colombia. The Memorial of Nicaragua was filed within the time limit [YUN 2003, p. 1305].

On 21 July 2003 [ibid.], Colombia filed preliminary objections to the jurisdiction of the Court; under Article 79 of the Rules of Court, proceedings on the merits were suspended accordingly. Nicaragua filed a written statement of its observations and submissions on the preliminary objections raised by Colombia within the time limit of 26 January 2004 [YUN 2004, p. 1268], fixed by the Court by an Order of 24 September 2003.

Public hearings were held on the preliminary objections from 4 to 8 June 2007. At the conclusion of those hearings, the Parties presented their final submissions to the Court. Colombia requested the Court to adjudge and declare that under the 1948 American Treaty on Pacific Settlement ("Pact of Bogotá"), and in particular in pursuance of articles VI and XXXIV of the Pact, the Court was without jurisdiction to hear the controversy submitted to it by Nicaragua under article XXXI, and to declare the controversy ended; that under Article 36, paragraph 2, of the Statute of the Court, the Court had no jurisdiction to entertain Nicaragua's Application; and that Nicaragua's Application was dismissed.

Nicaragua asked the Court to adjudge and declare that the preliminary objections submitted by Colombia were invalid in respect of the jurisdiction based

upon the Pact of Bogotá and upon Article 36, paragraph 2, of the Statute of the Court. In the alternative, Nicaragua asked the Court to adjudge and declare, in accordance with the provisions of Article 79, paragraph 7, of the Rules of Court, that the objections submitted by Colombia did not have an exclusively preliminary character; and to reject the request of Colombia to declare the controversy submitted to it by Nicaragua under article XXXI of the Pact of Bogotá “ended”, in accordance with articles VI and XXXIV of the same instrument. The Court was further asked to adjudge and declare that any other matters not explicitly dealt with in the written statement and oral pleadings were expressly reserved for the merits phase of the proceeding.

On 13 December 2007, the Court rendered its Judgment on the preliminary objections. By 13 votes to 4, the Court upheld the objection to its jurisdiction raised by Colombia on the basis of articles VI and XXXIV of the Pact of Bogotá insofar as it concerned sovereignty over the islands of San Andrés, Providencia and Santa Catalina. It unanimously rejected the objection to its jurisdiction insofar as it concerned sovereignty over the other maritime features in dispute between the Parties and the maritime delimitation between the Parties. By 14 votes to 3, the Court upheld the second preliminary objection raised by Colombia relating to the declarations made by the Parties recognizing the compulsory jurisdiction of the Court insofar as it concerned sovereignty over the islands of San Andrés, Providencia and Santa Catalina. By 16 votes to 1, the Court found that it was not necessary to examine the objection to its jurisdiction insofar as it concerned sovereignty over the other maritime features in dispute between the Parties and the maritime delimitation between the Parties. With regard to its own jurisdiction, the Court unanimously found that it had jurisdiction, on the basis of article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning sovereignty over the maritime features claimed by the Parties other than the islands of San Andrés, Providencia and Santa Catalina, and upon the dispute concerning the maritime delimitation between the Parties.

Appended to the Judgment were dissenting opinions by Vice-President Al-Khasawneh and Judge Bennouna; separate opinions by Judges Abraham and Ranjeva; and declarations by Judges Keith, Parra-Aranguren, Simma and Tomka, and Judge ad hoc Gaja.

### **Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)**

On 24 July 2003 [YUN 2003, p. 1308], Malaysia and Singapore jointly notified the Court of a Special Agree-

ment that was signed between them on 6 February 2003 at Putrajaya, Malaysia, and entered into force on 9 May 2003. In article 2 of the Special Agreement, the Parties requested the Court to determine whether sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge belonged to Malaysia or Singapore. In article 6, the Parties agreed to accept the Judgment of the Court as final and binding. The Parties further set out their views on the procedure to be followed.

On 1 September 2003 [*ibid.*, p. 1309], the Court fixed 25 March 2004 and 25 January 2005 as the respective time limits for the filing, by each of the Parties, of a Memorial and of a Counter-Memorial. The Memorial [YUN 2004, p. 1271] and Counter-Memorial [YUN 2005, p. 1385] were filed within the time limits.

On 1 February 2005, the Court fixed 25 November 2005 as the time limit for the filing of a Reply by each of the Parties. The Replies were filed within the time limit [*ibid.*].

By a joint letter of 23 January 2006, the Parties informed the Court that they had agreed there was no need for an exchange of Rejoinders in the case. The Court itself subsequently decided that no further pleadings were necessary, and that the written proceedings were accordingly closed [YUN 2006, p. 1480].

Public hearings were held from 6 to 23 November 2007. At the conclusion of those hearings, the Parties presented their final submissions to the Court. Singapore requested the Court to adjudge and declare that Singapore had sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge. Malaysia asked the Court to adjudge and declare that Malaysia had sovereignty over the disputed islets.

### **Maritime Delimitation in the Black Sea (Romania v. Ukraine)**

On 16 September 2004 [YUN 2004, p. 1271], 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. Romania requested the Court to draw, in accordance with international law, and specifically the criteria laid down in article 4 of the Additional Agreement to the 1997 Treaty on Relations of Co-operation and Good Neighbourliness between Romania and Ukraine, a single maritime boundary between the continental shelf and the exclusive economic zones of the two States in the Black Sea.

As a basis for the Court's jurisdiction, Romania invoked article 4(*b*) of the Additional Agreement, which provided that, if the negotiations should not determine the conclusion of an agreement on the de-

limitation of the continental shelf and the exclusive economic zones in the Black Sea in a reasonable period of time, no later than two years after their initiation, Romania and Ukraine would agree that the delimitation problem would be solved by ICJ, at their request, provided that the treaty on the regime of the State border between Romania and Ukraine had entered into force. However, should ICJ consider that the delay of the entry into force of the treaty on the border regime was the result of the other Party's fault, it might examine the request concerning the delimitation before the entry into force of the treaty.

Romania contended that the two conditions set out in article 4(b) of the Additional Agreement had been fulfilled, since the negotiations had by far exceeded two years and the Treaty on the Romanian-Ukrainian State Border Régime had entered into force on 27 May 2004.

In its Application, Romania further provided an overview of the applicable law for solving the dispute, citing a number of provisions of the Additional Agreement of 1997, as well as the 1982 United Nations Convention on the Law of the Sea [YUN 1982, p. 181], to which both Ukraine and Romania were parties, together with other relevant instruments binding the two countries.

On 19 November 2004 [YUN 2004, p. 1272], the Court fixed 19 August 2005 and 19 May 2006, respectively, as the time limits for the filing of a Memorial by Romania and a Counter-Memorial by Ukraine. The Memorial and Counter-Memorial were filed within the time limits.

On 30 June 2006 [YUN 2006, p. 1480], 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 respective time limits for the filing of those pleadings. Romania filed its Reply within the time limit set.

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 duly filed within the time limit thus extended, and the case was, therefore, ready for hearing.

### **Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)**

On 29 September 2005 [YUN 2005, p. 1385], Costa Rica filed an Application instituting proceedings against Nicaragua in respect of a dispute concerning navigational and related rights on the San Juan River. Costa Rica stated in its Application that it sought "the cessation of [the] Nicaraguan conduct which prevent[ed] the free and full exercise and enjoyment of the rights that Costa Rica possess[ed] on the San Juan River, and which also prevent[ed] Costa Rica from

fulfilling its responsibilities" under certain agreements between itself and Nicaragua. It stated that Nicaragua had, in particular since the late 1990s, imposed restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River, in violation of article VI of the Treaty of Limits, signed in 1858 between the two Parties, which granted Nicaragua sovereignty over the waters of the river, while recognizing at the same time important rights to Costa Rica. It maintained that those rights were confirmed and interpreted on 28 March 1888 by the President of the United States, Grover Cleveland, and by a judgment of the Central American Court of Justice of 1916, as well as by the 9 January 1956 Agreement Supplementary to Article IV of the 1949 Pact of Amity. Costa Rica contended that the above-mentioned restrictions were "of a continuing character".

Costa Rica argued further that on 28 September 2005, the National Assembly of Nicaragua passed a resolution threatening to impose economic sanctions on Costa Rica in the event of its bringing the dispute to the Court, to which was annexed the text of a draft law imposing a 35 per cent import tax on all goods and services of Costa Rican origin. Costa Rica added that it had proposed many times to Nicaragua a diplomatic solution and the use of available mechanisms of peaceful resolution of differences, including mediation through the Organization of American States (OAS) and international arbitration, but that the Government of Nicaragua had rejected those alternatives.

Costa Rica requested the Court to adjudge and declare that Nicaragua had violated its obligations to facilitate and expedite traffic on the San Juan River within the terms of the 1858 Treaty and interpretation by the 1988 arbitration; to allow Costa Rican boats and their passengers to navigate freely and without impediment on the river for commercial purposes, and to moor freely on any of the river's banks without paying any charges, unless expressly agreed by both Governments. It further asked the Court to adjudge and declare that Nicaragua had violated its obligations not to require Costa Rican boats and their passengers to stop at any Nicaraguan post along the river; not to impose any charges or fees on Costa Rican boats and their passengers for navigating on the river; to allow Costa Rica the right to navigate the river in accordance with the Cleveland Award; to allow Costa Rica the right to navigate the San Juan River in official boats for supply purposes, for the exchange of personnel of the border posts along the river, and for the purposes of protection, as established in the pertinent instruments; to collaborate with Costa Rica in order to carry out those undertakings and activities which required a common effort by both States in order to facilitate and expedite traffic along the river, within the terms of the Treaty; and not to aggravate and ex-

tend the dispute by adopting measures against Costa Rica, including unlawful economic sanctions. Costa Rica requested the Court to determine the reparation to be made by Nicaragua.

As a basis for the Court's jurisdiction, Costa Rica invoked the declarations of acceptance of the Court's jurisdiction, made by Costa Rica in 1973 and by Nicaragua in 1979, as well as several other agreements between the Parties.

By an Order of 29 November 2005 [ibid.], the Court fixed 29 August 2006 and 29 May 2007 as the respective time limits for the filing of a Memorial by Costa Rica and a Counter-Memorial by Nicaragua; the Memorial and Counter-Memorial were filed within the time limits. The Government of Colombia requested copies of the pleadings and annexed documents. Pursuant to Article 53, paragraph 1, of the Rules of Court, the Court, after ascertaining and taking account of the views of the Parties, decided, for the time being, not to accede to Colombia's request.

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 time limits prescribed. The case was, therefore, ready for hearing.

### **Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)**

On 9 January 2006 [YUN 2006, p. 1480], Djibouti filed an Application instituting proceedings against France regarding the alleged violation by the latter of its international obligations in respect of mutual assistance in criminal matters in the context of the investigation into the death of French Judge Bernard Borrel in Djibouti in 1995. Djibouti explained that the dispute concerned the refusal by the French governmental and judicial authorities to execute an international letter rogatory regarding the transmission to the Djiboutian judicial authorities of the records relating to the investigation in the case against X for the murder of Judge Borrel. Djibouti maintained that the refusal constituted a violation of France's international obligations under the 1977 Treaty of Friendship and Co-operation signed by the two States, and the 1986 Convention on Mutual Assistance in Criminal Matters between France and Djibouti. Djibouti further asserted that, in summoning certain internationally protected nationals of Djibouti, including the Head of State, as *témoins assistés* (legally represented witnesses) in connection with a criminal complaint for subornation of perjury against X in the Borrel case, France had violated its obligation to prevent attacks on the person and on the freedom or dignity of persons enjoying such protection. Djibouti sought to found the jurisdiction of the Court on Article 38, paragraph 5,

of the Rules of Court. In accordance with that Article, the Application by Djibouti was transmitted to the French Government.

In a 25 July 2006 letter [ibid., p. 1481], France informed the Court that it consented to the jurisdiction of the Court to entertain the Application filed by Djibouti, pursuant to Article 38, paragraph 5, of its Rules. That consent made it possible to enter the case in the Court's General List on 9 August 2006, and to open the proceedings.

By an Order of 15 November 2006 [ibid.], the Court fixed 15 March 2007 as the time limit for the filing of a Memorial by Djibouti and 13 July 2007 as the time limit for the filing of a Counter-Memorial by France. The Memorial and Counter-Memorial were filed within the prescribed time limits.

### **Pulp Mills on the River Uruguay (Argentina v. Uruguay)**

On 4 May 2006 [YUN 2006, p. 1481] Argentina filed an Application instituting proceedings against Uruguay for alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed between the two States on 26 February 1975 for the purpose of establishing the joint machinery necessary for the optimum and rational utilization of that part of the river which constituted 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 Statute. Argentina claimed that the mills posed a threat to the river and its environment, and were likely to impair the quality of the river's waters and cause significant transboundary damage to Argentina.

As basis for the Court's jurisdiction, Argentina cited Article 36, paragraph 1, of the Statute of the Court and the first paragraph of Article 60 of the 1975 Statute, which provided that any dispute concerning the interpretation or application of the Statute that could not be settled by direct negotiations could be submitted by either party to the Court; Argentina claimed that direct negotiations between the Parties had failed.

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 halt all building works on them, pending a final decision by the Court; cooperate with Argentina with a view to protecting and conserving the aquatic environment of the River Uruguay; and refrain from taking any further unilateral action with respect to 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 were held on Argentina's request for the indication of provisional measures on 8 and 9 June 2006 [ibid., p. 1482]. By an Order of 13 July 2006, the Court, by 14 votes to 1, found that the circumstances, as they presented themselves to the Court, were not such as to require the exercise of its power under Article 41 of the Statute of the Court to indicate provisional measures. The Court fixed 15 January 2007 as the time limit for the filing of a Memorial by Argentina and 20 July 2007 as the time limit for the filing of a Counter-Memorial by Uruguay.

On 29 November 2006, Uruguay submitted a request for the indication of provisional measures on the grounds that, from 20 November 2006, organized groups of Argentine citizens had blockaded an international bridge, causing it considerable economic prejudice, and that Argentina had taken no action to end the blockade. Uruguay requested the Court to order Argentina to take "all reasonable and appropriate steps" to prevent or end the interruption of transit between Uruguay and Argentina; refrain from any measure that might aggravate, extend or make more difficult the settlement of the dispute; and abstain from any other measure that might prejudice the rights of Uruguay being considered before the Court.

Public hearings were held on 18 and 19 December 2006 [ibid.] on Uruguay's request for the indication of provisional measures. By an Order of 23 January 2007, the Court found that the circumstances, as they presented themselves at that time, were not such as to require the exercise of its power under Article 41 of its 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. The case was, therefore, ready for hearing.

## Other questions

### Conditions of service and compensation

In a 3 April letter [A/61/837] to the General Assembly President, the ICJ President expressed the Court's concern that the Assembly's proposed action regard-

ing emoluments of ICJ members would result in newly elected judges receiving a substantially lower remuneration than current members, and would therefore not be in conformity with the Statute of the Court. The Court urged the Assembly to postpone the approval of any new system, subject to submission by the Secretary-General of new proposals, as recommended by the Advisory Committee on Administrative and Budgetary Questions in 2006 [YUN 2006, p. 1682].

In **resolution 61/262** of 4 April (see p. 1499), the Assembly took action with regard to the conditions of service and compensation for ICJ members and judges and ad litem judges of the Tribunals.

### Trust Fund to Assist States in the Settlement of Disputes

In July [A/62/171], the Secretary-General reported on the activities and status of the Trust Fund to Assist States in the Settlement of Disputes through ICJ since the submission of his 2006 report [YUN 2006, p. 1483]. The Fund, established in 1989 [YUN 1989, p. 818], provided financial assistance to States for expenses incurred in connection with a dispute submitted to ICJ by way of a special agreement or the execution of a Judgment resulting from such an agreement. The Fund's terms of reference were revised in 2004 [YUN 2004, p. 1274].

During the period under review (1 July 2006–30 June 2007), the Fund received, on 20 March, one application from Djibouti to defray the expenses incurred in connection with the institution of proceedings in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)* (see p. 1332). Six States contributed to the Fund, which, as at 30 June, had a total balance of \$2.4 million.

Noting that since its inception the Fund had a decreasing level of resources, and that the overall amount contributed during the current period had decreased by almost 34 per cent, compared to the previous period, the Secretary-General urged all States and other relevant entities to give serious consideration to making substantial and regular contributions to the Fund.

On 30 October, on the recommendation of the Panel of Experts set up in accordance with the Fund's terms of reference, the Secretary-General awarded financial assistance in the amount of \$290,500 to Djibouti [A/63/229].