

PREFACE

1 Introduction

This work brings together the commentaries of a variety of international lawyers on the 13 Judgments and 5 Advisory Opinions rendered by the International Court of Justice (ICJ) between January 1, 1987, and December 31, 1996. Commentaries on 14 decisions¹ were previously published between 1989 and 1997 as part of the International Decisions section of the *American Journal of International Law*. Reviews of the four remaining decisions were added, together with introductory notes describing the judicial activity of the ICJ in a given year.²

The book is divided into 10 chapters covering each of the years during the decade 1987-1996. Each chapter starts with a summary of the judicial activity of the ICJ during a given year, using the General List of ICJ cases, pleadings filed, Orders and Judgments or Advisory Opinions issued, and hearings held at the Peace Palace in The Hague (The Netherlands) to describe the Court's record for that year. In this manner, a complete and up-to-date overview is presented of the judicial activity of the ICJ from January 1, 1987, until December 31, 1996. The book thus covers part of the Fourteenth Period (1985-1988),

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- 1 Including one Order addressing substantive issues in the *Nuclear Tests (New Zealand v. France) Case*. New Zealand's unusual request to reopen this case was initially entered into the General List of ICJ cases, which justifies its place in this overview of the Court's work between 1987 and 1997. Although the Court's Orders disposing of substantive issues are as much a part of the jurisprudence of the Court as its Judgments and Advisory Opinions, the limited space available in this volume caused the discussion of the Court's 1987-1996 jurisprudence to be confined to its Judgments and Advisory Opinions. The interested reader is especially encouraged to read the Court's Orders dealing with requests for the indication of Provisional Measures, as discussed in Section 2.4.3 of the Introduction and as listed in Annex B of this book.
 - 2 Similar summaries of the judicial work of the ICJ during 1991-1992, 1993-1994, 1995 and 1996 were previously published in 87 AJIL 429 (1993), 89 AJIL 213 (1995), 90 AJIL 328 (1996) and 91 AJIL 554 (1997), respectively.

and the Fifteenth (1988-1991), Sixteenth (1991-1994) and Seventeenth (1994-1997) Periods of the ICJ.³ Additional information on the work and composition of the ICJ during the period covered is offered by way of an introductory chapter and the annexes found at the end of the book.

The decade covered in this book forms part of the United Nations Decade of International Law (1990-1999), which was promulgated by UN General Assembly Resolution 44/23 of November 17, 1989. According to Paragraph 2(b) of Resolution 44/23, one of the main purposes of the Decade should be “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.”

Unofficial summaries of the substantive Orders, Judgments and Advisory Opinions of the ICJ that are prepared and issued by the Court’s Registry have been assembled in a United Nations publication entitled “*Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice 1948-1991*.”⁴ This publication, containing some 225 pages of unofficial summaries, is available in all of the official languages of the United Nations (English, French, Spanish, Arabic, Chinese and Russian) and is currently being updated. So far, a work incorporating a set of commentaries and statistics in the form found in the present book has been lacking. This book tries to fill a part of this gap, by bringing together a variety of views on a diverse jurisprudence. It offers concise scholarly and often critical insights into the decisions in various cases that were pending since 1987, with references to the earlier jurisprudence of the World Court.⁵ However, a word of caution is in place here. Convenient as summaries and commentaries may be, it is important to gain first-hand knowledge of the decisions of the Court. An in-depth understanding can only be attained by reading the full text of such decisions, including the declarations and separate and dissenting opinions of individual judges attached to them. The publications of the ICJ, where the official text of its decisions and a description of its work may be found, are described at the end of the introductory chapter.

3 The First Period started on February 6, 1946. “Periods” correspond to the three-year cycles of the Court, one-third of the Court being elected or re-elected every three years.

4 UN Doc. ST/LEG/SER.F/I (1992).

5 This book covers only the ten-year period ending on December 31, 1996. At the time of printing, in the Fall of 1997, the ICJ had rendered only one decision, on September 25, 1997, in *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia).

2 Tribute to ICJ Registrar Eduardo Valencia-Ospina

All of the decisions described in this book have in common that they were countersigned by His Excellency Eduardo Valencia-Ospina, ICJ Registrar since February 1987. The period 1987-1996 was chosen because it covers the first ten years of Eduardo Valencia-Ospina's tenure as ICJ Registrar.

Eduardo Valencia-Ospina, who was born in Cali, Colombia, was first elected Registrar by the Court on February 19, 1987, to serve for a term of seven years, and was re-elected on February 15, 1994. He is the first South American to hold the position of ICJ Registrar. He was Deputy-Registrar between 1984 and 1987. Prior to his election as Deputy-Registrar, he served as the Senior Legal Officer of the Codification Division at the Office of Legal Affairs in the United Nations Secretariat, which he joined in September 1964. He holds the degrees of Doctor of Juridical and Economic Sciences from Javeriana University in Bogotá, Colombia, and was the first Colombian lawyer to receive a graduate degree from the Harvard Law School.

The Registrar, whose title in French is *Greffier* and in Spanish *Secretario-General*, has the rank of Assistant-Secretary-General within the United Nations. He is granted the status of Head of Diplomatic Mission in the host country of the ICJ. The Registrar countersigns all Judgments, Advisory Opinions, Orders and any other formal ICJ decisions together with the ICJ President or Vice-President. He is responsible for the preparation of cases for consideration by the Court and assists each Drafting Committee elected to draft the text of a Judgment or Advisory Opinion. This means that the Registrar is the person who is most closely involved with the preparation of each and every decision rendered by the ICJ. Eduardo Valencia-Ospina has participated in some 30 cases during his tenure at the ICJ (which equals about one-third of the cases that this fifty-year-old institution has dealt with), making him the pre-eminent Registrar in the history of the World Court.

The Registrar is the Chief Administrative, Executive and Financial Officer of the Court, being the head of the administrative organ of the ICJ, the "Registry," which consists of about 50 officials who are appointed by the Court on proposals submitted by the Registrar. The staff of the ICJ Registry is under the sole control of the Registrar. The Registry staff is assigned to several departments, including Legal, Linguistic, Information, Library/Documents, Establishment, Archives/Distribution, Typewriting/Reproduction, Judges' Secretaries, and Printing. The Registrar is responsible for overseeing all of these departments. He serves as the channel for communication between the ICJ and the outside world. In other words, he is the spokesperson for the Court. The Registrar issues all the official communications and notifications provided for

by the ICJ Statute. Every official document that leaves the Registry must bear the signature or initials of the Registrar or his representative. He is responsible for the preparation of the Court's budget estimates and represents the ICJ before the competent authorities of the United Nations in their consideration of the ICJ budget. The Registrar alone is entitled to incur financial liabilities in the name of the ICJ.

The above summary of the role and functions of the ICJ Registrar illustrates the significance of this high-ranking position. Registrar Valencia-Ospina has elevated his office to the highest levels of diplomacy, integrity and professionalism, from which the ICJ has profited during the past decade. His tenth anniversary as ICJ Registrar provided an excellent opportunity to offer this book as a token of affection and admiration. It is with great pleasure that I dedicate this work to Eduardo Valencia-Ospina, whom I had the honor to serve as Associate Legal Officer and Special Assistant in the ICJ Registry from Spring 1992 until Fall 1994.

3 Acknowledgment

The American Society of International Law and various individual contributors have generously granted their permission to republish certain work that was previously published in the *American Journal of International Law*, as indicated throughout this book.

I gratefully acknowledge my debt of gratitude to Dr. Charlotte Ku, Executive Director of the American Society of International Law, for her support of this project and for her assistance in processing the permissions to reprint some of the contributions found in this book.

A special debt of gratitude is extended to David Bederman, Terry Gill, Steven Ratner, Catharine Hartzenbusch, Antony Anghie, Gideon Rottem, and Jonathan Charney for granting their permission to republish the work prepared by them that was previously published in the *American Journal of International Law*.

I am grateful to Keith Highet, John King Gamble, Paul Szasz, Conor McAuliffe and Liz Heffernan for their speedy contributions to fill the gaps in this project.

Roy Lee, Director of the Codification Division in the United Nations Office of Legal Affairs, was helpful in providing me with updated information on the United Nations and the ICJ.

Finally, I am grateful to Kluwer Law International, in particular to Ms. Annebeth Rosenboom, for publishing this work.

Dr. Peter H.F. Bekker
New York City, Fall 1997