dispute was held to derive from previous treaties with the result that *effectivités*, construed as acts *contra legem*, had little value. In the present case, on the other hand, the Court found that no treaty title, or title based on succession, could be shown, with the result, as indicated above, that *effectivités*, though not very impressive either quantitatively or qualitatively, turned out to be the decisive element in the case.

Malaysia's success really hinged on the Court's ruling that Ligitan and Sipadan were not covered by the 1891 Convention, for it was the rejection of Indonesia's arguments on that point which led to the comparison of *effectivités* where its case was always much weaker. In his dissenting opinion Judge *ad hoc* Franck maintained that the Court had interpreted the Convention too narrowly, but when set against the formidable arguments in the judgment, his case here does not seem very convincing. He was on much stronger ground in suggesting that comparing the parties' *effectivités* was like 'trying to weigh precisely a handful of feathers against a handful of grass'.[20] But then this is not the first time sovereignty over disputed islands has been determined by weighing exiguous *effectivités*[21] and given the vagaries of history and geography, it is unlikely to be the last.

From a procedural and institutional standpoint too, the latest case provides a sharp contrast with its immediate predecessor. In the African case jurisdiction and admissibility were contested, matters were complicated by a successful attempt to obtain provisional measures of protection, an unsuccessful request for interpretation of the preliminary judgment, counter-claims by the respondent and an effective third party intervention.[22] As a result that case dragged on for more than eight years. In the present case, in contrast, though the proceedings were interrupted by the attempted intervention of the Philippines, by concluding a special agreement and concentrating on the main issue, Indonesia and Malaysia were able to obtain a decision in less than half that time. Accordingly, another lesson from the story of Ligitan and Sipadan is that when states are prepared to co-operate, litigation in the International Court provides a way of resolving territorial disputes almost as expeditiously as arbitration.

JG MERRILLS

V. CASES BEFORE THE COURT[1]

1. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v United Kingdom*).

Libya instituted proceedings against the United Kingdom and the United States on 3 March 1992, arguing that it was entitled under the Montreal Convention to try those

[20] Dissenting opinion of Judge Franck, para 7. The only other member of the Court to make an individual point was Judge Oda, who, in a declaration, discussed the possible impact of the Court's decision on delimitation of the continental shelf in the region.

[21] See, for example, the decision of the Arbitral Tribunal at the First Stage of the recent *Eritrea/Yemen* case, where sovereignty over disputed islands was the main issue. Text of the Award in (2001) 40 *ILM* 900, and see WM Reisman, Case Note (1999) 93 *AJIL* 668; also N Antunes, 'The Eritrea-Yemen arbitration: First Stage – The Law of Title to Territory Re-Averred'. (1999) 48 *ICLQ* 362.

[22] For a summary of this history, with references to earlier analysis, see Merrills, n 19 above.

[1] As at 31 March 2003.

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suspected of the destruction of Pan Am Flight 103 over Lockerbie itself and requested an award of provisional measures to prevent further action to compel their surrender pending the outcome of the case. In its orders of 14 April 1992[2] the Court declined to do so. In orders of 19 June 1992[3] the following time limits were set for the submission of written pleadings: Libya, memorial, 20 December 1993; United Kingdom and the United States, counter-memorials, 20 June 1995. Preliminary objections were filed by the United Kingdom and the United States on 16 and 20 June 1995 respectively but in its judgments of 27 February 1998[4] the Court found it did have jurisdiction and that the application was admissible. In orders of 30 March 1998[5] the time limit for the filing of counter-memorials by the United Kingdom and the United States was set as 30 December 1998 but by orders of 17 December 1998[6] this was extended to 31 March 1999. In an order of 29 June 1999[7] the Court fixed 29 June 2000 as the time limit for the filing of a reply by Libya and in an order of 6 September 2000[8] the Court fixed 3 August 2001 as the time limit for the filing of a rejoinder by the United Kingdom and the United States.

2. 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*).

See previous entry.

3. Oil Platforms (*Islamic Republic of Iran v United States of America*).

Iran instituted proceedings against the United States on 2 November 1992 with respect to the destruction of Iranian oil platforms, allegedly in breach of the 1955 Treaty of Amity, Economic Relations and Consular Rights. By an order of 4 December 1992[9] the following time limits were set for the submission of written pleadings: Iran, memorial 31 May 1993; United States, counter-memorial, 30 November 1993. These were extended by an order of 3 June 1993[10] to: Iran, memorial, 8 June 1993; United States, counter-memorial, 16 December 1993. On 16 December 1993 the United States filed preliminary objections. In its judgment of 12 December 1996[11] the Court found that it had jurisdiction to entertain the claims[12] and, by an order of 16 December 1996,[13] fixed 23 June 1997 as the date for the submission of the United State's counter-memorial. The counter-memorial, submitted on 23 June 1997, contained a counter-claim against Iran and, in an order of 19 March 1998,[14] the Court held this to be admissible and that it formed a part of the current proceedings. The following time limits were set for the written pleadings on the merits: Iran, reply, 10 September 1998; United States, rejoinder, 23 November 1999. By an order of 26 May 1998[15] these were extended to: Iran, reply, 10 December 1998; United States, rejoinder, 23 May 2000. By an order of 8 December 1998[16] they were further extended to: Iran, reply, 10 March 1999; United

[2] ICJ Rep 1992, 3, 14. See F Beveridge, 'The Lockerbie Affair', (1992) 41 *ICLQ* 907.
[3] ICJ Rep 1992, 231, 234.
[4] See F Beveridge, Case Note, (1999) 48 *ICLQ* 658.
[5] ICJ Rep 1998, 237, 240.
[6] ICJ Rep 1998, 749.
[7] ICJ Rep 1999, 975.
[8] ICJ Rep 2000, 140.
[9] ICJ Rep 1992, 763.
[10] ICJ Rep 1993, 35.
[11] ICJ Rep 1996, 803.
[12] See MD Evans, Case Note, (1997) 46 *ICLQ* 693.
[13] ICJ Rep 1996, 902.
[14] ICJ Rep 1998, 190.
[15] ICJ Rep 1998, 269.
[16] ICJ Rep 1998, 740.

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States, rejoinder, 23 November 2000. By an order of 4 September 2000[17] the time limit for the filing of the US rejoinder was further extended, to 23 March 2001. Following a request from Iran, and which was unopposed by the United States, the Court, by an order of 28 August 2001[18], authorized the filing of an additional pleading by Iran relating to the counter-claim made by the United States and declared admissible by the Court in its order of 19 March 1998,[19] to be submitted by 24 September 2001. Oral hearings were held from 17 February to 7 March 2003[20] and the Judgment is awaited.

4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Yugoslavia*).

The Republic of Bosnia and Herzegovina instituted proceedings against Yugoslavia on 20 March 1993 alleging violations of the 1949 Genocide Convention and requesting an indication of provisional measures, which was made in an order of 8 April 1993.[21] This was reaffirmed in an order of 13 September 1993,[22] following a second request for provisional measures made by Bosnia and Herzegovina on 27 July 1993 and a request made by Yugoslavia on 10 August 1993.[23] By an order of 16 April 1993[24] the following time limits were set for the filing of the written pleadings: Bosnia and Herzegovina, memorial, 15 October 1993; Yugoslavia, counter-memorial, 15 April 1994. By an order of 7 October 1993[25] these were extended to: Bosnia and Herzegovina, memorial, 15 April 1994; Yugoslavia, counter-memorial, 15 April 1995 and, by order of 21 March 1995,[26] the date for the submission of the Yugoslavian counter-memorial was again extended to 30 June 1995. On 26 June 1995 Yugoslavia submitted preliminary objections which were rejected by the Court in its order of 11 July 1996.[27] By an order of 23 July 1996[28] the time limit for filing the Yugoslav counter-memorial was fixed as 23 July 1997. The counter-memorial was filed on 22 July 1997 and contained counter-claims against Bosnia and Herzegovina and, in an order of 17 December 1997,[29] the Court held them to be admissible and that they formed a part of the current proceedings. These counter claims were subsequently withdrawn at the request of Bosnia and Herzegovina, this being noted by the Court in its order of 10 September 2001.[30] The order of 17 December 1997[31] set the following time limits for the written pleadings on the merits: Bosnia and Herzegovina, reply, 23 January, 1998; Yugoslavia, rejoinder, 23 July 1998. By an order of 22 January 1998[32] these were extended to: Bosnia and Herzegovina, reply, 23 April 1998; Yugoslavia, rejoinder, 22 January 1999. By an order of 11 December 1998[33] the time limit for the submission of the Yugoslav rejoinder was further extended, to 22 February 1999.

5. Gabcikovo-Nagymaros Project (*Hungary/Slovakia*).

On 2 July 1993, in pursuance of a Special Agreement of 7 April 1993, Hungary and Slovakia requested the Court to determine certain issues arising out of the implementation

[17] ICJ Rep 2000, 137. [18] ICJ Rep 2001, 568. [19] ICJ Rep 1998, 190.
[20] ICJ Press Communiqué No 2003/13 . [21] ICJ Rep 1993, 3.
[22] ICJ Rep 1993, 325.
[23] See C Gray, Case Note, (1994) 43 *ICLQ* 705. [24] ICJ Rep 1993, 29.
[25] ICJ Rep 1993, 470. [26] ICJ Rep 1995, 80.
[27] ICJ Rep 1996, 595. See C Gray, Case Note, (1997) 46 *ICLQ* 688.
[28] ICJ Rep 1996, 797. [29] ICJ Rep 1997, 243. [30] ICJ Rep 2001, 572.
[31] ICJ Rep 1997, 243. [32] ICJ Rep 1998, 3. [33] ICJ Rep 1998, 743.

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and termination of a 1977 Agreement on the construction and operation of the Gabcikovo-Nagymaros barrage system. In its judgment of 25 September 1997[34] the Court found both States to be in breach of their obligations and called on them to negotiate a settlement in good faith.[35] On 3 September 1998 Slovakia filed a request for an additional judgment, arguing that Hungary was unwilling to implement the judgment[36] and it was subsequently agreed that Hungary would file a written statement of its position regarding this request by 7 December 1998.[37]

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

Guinea instituted proceedings against the Democratic Republic of Congo on 28 December 1998 alleging grave breaches of international law perpetrated upon a national of Guinea. By an order of 25 November 1999[38] the following time limits were set for the submission of written pleadings: Republic of Guinea, memorial, 11 September 2000; Democratic Republic of the Congo, counter-memorial, 11 September 2001. By an order of 8 September 2000[39] these were extended to: Republic of Guinea, memorial, 23 March 2001; Democratic Republic of the Congo, counter-memorial, 4 October 2002. On 3 October 2002 the Democratic Republic of the Congo filed preliminary objections to the admissibility of the Application and in an order of 7 November 2002[40] the Court fixed 7 July 2003 as the time limit for submission of written observations by the Republic of Guinea.

7. Legality of Use of Force (*Yugoslavia v Belgium*).

Yugoslavia instituted proceedings against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States of America on 29 April 1999, alleging that they had been involved in the bombing of Yugoslav territory in violation of their obligations not to use force against another state and requested an award of provisional measures calling upon them to cease doing so. In its orders of 2 June 1999[41] the Court declined to do so and struck the applications against Spain and the United States of America from its list.[42] In orders of 30th June 1999[43] the following time limits were set by the Court for the submission of written pleadings: Yugoslavia, memorial, 5 January 2000; respondent States, counter-memorials, 5 July 2000. On 5 July 2000 the respondent States filed preliminary objections to the jurisdiction of the Court and the admissibility of the application and in an order of 8 September 2000[44] the Court fixed 5 April 2001 as the time limit for the submission of written observations by Yugoslavia. In an order of 21 February 2001[45] this was extended to 5 April 2002 and, in an order of 20 March 2002,[46] further extended to 7 April 2003.

[34] ICJ Rep 1997, 7.
[35] See PN Okowa, Case Note, (1998) 47 *ICLQ* 688.
[36] ICJ Press Communiqué No 98/28.
[37] ICJ Press Communiqué No 98/31.
[38] ICJ Rep 1999, 1042.
[39] ICJ Rep 2000, 146.
[40] ICJ Press Communiqué No 2002/33
[41] ICJ Rep 1999, 124 (Belgium); 259 (Canada); 363 (France); 422 (Germany); 482 (Italy); 542 (Netherlands); 656 (Portugal); 761 (Spain); 826 (United Kingdom); 916 (United States of America).
[42] See C Gray, Case Note, (2000) 49 *ICLQ* 730.
[43] ICJ Rep 1999, 988.
[44] ICJ Rep 2000, 149.
[45] ICJ Rep 2001, 13.
[46] ICJ Press Communiqué No 2002/10.

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8. Legality of Use of Force (*Yugoslavia v Canada*).

See previous entry.

9. Legality of Use of Force (*Yugoslavia v France*).

See previous entry.

10. Legality of Use of Force (*Yugoslavia v Germany*).

See previous entry.

11. Legality of Use of Force (*Yugoslavia v Italy*).

See previous entry.

12. Legality of Use of Force (*Yugoslavia v Netherlands*).

See previous entry.

13. Legality of Use of Force (*Yugoslavia v Portugal*).

See previous entry.

14. Legality of Use of Force (*Yugoslavia v United Kingdom*).

See previous entry.

15. Armed activities on the territory of the Congo (*Democratic Republic of the Congo v Uganda*).

The Democratic Republic of the Congo (DRC) instituted proceedings against Burundi, Uganda and Rwanda on account of 'acts of armed aggression'. In an order of 21 October 1999[47] the following time limits were set for the submission of written proceedings on the merits of the dispute: DRC, memorial, 21 July 2000; Uganda, counter-memorial, 21 April 2001. On 19 June 2000 the DRC made a request for an award of provisional measures, which was made by the Court in its order of 1 July 2000.[48] The Ugandan counter-memorial had contained three counter-claims against the DRC and, in an order of 29 November 2001,[49] the Court held that two of these to be admissible and that they formed a part of the current proceedings, dismissing the third. It then authorized a further round of written pleadings on the merits and set the following time limits: DRC, reply, 29 May 2002; Uganda, rejoinder, 29 November 2002 (extended by an order of 7 November 2002[50] until 7 December 2002). In an order of 29 January 2003[51] the

[47] ICJ Rep 1999, 1022.
[48] ICJ Rep 2000, 111and see D Kritsiotis, Case Note, (2001) 50 *ICLQ* 662.
[49] ICJ Rep 2001, 660.
[50] ICJ Press Communiqué No 2002/32.
[51] ICJ Press Communiqué No 2003/12.

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Court authorized the filing of an additional written pleading by the DRC relating solely to the Ugandan counter-claims, to be filed by 28 February 2003.

16. Application of the Convention on the Prevention and Punishment of the Crime of Genocide *(Croatia* v *Yugoslavia*).

Croatia instituted proceedings against Yugoslavia on 2 July 1999, alleging violations of the 1949 Genocide Convention and seeking reparations. In an order of 14 September 1999[52] the following time limits were set for the submission of written pleadings: Croatia, memorial, 14 March 2000; Yugoslavia, counter-memorial, 14 September 2000. In an order of 10 March 2000[53] these were extended to: Croatia, memorial, 14 September 2000, Yugoslavia, counter-memorial, 14 September 2001. By an order of 27 June 2000[54] these were further extended to: Croatia, memorial, 14 March 2001; Yugoslavia, counter-memorial, 16 September 2002. On 11 September 2002 Yugoslavia filed preliminary objections to the jurisdiction and admissibility of the Application and in an order of 14 November 2002[55] the Court fixed 29 April 2003 as the time limit the submission of written observations by Croatia.

17. Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea *(Nicaragua* v *Honduras*).

Nicaragua instituted proceedings against Honduras on 8 December 1999 regarding a dispute concerning the delimitation of maritime zones between them in the Caribbean Sea and requesting that the Court determine the course of a single maritime boundary between their respective areas of territorial sea, continental shelf and exclusive economic zone. In an order of 21 March 2000[56] the following time limits were set for the submission of written pleadings: Nicaragua, memorial, 21 March 2001; Honduras, counter-memorial, 21 March 2002. In an order of 13 June 2002[57] a further round of written pleadings was authorized and the following time limits set: Nicaragua, reply, 13 January 2003; Honduras, rejoinder, 13 August 2003.

18. Certain Property (*Liechtenstein v Germany*).

Liechtenstein instituted proceedings against Germany on 1 June 2001 in a dispute concerning decisions of Germany to treat certain property of Liechtenstein nationals as German assets seized for the purposes of reparation as a consequence of World War II without ensuring any compensation. By an order of 28 June 2001[58] the following time limits were set for the submission of written pleadings: Liechtenstein, memorial, 28 March 2002; Germany, counter-memorial, 27 December 2002. On 27 June 2002 (and thus within three months of the submission of the memorial) Germany filed preliminary objections to the jurisdiction and admissibility of the Application and in an order of 12 July 2002[59] the Court fixed 15 November 2002 as the time limit the submission of written observations by Liechtenstein.

[52] ICJ Rep 1999, 1015.
[53] ICJ Rep 2000, 3.
[54] ICJ Rep 2000, 108.
[55] ICJ Press Communiqué No 2002/34.
[56] ICJ Rep 2000, 6.
[57] ICJ Press Communiqué No 2002/17.
[58] ICJ Rep 2001, 565.
[59] ICJ Press Communiqué No 2002/20.

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19. Territorial and Maritime Dispute (*Nicaragua v Colombia*).

Nicaragua instituted proceedings against Colombia on 6 December 2001 with regard to 'legal issues subsisting' between Nicaragua and Colombia 'concerning title to territory and maritime delimitation' in the western Caribbean'.[60] By an order of 26 February 2002[61] the following time limits were set for the submission of written pleadings: Nicaragua, memorial, 28 April 2003; Colombia, counter-memorial, 23 June 2004.

20. Frontier Dispute (*Benin/Niger*)

On 3 May 2002, in pursuance of a Special Agreement signed on 15 June 2001 (in force 11 April 2002), Benin and Niger seised the Court of a dispute concerning the course of their boundary in the River Niger, the ownership of islands in that river (in particular, Lété island) and the course of their boundary in the River Mekrou. In an order of 27 November 2002[62] the Court acceded to the request of the parties that a special Chamber be formed to deal with the case, comprising President Guillaume, Judges Ranjeva and Kooijmans and Judges *ad hoc* Bedjaoui (chosen by Niger) and Bennouna (chosen by Benin). In that order the Court also set 27 August 2003 as the time limit for the submission of a memorial by both parties.

21. Armed Activities on the Territory of the Congo (New Application: 2002) *(Democratic Republic of Congo v Rwanda*)

The Democratic Republic of the Congo (DRC) instituted proceedings against Rwanda on 28 May 2002, alleging violations of human rights and international humanitarian law resulting from acts of armed aggression and also requested an award of provisional measures to prevent irreparable harm flowing from the occupation of parts of its territory by Rwandan forces. In an order of 10 July 2002[63] the Court declined to do so, but also rejected the Rwandan request that the case be removed from the list. At the suggestion of Rwanda, in an order of 18 September 2002[64] the Court decided to first consider questions concerning its jurisdiction and the admissibility of the application and the following time limits were set for the submission of written pleadings: Rwanda, memorial, 20 January 2003; DRC, counter-memorial, 20 May, 2003.

22. 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 an Application for revision of the Judgment of the Chamber of the Court in the above-mentioned case as regards the course of the boundary as determined by the Court in the sixth sector of the land boundary. In an order of 27 November 2002[65] the Court acceded to the request of the parties that a

[60] ICJ Press Communiqué No 2001/34.
[61] ICJ Press Communiqué No 2002/07.
[62] ICJ Press Communiqué No 2002/41.
[63] ICJ Press Communiqué No 2002/19. See C Brown, Case Note, above, at 782.
[64] ICJ Press Communiqué No.2002/22.
[65] ICJ Press Communiqué No 2002/40.

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special Chamber be formed to deal with the case, comprising President Guillaume, Judges Rezek and Buergenthal and Judges *ad hoc* Torres Bernárdez (chosen by Honduras) and Paolillo (chosen by El Salvador). In that order the Court also set 1 April 2003 as the time limit for Honduras to submit written observations on admissibility of the Application.

23. Avena and other Mexican Nations (*Mexico v United States of America*)

Mexico instituted proceedings against the United States of America on 10 January 2003 alleging violations of the 1963 Vienna Convention on Consular Relations with respect to 54 Mexican nationals sentenced to death in ten States of the USA and requested an award of provisional measures. In an order of 5 February 2003[66] the Court indicated that all necessary measures be taken, inter alia, to ensure that three Mexican nationals not be executed and reserved its right to indicate further provisional measures pending the final judgment if appropriate.

VI. OTHER DEVELOPMENTS

1. The Court has issued a new Practice Direction, IX, concerning exceptional circumstances in which documents might be submitted after the closure of written proceedings. It has also indicated a number of changes to its working methods, including: that a single round of written proceedings is to be considered the norm in cases begun by means of an application; reinforcing the need for oral argument to be limited that what was reasonably required by the parties; and explaining its intention to make greater use of its capacity to give specific indications to the parties of areas to focus upon in oral proceedings.[67]

2. In the triennial election of five members to the Court held on 21 October 2002 the UN General Assembly and Security Council re-elected Judges Jiuyong (China) and Koroma (Sierra Leone) and elected Hisahi Owada (Japan), Bruno Simma (Germany) and Peter Tomka (Slovakia). These terms of office began on 6 February 2003 and will expire on 5 February 2012.[68]

3. On 9 December 2002 the Republic of the Congo presented an Application against France regarding proceedings for crimes against humanity and torture commenced, inter alia, against the Congolese Foreign Minister, and also as regards warrants for the witness hearing of the President of the Republic of the Congo. A request for provisional measures was also made.[68] The applicant sought to base the Court's jurisdiction on the consent of the respondent under Article 38 (5) of the ICJ Statute (*forum prorogatum*). This was given on 11 April 2003 and hearings on the request for provisional measure were held on 28–29 April.[69]

4. On 17 December 2002 the Court gave Judgment in the case concerning Sovereignty over Pulau Ligitan and Pulau Sipidan *(Indonesia/Malasyia*), in which it found that sovereignty over the Islands belonged to Malaysia.[70]

[66] ICJ Press Communiqué No 2003/9.
[67] ICJ Press Communiqué No 2002/12.
[68] ICJ Press Communiqué No 2002/37.
[69] ICJ Press Communiqué No 2003/14.
[70] ICJ Press Communiqué No 2002/39. See JG Merrills, Case Note, above at 797.

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5. On 3 February 2003 the Court gave Judgment in the case concerning the 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*), finding that Application inadmissible.[71]

6. On 6 February 2003 Vice-President Jiuyong was elected President and Judge Ranjeva elected Vice-President of the Court. Both will serve a three-year term of office.[72]

7. On 7 February 2003 the Court determined the membership of its Chamber of Summary Procedure as comprising President Jiuyong, Vice-President Ranjeva and Judges Parra-Aranguren, Al-Khasawneh, Buergenthal (with Judges Elarby and Owada as substitutes) and the membership of its Chamber for Environmental Matters as comprising President Jiuyong, Vice-President Ranjeva and Judges Kooijmans, Rezek, Simma and Tomka.

[71] ICJ Press Communiqué No 2003/8. This judgment will be the subject of a Case Note in a subsequent part of the Quarterly.
[72] ICJ Press Communiqué No 2003/10.

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