III.259. TERMINOLOGY. Articles 1 to 8 of the Rules of Court constitute the first half of the major restructuring of the Rules completed in 1978. That consists in treating separately the Court as a standing institution, the fifteen members elected in accordance with Articles 2 to 15 of the Statute as described in chapter 6, and the Court as constituted for a particular case or phase of a case, the Bench. The expression The Court, used loosely, has two meanings. One is the collectivity of those fifteen elected members. The second is the bench. The two are not necessarily the same. Under the Statute, absence on leave of members of the Court, the triennial cadence of elections, resignations, sickness and mortalities, the addition of what are named judges ad hoc appointed by the parties, and ineligibilities create differences.¹ Article 1 of the Rules of Court states this clearly:

1. The Members of the Court are the judges elected in accordance with Articles 2 to 15 of the Statute.
2. For the purposes of a particular case, the Court may also include upon the Bench one or more persons chosen under Article 31 of the Statute to sit as judges ad hoc.

¹ See § III.266 below. In addition there are other human reasons for changes in the composition of the Court or of a bench.
3. In the following Rules, the term “Member of the Court” denotes any elected judge; the term “judge” denotes any Member of the Court and any judge ad hoc.

This chapter is concerned with the bench, the ladies and gentlemen, members of the Court and others (particularly assessors and experts appointed by the Court), who, in the words of a former Registrar, ‘will take part in the decision of that particular case’. For this purpose, taking part in a decision includes not merely the judicial operation that ends with a vote, which only judges can perform, but others, specifically assessors, experts appointed by the Court, and members of the registry staff who can take part in the deliberations of the bench but without the right to vote. The Statute also envisages the constitution of smaller standing collectivities of members of the Court and others for certain purposes. These are designated Chambers. Here too there is a distinction between a Chamber as such, and the bench for a particular case. That distinction applies to two of the chambers which the Court may create: the chamber for special categories of case under Article 26, paragraph 1, of the Statute (termed here Special Chambers), and the Chamber of Summary Procedure required under Article 29 of the Statute – both standing chambers of the Court.

Article 1 omits an opening phrase which has become standard in modern international drafting – ‘for the purposes of the present Rules’. However, the Article must be read as being subject to this limitation, since the Statute, and possibly other instruments, may use the same words with other meanings.

Article 1 of the Rules in its present form is new. However, it does not exhaust the terminology used in the Statute and the 1978 Rules. They also use the term ‘senior judge’. By Article 3, paragraph 6, of the Rules the ‘senior judge’ is the member of the Court who takes precedence next after the President and Vice-President; and if that member is unable to

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2 Gulf of Maine case, VII Pleadings 296, 297 at 299 (docs. 21, 23), letter of 18 March 1982 from the Registrar (Torres-Bernárdez) to the agent of Canada, regarding the position of the judge ad hoc chosen by Canada to sit in the Chamber which decided that case in relation to the full Court. The Registrar added that this part of the letter was written ‘in my capacity as Registrar of the Court, and without prejudging in any way the position the Court might adopt in this matter’. Others who may sit on the bench in a particular case or phase of a case and take part in the Court’s deliberations, but not in its decision, are assessors and in certain circumstances experts appointed by the Court. Further on this at §§ III.275, 276 below. The meaning of ‘case’ in this context – whether it means the case as a whole or a phase in a case – is not clear.