THE ACTIVITY OF THE INTERNATIONAL COURT OF JUSTICE IN 2011

PAOLO PALCHETTI*

1. COMPOSITION OF THE COURT

On 10 November 2011, Judges Owada, Tomka and Xue Hanquín were re-elected as Members of the Court. On the same day, Giorgio Gaja was elected as a new Member of the Court. Judge Gaja is the fourth judge of Italian nationality sitting on the bench of the Court. Before him, the other Italian judges were Judge Morelli (1961-1970), Judge Ago (1979-1995) and Judge Ferrari Bravo (1995-1997).

Under Article 10, paragraph 1, of the Statute of the Court, only “[t]hose candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected”. Article 11 then provides that “[i]f, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place”. After the election which took place on 10 November 2011, one seat still remained unfilled, as no candidate obtained an absolute majority in both the General Assembly and the Security Council. At a new election on 13 December 2011 Julia Sebutinde, of Ugandan nationality, was elected as a Member of the Court. When, on 5 February 2012, she will start her term of office, there will be three women sitting on the bench of the Court, the other two being Judge Xue and Judge Donoghue.

2. DOCKET OF THE COURT

In 2011, two new cases were submitted to the Court. In April, Cambodia instituted proceedings against Thailand under Article 60 of the Statute of the Court. Cambodia requested an interpretation of the Judgment rendered in 1962 by the International Court of Justice in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand). In its 1962 Judgment the Court held that the Temple of Preah Vihear was situated in territory under sovereignty of Cambodia. However, starting from 2008, serious incidents involving the armed forces of the two States occurred in the area of the Temple. In its Application, Cambodia asked the Court to adjudge, inter alia, that “Thailand is under an obligation to withdraw any military or other personnel from the vicinity of the Temple on Cambodian territory”. Together with the Application, Cambodia also submitted a request for the indication of provisional measures. In December, Nicaragua instituted proceeding against

* Professor of International Law, University of Macerata.
Costa Rica. The dispute concerns construction works carried by Costa Rica along the border area between the two countries. Nicaragua contends that these works have resulted in violations of Nicaraguan sovereignty and environmental damages to its territory. Nicaragua’s Application was submitted almost one year after the Application filed by Costa Rica, by which that State claimed that, by sending military contingents to Costa Rican territory and establishing military camps therein, Nicaragua had breached the fundamental principles of territorial integrity and the prohibition of use of force, as well as other obligations stemming from treaties such as the 1858 Treaty of Limits and the Ramsar Convention on Wetlands. In its Application, Nicaragua stated that, since the legal and factual grounds of its Application are connected to the proceedings instituted by Costa Rica, it “reserves its right to consider in a subsequent phase of the present proceedings […] whether to request that the proceedings in both cases should be joined”.

On April 2011 the case concerning Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland) was removed from the Court’s list at the request of Belgium. Belgium’s request was motivated by reference to the fact that, in its memorial on preliminary objections, Switzerland had clarified that there is “nothing to prevent a Belgian judgment, once handed down, from being recognized in Switzerland in accordance with the applicable treaty provision”. Interestingly, Belgium specified that the decision to request the discontinuance of the case had been taken by the Belgian Government “in concert with the Commission of the European Union”.

In 2011, the Court rendered judgment on the merits in the case concerning Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece). The Court also found that it had no jurisdiction to decide the dispute in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation).

At the end of 2011, 15 cases were pending before the Court. In a speech to the General Assembly, President Owada noted that, in order to eliminate a backlog on judicial work, the Court had introduced some novelties in its method of working. In particular, he referred to the fact that the Court has been consistently handling cases in parallel and shortening the time between the closure of written proceedings and the opening of the oral proceedings. While noting the increase in the number of cases in the docket of the Court, President Owada invited the Security Council to pay more attention to the possibility of making use of the International Court of Justice. He noted that the Security Council could give much more attention to Article 36, paragraph 3, of the United Nations Charter and “consider the possibility of much fuller use of the Court in a number of cases which come before the

---

1 Speech by H.E. Judge Hisashi Owada, President of the International Court of Justice, to the Sixty-Sixth Session of the General Assembly of the United Nations, 26 October 2011, p. 14.