# VIENNA CONVENTION ON CONSULAR RELATIONS (*PARAGUAY* v. *UNITED STATES OF AMERICA*) (*"BREARD"*) AND LAGRAND (*GERMANY* v. *UNITED STATES OF AMERICA*), APPLICATIONS FOR PROVISIONAL MEASURES

## *A. Introduction*

Article 41 of the Statute of the International Court of Justice is the main source of the Court's authority to make provisional measures. It provides, *inter alia*, that: "The Court shall have the power to indicate, if it considers the circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party."

In its broad formulation, the provision, understandably, does not address specific issues of law and procedure but these have been fleshed out by the Court in its Rules of Procedure and jurisprudence. With over 50 years of experience, and the benefit of the wisdom of the Permanent Court of International Justice,[1] the Court has developed some clear principles relating to provisional measures of protection. The process of development is ongoing and each request raises its own special issues and it is, therefore, true to say that all the relevant principles are by no means settled. Key aspects of basic questions, such as when the Court may use its powers under Article 41 and whether there are any procedural or substantive limitations inherent in the Court's powers, continue to arise in litigation before the Court. The recent rise in the numbers of requests for the Court to indicate provisional measures[2] provides many opportunities to consider some of the remaining uncertainties. This comment assesses some of the principles and issues raised in two of the most recent considerations of the matter before the Court: the *Breard*[3] and *LaGrand*[4] cases.

## *B. The Cases Against the United States*

In April 1998 and March 1999 Paraguay and Germany respectively filed applications before the Court against the United States[5] alleging violations of

1. There was a similar provision in the Statute of the PCIJ, the predecessor to the ICJ. For a review of the provisional measures of the PCIJ see M. N. Mendelson, "Interim Measures of Protection in Cases of Contested Jurisdiction" (1972–73) 46 B.Y.I.L. 259. See also Shigeru Oda, "Provisional Measures. The Practice of the International Court of Justice", in Vaughan Lowe and Malgosia Fitzmaurice, *Fifty Years of the International Court of Justice. Essays in Honour of Sir Robert Jennings* (1996), p.542.

2. So far, the Court has granted provisional measures in ten cases and denied them in five others. Another two became passé. Eight of the decisions relating to provisional measures were made between 1990 and 1999 alone, representing 53% of all the Court's decisions in the matter.

3. *Vienna Convention on Consular Relations (Paraguay* v. *United States of America), Provisional Measures*, order of 9 Apr. 1998, I.C.J. Rep. 1998, 248.

4. *LaGrand (Germany* v. *United States of America), Provisional Measures*, Order of 3 Mar. 1999, I.C.J. Rep 1999, 9.

5. The *Breard* case has now been discontinued at the request of Paraguay. See order of 10 Nov. 1998 (I.C.J. Rep. 1998, 426). *LaGrand* is still pending before the Court.

Articles 5[6] and 36[7] of the Vienna Convention on Consular Relations.[8] Both applicants maintained that nationals of their respective countries (Angel Francisco Breard in the case of Paraguay and Karl and Walter LaGrand in the German case), who had been convicted of serious criminal offences in the United States, were not informed, as required by Article 36(1)b of the Vienna Convention, of their right to contact consular officials in the United States. Further, consular officials had not been informed of the arrests and detention. In both cases, the accused were, at the time of the applications, facing the death penalty and all domestic remedies had been exhausted. Paraguay and Germany both asked the Court to adjudge and declare, *inter alia*, that:

(1) the United States is obliged not to rely on its domestic law, especially the doctrine of "procedural default" to preclude the exercise of rights under the Vienna Convention on Consular Relations;
(2) the criminal liability imposed on the accused in violation of international law should be recognised by United States authorities as void;
(3) the United States restore the *status quo ante*, that is, re-establish the situation which existed before the breach of the Vienna Convention on Consular Relations;[9]
(4) the United States provide guarantees of the non-repetition of the illegal acts;
(5) They are entitled to reparation for the illegal acts.[10]

The jurisdiction of the Court was, according to the applicants, founded on Article 36(1) of the Statute of the Court[11] and on Article 1 of the Optional

6. Art.5 of the Vienna Convention on Consular Relations (1963) provides *inter alia*, that: "Consular functions consist in: (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law; ... (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests."

7. Art.36(1)(b) provides: "1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: (a) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph."

8. Done on 24 Apr. 1963, 596 U.N.T.S. 262.

9. In the German application, this claim was restricted to Walter LaGrand because Karl LaGrand had already been executed.

10. Paraguay claimed *restitutio in integrum* while Germany focused on compensation for the execution of Karl LaGrand on 24 Feb. 1999.

11. Art.36(1) of the Statute embodies the so-called compulsory jurisdiction of the Court and it provides: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and Conventions in force."

Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes.[12] As the United States had all but conceded the breaches of the Convention, the above issues may be encapsulated under the broad heading of the consequences of such a breach. As the Convention itself does not identify any particular consequences, the conclusions of the Court in this regard would be of immense academic and practical interest.

### *C. Provisional Measures*

Meanwhile, considering the imminence of the scheduled execution dates at the time of the applications,[13] the Court was also requested to order provisional measures restraining the United States from implementing the death sentences while the cases were under consideration by the Court. Both applications argued the grounds for their requests and the possible consequences of its dismissal in terms similar to the following from the Paraguayan application:[14]

> Under the grave and exceptional circumstances of this case, and given the paramount interest of Paraguay in the life and liberty of its national, provisional measures are urgently needed to protect the life of Paraguay's national and the ability of this Court to order the relief to which Paraguay is entitled: restitution in kind. Without the provisional measures requested, the United States will execute Mr Breard before this Court can consider the merits of Paraguay's claims, and Paraguay will be forever deprived of the opportunity to have the *status quo ante* restored in the event of a judgment in its favour.

In the case of Paraguay this request was granted a few days later after an oral hearing.[15] The German request for interim measures, on the other hand, was granted by the Court *proprio motu* in accordance with the powers conferred by Article 75(1) of the Court's Rules of Procedure.[16] The order was made without having heard argument from the parties. The Court justified this unprecedented action on account of the urgency of the situation.[17]

The United States unsuccessfully contested both applications for provisional measures, with an opportunity to set out its arguments during the oral hearings of the *Breard* case. Considering the similarity of issues in the two cases, it is conceivable that arguments similar to those presented in the *Breard* case would

12. Done at Vienna, 24 Apr. 1963. 596 U.N.T.S. 488 (1963). Art.1 of the Optional Protocol provides that: "Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being Party to the present Protocol."

13. The Paraguayan application was filed on 3 Apr. 1998 and Angel Breard was scheduled to be executed on 14 Apr. 14. Walter LaGrand was scheduled to be executed on 3 Mar. 1999, a day after Germany initiated its litigation against the US.

14. *Breard*, *supra* n.3, at para.8. See also *LaGrand*, *supra* para. 8.

15. The Court decided, *Breard*, *idem*, para.41: "The United States should take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings, and should inform the Court of all measures which it has taken in implementation of this Order."

16. Art.75(1) of the Rules of Procedure provides: "The Court may at any time decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties."

17. See *LaGrand* para.12. The proposal not to hear argument was originally made by Germany.

have been relied upon in the *LaGrand* case had there been an opportunity to do so. At the oral hearings to consider the application for provisional measures in the *Breard* case, the United States relied on three broad arguments, relating broadly to the jurisdiction of the Court, equality of arms and public policy.

*1. Jurisdiction*

In contesting Paraguay's application for provisional measures, the United States argued that the Court had no jurisdiction to hear the case. This was based on two separate but related contentions. First, the Court had no jurisdiction to hear the case because there was no dispute between the parties as to the interpretation or application of the Vienna Convention on Consular Relations. As far as the United States was concerned, both parties were *ad idem* that Article 36 of the Convention conferred the rights of notification identified in the Paraguayan application. Furthermore, the United States had conceded the omission to notify Mr Breard of his rights and the Paraguayan consul of Mr Breard's arrest and detention. In recognition of the error of its ways the United States had already apologised to Paraguay for the omission and had also undertaken to ensure that the omissions do not occur in the future.[18] In the same vein, Paraguay's objections to the criminal proceedings against Mr Breard did not constitute a dispute concerning the interpretation of the Convention

The second string to the jurisdiction argument was that, as it appeared that Paraguay's arguments would not enable it successful on the merits of the case, provisional measures should not be ordered.[19] In support of this contention the United States reasoned that although the accused was not informed of his rights under the Vienna Convention, he had received all the necessary legal assistance, had understood the nature of the criminal proceedings and had also admitted his guilt. Therefore, consular assistance would not have made much difference to the outcome. In addition, Paraguay had no legally cognisable claim to the relief sought in its application. There was no entitlement to *restitutio in integrum* under the terms of the Vienna Convention on Consular Relations[20] and, further, the invalidation of the criminal conviction for which Paraguay stood in its application had no foundation in the text or *travaux préparatoires* of the Vienna Convention on Consular Relations or in State practice. State practice in matters of Article 36(1) notifications is uneven and failures to notify are often remedied by apology. In any case, according to the United States, such a penalty would be unworkable in practice.[21]

Since the *Fisheries Jurisdiction* case, the Court has consistently held that it is not necessary for it to satisfy itself conclusively that it has jurisdiction on the merits of a case in order to be able to indicate provisional measures, although it ought not make indications for provisional measures if the absence of jurisdiction is

18. *Breard*, *supra* n.3, at para.28.
19. See, generally, *idem* para.20.
20. *Idem* para.28.
21. *Idem* paras.18 and 20.

manifest.[22] This view has been restated in a long line of cases.[23] In the *Nuclear Tests* case, for example, the Court found that:[24]

> Whereas on a request for provisional measures the Court need not, before indicating them, finally satisfy itself that it has jurisdiction on the merits of the case, and yet ought not to indicate such measures unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded.

On account of this established practice, the Court's reaction to the US arguments relating to its jurisdiction, especially the second strand, was fairly predictable. The *prima facie* standard was reiterated by the Court in the *Breard* decision,[25] adding that "the existence of the relief sought by Paraguay under the Convention can only be determined at the stage of the merits; and ... the issue of whether any such remedy is dependent upon evidence of prejudice to the accused in his trial and sentence can equally only be decided upon at the merits".[26] The Court was similarly unpersuaded by the suggestion that there was no dispute between the parties. In the opinion of the Court, "there exists a dispute as to whether the relief sought by Paraguay is a remedy available under the Vienna Convention, in particular in relation to Articles 5 and 36 thereof".[27] As a dispute relating to the consequences of a breach of the Vienna Convention, the Court had little difficulty in founding jurisdiction under Article 1 of the Optional Protocol Concerning the Compulsory Settlement of disputes.[28]

### 2. *Equality of arms*

The United States argued further that provisional measures must take account of the rights of both parties in order to maintain a fair balance. This would not be the situation if the Paraguayan request were granted.[29] The principle of equality of arms is an inherent part of the right to a fair hearing in any litigation, including incidental proceedings before the Court. The Court therefore has to be mindful of the impact of its provisional orders on the equality of arms principle. It is indeed arguable that by seeking to preserve the rights of litigants, provisional measures aim to ensure the equality of arms in litigation before the Court. It follows that not

22. *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Interim Protection*, order of 17 Aug. 1972, I.C.J. Rep. 1972, 30, para.16.

23. See e.g. *Aegean Sea Continental Shelf (Greece* v. *Turkey), Interim Protection*, order of 11 Sept. I.C.J. Rep. 1976, 3 and *Military and Paramilitary Activities in and Nicaragua (Nicaragua* v. *United States of America), Provisional Measures*, order of 10 May 1984, I.C.J. Rep. 1984, 169.

24. *Nuclear Tests (Australia* v. *France) Interim Protection*, order of 22 June 1973, I.C.J. Rep. 1973, 99, para.13.

25. *Breard*, *supra* n.3, at para.23, where the Court concluded: "on a request for the indication of provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, but ... it may not indicate them unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded".

26. *Idem*, para.33.

27. *Idem*, para.31.

28. *Idem*, paras.31 and 34.

29. *Idem*, para.21.

all claims to preserve rights will necessarily conform to the need to maintain equality of arms. The nature and context of the Court's interpretation of its powers to indicate provisional measures ensures that parties maintain a balance in their standing. In the first place the rights in need of preservation must refer to rights which are the subject of dispute in the judicial proceedings and, perhaps more importantly, that they are at risk of irreparable prejudice.[30] In addition, provisional measures are justified if there is urgency[31] about the threat of potential prejudice to the rights in question. In the *Breard* case and, by extension of the argument, the *LaGrand* case, the scheduled execution of the accused would render it impossible for the Court to order the relief sought by Paraguay or Germany. It was the uncontestable urgency in the *Breard* and *LaGrand* cases which led Judges Schwebel and Oda to vote with the rest of the Court despite their strong reservations about the final decisions.

The question of equality of arms was also at the centre of the decision of the Court to order provisional measures without hearing argument from the parties in the *LaGrand* case. Although the Court claimed to have granted the order *proprio motu*, it did so at the instigation of the applicant in the case. Not to have heard the respondent's view in the case raises obvious issues of equality of arms in the litigation. This was an issue which caused Judge Schwebel sufficient concern for him to question if the Court's approach was "consistent with the fundamental rules of the procedural equality of the parties".[32] Schwebel argued fairly strongly on the distinction between Article 74 of the Court's Rules of Procedure,[33] which should govern situations in which a party makes an application before the Court on the one hand, and Article 75(1), by which the Court is empowered to indicate provisional measures under its own steam. According to Schwebel,

> The Rule [Article 75(1)] assumes that the Court may act on its own motion where a party has not made a request for the indication of provisional measures. But the Court's consideration of the matter in this case has only been provoked by Germany's application and its request for provisional measures. Article 74 of the Rules provides that, when a party makes such a request, the Court shall arrange "a hearing which will afford the parties an opportunity of being represented at it". No such hearings have been held, arranged or contemplated in the current case.

Despite his reservations he nevertheless voted for the order and hoped that the Court's action would not form a precedent. In the circumstances, his decision to support the order rather than vote against it is correct. The distinction sought to be drawn between Articles 74 and 75 of the Rules of Procedures is, on reflection, not a particularly secure one and may be justified only by reading Article 75(1) in

30. In *Aegean Sea Continental Shelf*, *supra* n.23, the Court rejected the Greek application for provisional measures because the Court reasoned that the harm alleged in the Greek application might be capable of reparation by appropriate means.

31. The application by Switzerland in *Interhandel, Interim Protection*, order of 24 Oct. 1957, I.C.J. Rep. 1957, 105 was dismissed on account of a lack of urgency.

32. Separate Opinion of President Schwebel in *LaGrand*, *supra* n.4, at p.21.

33. The relevant provision in the Rules of Procedure is Art.74(3) which provides: "The Court, or the President if the Court is not sitting, shall fix a date for a hearing which will afford the parties an opportunity of being represented at it. The Court shall receive and take into account any observations that may be presented to it before the closure of the oral proceedings.".

isolation and thus out of context. The Court's power to indicate its own provisional measures even when a party has made an application is confirmed in Article 75(2), which provides:

> When a request for provisional measures has been made, the Court may indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request.

Schwebel's concern for equality of arms is, however, totally valid because it does not appear on reading the Rules of the Court that a hearing should be dispensed with without overwhelming and compelling reasons.

Confronted with the imminent execution of LaGrand, the Court chose to follow what seemed to it to be the most effective way of securing his life and the rights of Germany. This decision was influenced largely by the extreme urgency of the matter, contributed to by the absence of credible evidence that the US authorities would show goodwill by staying the execution while the matter was argued before the Court. The distrust of the US authorities seemed to be confirmed by the fact that despite the indication of provisional orders requesting the United States "to take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings", the execution nevertheless went ahead as scheduled. Mr Breard was similarly executed in spite of a similarly worded order from the Court. The decision by the US authorities after both the *Breard* and *LaGrand* cases to execute the accused in the face of the Court's orders rekindles the debate as to whether provisional measures are legally binding, and if so whether the US authorities had complied with the Court's order, an interesting matter which unfortunately lies beyond the scope of this short note.

*3. Public policy*

Finally, the United States made what is, in essence, a general public policy argument to the effect that provisional measures in the circumstances of the instant case would be contrary to the interests of States parties to the Vienna Convention on Consular Relations and the international community as a whole. According to the United States, the order sought by Paraguay would disrupt criminal justice systems, given the risk of a proliferation of cases.[34] This is not an argument which the Court addressed directly but perhaps there was little need to do so. If States parties such as Paraguay and Germany agreed with the US argument, they would not seek provisional measures from the Court. The litigation was an indication that they did not consider that such measures would disrupt their criminal justice systems. The Court was, however, keen to point out that the issues in the case did not concern the entitlement of the United States to resort to the death penalty for serious crimes, and also that it is not its function to act as an international court of criminal appeal.[35]

The decisions to indicate provisional measures in the context of the *Breard* and *LaGrand* cases have brought the Court into the direct frame of individual rights protection. In the evolutionary development of its powers this is not surprising as

34. *Breard*, *supra* n.3, at para.22.
35. *Idem*, para.38.

it has not shunned human rights concerns in the past.[36] The protection of individual rights was at the heart of the Court's provisional orders in both the *Iranian Hostages*[37] and the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*[38] cases. The difference between the present cases and the previous ones is the Court's focus on the rights of the individual. This development was noticeable enough to lead Judge Oda in his separate opinion to caution against its recurrence. According to Judge Oda:[39]

> If the Court intervenes *directly* in the fate of an individual, this would mean some departure from the function of the principal judicial organ of the United Nations, which is essentially a tribunal set up to settle inter-state disputes concerning the rights and duties of States. I fervently hope that this case will not set a precedent in the history of the Court.

Judge Oda is clearly swimming against the tide because the *LaGrand* and *Breard* cases are a predictable and in the circumstances justifiable development from the *Hostages* and *Genocide* cases. In addition, on occasions, such as in the present cases where the rights of States and those of individuals are inseparable, it would be unwise for the Court to remain inflexible by seeking to address only the rights of States. This would prove unworkable in practice. International human rights law is understandably a pervasive phenomenon. It provides the essential link in international law between the State and the individual, the ultimate bottom line in any legal order. The effective protection of individual rights before the Court cannot be based on the traditional principles of diplomatic protection alone. Diplomatic protection has to take account of the developments in international human rights law.

There is also the policy question of the credibility of interim measures that has been brought into sharp focus by the events surrounding this case. The artificial separation between interim measures and the merits stages has often led the Court to postpone the consideration of perfectly valid substantive arguments until the later stage. Respondents in litigation for provisional measures, such as the United States in the cases under discussion, often consider interim measures proceedings as not sufficiently in conformity with due process rules. This may well account for the abysmal record of compliance with such measures.[40] In the ten cases in which provisional measures were ordered, only in two of them[41] can one confidently say that they have been complied with fully. The others, including the two cases concerning the Vienna Convention on Consular Relations, have had

36. For a discussion of this issue, see R. Higgins, "Interim Measures for the Protection of Human Rights", in Jonathan Charney, Donald Anton and Mary O'Connell (Eds), *Politics, Values and Functions. International Law in the 21st Century Essays in Honor of Professor Louis Henkin*, p.87.

37. *United States Diplomatic and Consular Staff in Tehran, Provisional Measures*, order of 15 Dec. 1979, I.C.J. Rep. 1979, 7.

38. *Provisional Measures*, order of 8 Apr. 1993, I.C.J. Rep. 1993, 3 and order of 13 Sept. 1993, *idem*, p.325.

39. Separate opinion of Judge Oda, *LaGrand*, *supra* n.4, at p.18.

40. On this point see, Shigeru Oda, "Provisional Measures. The Practice of the International Court of Justice", in Lowe and Fitzmaurice, *op. cit. supra* n.1, at p.541.

41. "*Frontier Dispute*, Provisional Measures, order of 10 Jan. 1986, I.C.J. Rep. 1986, 3 and *Land and Maritime Boundary Between Cameroon and Nigeria, Provisional Measures*, order of Mar. 1996, I.C.J. Rep. 1996, 13.

either an indifferent or a less compliant response. This profile of State practice creates an unacceptable credibility gap that needs to be bridged. Considering the urgency of provisional measures in order to avoid irreparable prejudice to the rights of litigants, perhaps the best way forward in this regard would be to speed up proceedings in which provisional measures have been ordered. The gap that currently exists between incidental proceedings and the merits stage is sufficiently excessive to generate a sense of injustice in the minds of some litigants.

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## II. CASES BEFORE THE COURT†

### *A. Contentious Cases*

1. Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (*Qatar* v. *Bahrain*)

   Qatar instituted proceedings against Bahrain on 8 July 1991 in a dispute concerning sovereignty, sovereign rights and the delimitation of maritime areas. Bahrain raised preliminary objections in July 1991. Following its Judgments of 1 July 1994[1] and 15 February 1995[2] the Court found that it had jurisdiction and that the application (as reformulated on 30 November 1994) was admissible.[3] By an order of 28 April 1995,[4] memorials were to be submitted by both States by 29 February 1998, subsequently extended to 30 September by an order of 1 February 1996.[5] By an order of 30 October 1996,[6] counter-memorials were to be submitted by 31 December 1997. However, on 25 September 1997 Bahrain challenged the authenticity of 81 documents annexed to the Qatar memorial and sought clarification of their status as a preliminary issue. By an order of 30 March 1998[7] the Court set 30 March 1999 as the time limit for the filing of replies by both States but also decided that Qatar should file an interim report on the status of the disputed documents by 30 September 1998 and that Bahrain's reply should contain its observations on this report. In its interim report, submitted on 30 September 1998, Qatar announced that it would not rely on the disputed documents and, in an order of 17 February 1999,[8] the Court decided that the replies to be filed by both States would not rely on them and extended the time limit for submission until 30 May 1999.
2. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya* v. *United Kingdom*).

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† As at 29 April 1999.

1. I.C.J. Rep. 1994, 112.
2. I.C.J. Rep. 1995, 6.
3. See M. D. Evans,"ICJ Cases" (1995) 44 I.C.L.Q. 691.
4. I.C.J. Rep. 1995, 83.
5. I.C.J. Rep. 1996, 6.
6. I.C.J. Rep. 1996, 800.
7. I.C.J. Rep. 1998, 243.
8. I.C.J. Rep. 1999, 3.

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 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[9] the Court declined to do so. In orders of 19 June 1992[10] the following time limits were set for the submission of written pleadings: Libya, memorial, 20 December 1993; United Kingdom and 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[11] the Court found it did have jurisdiction and that the application was admissible. In orders of 30 March 1998[12] 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 18 December 1998[13] this was extended to 31 March 1999.

3. 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.

4. 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[14] 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[15] 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[16] the Court found that it had jurisdiction to entertain the claims[17] and, by an order of 16 December 1996,[18] fixed 23 June 1997 as the date for the submission of the US counter-memorial. The counter-memorial, submitted on 23 June 1997, contained a counterclaim against Iran and, in an order of 10 March 1998,[19] 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

9. I.C.J. Rep 1992, 3, 14. See F. Beveridge, "The Lockerbie Affair" (1992) 41 I.C.L.Q. 907.
10. I.C.J. Rep. 1992, 231, 234.
11. See Beveridge, Case Note, *supra*.
12. I.C.J. Rep. 1998, 237, 240.
13. I.C.J. Press Communiqué No.98/45.
14. I.C.J. Rep. 1992, 763.
15. I.C.J. Rep. 1993, 35.
16. I.C.J. Rep. 1996, 803.
17. See M.D. Evans, Case Note (1997) 46 I.C.L.Q. 693.
18. I.C.J. Rep. 1996, 902.
19. I.C.J. Rep. 1998, 190.

26 May 1998[20] these were extended to: Iran, reply, 10 December 1998; United States rejoinder, 23 May 2000. By an order of 8 December 1998[21] they were further extended to 10 March 1999 and 23 November 2000 respectively.

5. 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.[22] This was reaffirmed in an order of 13 September 1993,[23] 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.[24] By an order of 16 April 1993[25] 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[26] these were extended to 15 April 1994 and 15 April 1995 respectively and, by order of 21 March 1995,[27] the date for the submission of the Yugoslavian counter-memorial was further 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.[28] By an order of 23 July 1996[29] 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,[30] 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: Bosnia and Herzegovina, reply, 23 January 1998; Yugoslavia, rejoinder, 23 July 1998. By an order of 22 January 1998[31] these were extended to; Bosnia and Herzegovina, reply, 23 April 1998; Yugoslavia, rejoinder, 22 January 1999. By an order of 11 December 1998[32] the time limit for the submission of the Yugoslav Rejoinder was further extended, to 22 February 1999.

6. Gabcíkovo–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 and termination of a 1977 agreement on the construction and operation of the Gabcíkovo–Nagymaros barrage system. In

20. I.C.J. Rep. 1998, 269.
21. I.C.J. Press Communiqué No.98/42.
22. I.C.J. Rep. 1993, 325.
23. I.C.J. Rep. 1993, 325.
24. See C. Gray, Case Note (1994) 43 I.C.L.Q. 705.
25. I.C.J. Rep. 1993, 29.
26. I.C.J. Rep. 1993, 470.
27. I.C.J. Rep. 1995, 80.
28. I.C.J. Rep. 1996, 595. See C. Gray, Case Note (1997) 46 I.C.L.Q. 688.
29. I.C.J. Rep. 1996, 797.
30. I.C.J. Rep. 1997, 243.
31. I.C.J. Rep. 1998, 3.
32. I.C.J. Press Communiqué No.98/44.

its judgment of 25 September 1997[33] the Court found both States to be in breach of their obligations and called on them to negotiate a settlement in good faith.[34] On 3 September 1998 Slovakia filed a request for an additional judgment, arguing that Hungary was unwilling to implement the judgment[35] and it was subsequently agreed that Hungary would file a written statement of its position regarding this request by 7 December 1998.[36]

7. Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon* v. *Nigeria*).

   Cameroon instituted proceedings against Nigeria on 29 March 1994 in a dispute concerning sovereignty over the Bakassi Peninsula and over their maritime frontier and, by an additional application on 6 June 1994, requested the Court to determine the frontier between the two States from Lake Chad to the sea, order withdrawal of Nigerian troops from Cameroon territory and determine reparations. By an order of 16 June 1994[37] the following time limits were set for the submission of written pleadings: Cameroon, memorial, 16 March 1995; Nigeria, counter-memorial, 18 December 1995. On 13 December 1995 Nigeria raised objections to the jurisdiction of the Court and the admissibility of the claims. On 12 February 1996 Cameroon made a request for an award of provisional measures. The Court made an order concerning an award of provisional measures on 15 March 1996[38] and in its judgment of 11 June 1998[39] ruled that it had jurisdiction and found the claim admissible.[40] In an order of 30 June 1998[41] the time limit for the filing of the Nigerian counter-memorial was fixed as 31 March 1999 but by an order of 3 March 1999[42] this was extended to 31 May 1999. On 29 October 1998 Nigeria made a request for an interpretation of the Court's judgment of 11 June 1988,[43] which was declared inadmissible in the Court's judgment of 25 March 1999.[44]

8. Kasikili/Sedudu Island (*Botswana/Namibia*).

   On 29 May 1996, in pursuance of a Special Agreement dated 15 February 1996 (in force 15 May 1996), Botswana and Namibia requested the Court to determine the boundary between them around Kasikili/Sedudu Island and the legal status of the island. Orders of 24 June 1996[45] and 27 February 1998[46] fixed the following time limits for the submission of written pleadings by both States: memorials, 28 February 1997; counter-memorials, 28 November 1997;

33. I.C.J. Rep. 1997, 7.
34. See P. N. Okowa, Case Note (1998) 47 I.C.L.Q. 688.
35. I.C.J. Press Communiqué No.98/28.
36. I.C.J. Press Communiqué No.98/31.
37. I.C.J. Rep. 1994, 105.
38. I.C.J. Rep. 1996, 13. See J. G. Merrills, Case Note (1997) 46 I.C.L.Q. 676.
39. I.C.J. Rep. 1998, 275.
40. See J. G. Merrills, Case Note, *supra*.
41. I.C.J. Rep. 1998, 420.
42. I.C.J. Rep. 1999, 24.
43. I.C.J. Press Communiqué No.98/34.
44. I.C.J. Press Communiqué No.99/14. See J. G. Merrills, Case Note, *supra* p.651.
45. I.C.J. Rep. 1996, 63.
46. I.C.J. Rep. 1998, 6.

replies, 27 November 1998. Public hearings were held from 15 February to 5 March 1999[47] and judgment is expected in autumn 1999.

9. Sovereignty over Palau Ligitan and Pulua Sipadan (*Indonesia/Malaysia*).

On 2 November 1998, in pursuance of a Special Agreement dated 31 May 1997 (in force 14 May 1998), Indonesia and Malaysia seised the Court of their dispute concerning the sovereignty of the above-named islands.[48] In an order of 10 November 1998[49] the following time limits were set for the submission of written pleadings by both parties: memorials, 2 November 1999, counter-memorials, 2 March 2000.

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

Guinea instituted proceedings against the Democratic Republic of the Congo on 28 December 1998, alleging grave breaches of international law perpetrated upon a national of Guinea.[50]

11. LeGrand (*Germany* v. *United States America*).

Germany instituted proceedings against the United States on 2 March 1999, alleging violations of the 1963 Vienna Convention on Consular Relations with respect to two German nationals convicted of murder in Arizona. The Court issued an order for provisional measures on 3 March 1999.[51] In an order of 5 March 1999[52] the following time limits were set for the submission of written pleadings: Germany, memorial, 16 September 1999; United States counter-memorial, 27 March 2000.

### *B. Advisory Opinions*

1. Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights.

On 5 August 1998 ECOSOC requested an advisory opinion concerning the question of whether the Commission on Human Rights' Special Rapporteur on the Independence of Judges and Lawyers enjoyed immunity from legal process when giving an interview to a magazine by virtue of the Convention on the Privileges and Immunities of the United Nations. By an order of 10 August 1998[53] 7 October 1998 was fixed as the time limit for the receipt of written Statements (which were submitted by the UN Secretary-General, Costa Rica, Germany, Greece (accepted though filed late), Italy, Malaysia, Sweden, the United Kingdom and the United States) and 6 November 1998 for written comments on statements (which were submitted by the UN Secretary-General, Costa Rica, Malaysia and the United States). Public hearings were held on 7 to 10 December 1998[54] and the opinion was given on 29 April 1999.[55]

47. I.C.J. Press Communiqué No.99/10.
48. I.C.J. Press Communiqué No.98/35.
49. I.C.J. Rep. 1998, 429.
50. I.C.J. Press Communiqué No.98/46.
51. I.C.J. Rep. 1999, 9. See M. Addo, Case Note, *supra* p.673.
52. I.C.J. Rep. 1999, 28.
53. I.C.J. Rep. 1998, 423.
54. I.C.J. Press Communiqué No.98/43.
55. I.C.J. Press Communiqué No.99/16.

## III. OTHER DEVELOPMENTS

1. On 16 February 1999 Eritrea initiated proceedings in a dispute with Ethiopia concerning the alleged violation of the premises and of the staff of Eritrea's diplomatic mission in Addis Ababa and has made a request for an indication of provisional measures. Eritrea acknowledges that Ethiopia has not given its consent for the Court to exercise jurisdiction over the case but has invited it to do so. The Court has transmitted the application to Ethiopia.[56]

56. I.C.J. Press Communiqué No.99/4.