HAGUE INTERNATIONAL TRIBUNALS

This section consists of the following subsections:

I. International Court of Justice
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III. International Criminal Court

Subsections are, in principle, divided into the categories (a) List of Current Proceedings, (b) Constitutional and Institutional Developments, and (c) Commentary.

I. INTERNATIONAL COURT OF JUSTICE

(a) List of Current Proceedings: Update*

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1. CONTENTIOUS CASES BEFORE THE FULL 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); and 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)

Libya filed two separate applications on 3 March 1992. In the applications, Libya contended that it had not been possible to settle this dispute by negotiations and that the parties unable to agree on the organization of an arbitration to hear the matter. It accordingly submitted the disputes to the Court on the basis of

* This *List of Current Proceedings: Update* covers cases pending from 1 April 1999 onwards that merit attention because of a new procedural event. It describes the course of proceedings in these cases up to 1 August 1999. *See also*, on the Internet: http://www. icj-cij.org.

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12 Leiden Journal of International Law 583-595 (1999)

Article 14(1) of the Montreal Convention. Libya refers in the applications to the charging of two Libyan nationals, by the Lord Advocate of Scotland, and by a Grand Jury of the United States, respectively, with having caused a bomb to be placed aboard a Pan-am flight, which bomb subsequently exploded, causing the aeroplane to crash. Libya contends that the United Kingdom and the United States, respectively, by rejecting the Libyan efforts to resolve the matter within the framework of international law, including the Montreal Convention, are pressuring it into surrendering the two Libyan nationals for trial. In this connection, Libya refers to Article 1 of the Montreal Convention, according to which the charge constitutes an offence, and to the several other articles of that Convention which are relevant to Libya's alleged right to jurisdiction over the matter and the prosecution thereof. Libya alleges that these obligations are breached by the United Kingdom and the United States respectively.[1]

On the same day, Libya made two separate requests to the Court to indicate provisional measures. In its two Orders of 14 April 1992, the Court considered Resolution 748 (1992) of the UN Security Council, relating to the dispute and adopted three days after the oral hearings before the Court, and found that the rights of the United Kingdom and the United States under Resolution 748 could not be impaired by an indication of provisional measures. The Court therefore found that the circumstances of the case were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.[2]

By two Orders of 19 June 1992, the Court fixed 20 December 1993 as time limit for filing of the Memorial(s) by Libya, and 20 June 1995 for the filing of the Counter-Memorials by the United Kingdom and the United States.[3] On 22 September 1995, the Court fixed the time limits for the filing of written statements of its observations and submissions on the preliminary objections raised by the United Kingdom and by the United States.[4] This time limit was met by Libya. After hearing the oral pleadings of the parties in October 1997, the Court found on 27 February 1998 that it has jurisdiction to deal with the merits of the case and that the Libyan claims are admissible.[5]

Concerning the preliminary objections of the United States and of the United Kingdom that the Court did not have jurisdiction because the dispute was not of a legal nature, the Court finds that since the parties differ on the question whether the destruction of the Pan Am aircraft over Lockerbie is governed by the Montreal Convention, a legal dispute thus exists. As to the claim that any rights conferred to Libya by the Montreal Convention are superseded by Security Council resolutions 748 (1992) and 883 (1992), the Court decided that the

1. 1992 ICJ Rep. 3 and 114.
2. *Id.*
3. 1992 ICJ Rep. 231 and 234.
4. 1995 ICJ Rep. 282 and 285.
5. ICJ Communiqué No. 98/04, 98/04bis, 98/05, and 98/05bis of 27 February 1998.

resolutions were adopted after the filing of the Application on 3 March 1992. If the Court had jurisdiction on that date, it continues to do so.[6]

As regards the objection against the admissibility of the Libyan claims, based on the argument that Libya was endeavoring to "undo the Council's actions" (United States), and that the issues in dispute "are now regulated by decisions of the Security Council" (United kingdom), the Court finds that the date on which Libya filed its Application, 3 March 1992, is the only relevant date for determining the admissibility of the Application. As to the resolution 731 (1992), adopted before the filing of the Application, it could not form a legal impediment since it was a mere recommendation without binding effect.[7]

The United States and the United Kingdom also claimed that the claims of Libya became moot and without object because of the resolutions of the Security Council. The Court, however, finds that it cannot rule on this objection since that would mean ruling on the merits and affecting Libya's rights. The Court will consider this question when considering the merits of the case. As to the argument of the United States, requesting the Court in the alternative "to resolve the case in substance now", the Court indicates that by raising preliminary objections, the United States has made a procedural choice the effect of which is to suspend the proceedings on the merits.[8]

By way of Orders dated 30 March 1998, and taking into account the views of the parties, the Court fixed 30 December 1998 as the time limit for the filing of the Counter-Memorials of the United Kingdom and the United States.[9] On 17 December 1998, Judge Oda, acting President, extended the time limit to 31 March 1999.[10]

On 1 July 1999 the Court authorized the submission by Libya of a Reply in each of the cases. In Orders dated 29 June 1999, the Court fixed 29 June 2000 as the time limit for the filing of that Reply. The Court also authorized the filing of a Rejoinder by the United Kingdom and by the United States respectively, but it fixed no date for this filing. The Court referred to the meeting held with the Parties on 28 June 1999 by the Vice-President of the Court, acting President, Judge Weeramantry, in order to ascertain their views on the subsequent procedure following the filing of the Counter-Memorials of the United Kingdom and of the United States last March. At that meeting the Agent of Libya stated that his Government wished to be authorized to submit a Reply in each of the cases and that it sought a time limit of twelve months for the preparation of that Reply. The representatives of the United Kingdom and of the United States did not oppose that request but expressed the wish that no date be fixed at this stage of the proceedings

6. *Id.*
7. *Id.*
8. *Id.*
9. ICJ Communiqué No. 98/11 of 1 April 1998.
10. ICJ Communiqué No. 98/45 of 18 December 1998.

for the filing of Rejoinders by their respective countries, in view of the new circumstances consequent upon the transfer to the Netherlands, for trial by a Scottish court, of the two Libyan nationals suspected of having caused the Lockerbie incident. The Agent of Libya had no objection to this. The subsequent procedure has been reserved for further decision.[11]

1.2. Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon *v.* Nigeria)

Cameroon filed its application on 29 March 1994, thereby instituting proceedings against Nigeria in respect of a dispute described as relating essentially to the question over the Bakassi Peninsula. The Court was also requested to determine part of the maritime boundary between the two states. On 6 June 1994, Cameroon filed an additional application for the purpose of extending the subject of the dispute relating to the question over a part of the territory of Cameroon in the area of Lake Chad, while also asking the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. The parties agreed that the two applications be joined and the whole be examined as a single case.

By Order of 16 June 1994, the Court fixed 16 March 1995 and 18 December 1995 as the time limits for the filing, respectively, of a Memorial by Cameroon and a Counter-Memorial by Nigeria.[12] On 13 December 1995, Nigeria filed preliminary objections. The Court fixed 15 May 1996 as the time limit for Cameroon to present its observations and submissions on the preliminary objections raised by Nigeria.[13]

By Order of 15 March 1996, and in the wake of an armed incident that occurred on 3 February 1996 in the Bakassi Peninsula, the Court indicated, at the request of Cameroon, provisional measures to both parties to the dispute.[14] Hearings in the preliminary phase of this case were held in the first weeks of March 1998. On 11 June 1998 the Court found that it has jurisdiction to deal with the merits of the case. It also found that Cameroon's claims are admissible.

In its Judgement the Court rejected Nigeria's argument that Cameroon had no right to invoke its declaration as a basis of jurisdiction because it had omitted to inform Nigeria that it had made such a declaration and that it was preparing to seise the Court weeks later. According to the Court, only the deposit of the declaration with the Secretary-General of the United Nations is relevant as it establishes the mutual consent to the Court's jurisdiction. Moreover, nothing obliged Cameroon to inform Nigeria of its intention to seise the Court. It cannot therefore be reproached with having violated the principle of good faith. The Court held that the

11. ICJ Communiqué No. 99/36 of 1 July 1999.
12. 1994 ICJ Rep. 105.
13. 1996 ICJ Rep. 4.
14. 1996 ICJ Rep. 12.

fact that both States had attempted to solve their dispute bilaterally did not imply that either one had excluded the possibility of bringing it before the Court. Neither in the Charter nor otherwise in international law is any rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court. The fact that negotiations are ongoing in the Lake Chad Basin Commission cannot prevent the Court from exercising its functions. The Commission is not a judicial body and its authority is not exclusive. Concerning the possible consequences of Cameroon's Application on the tripoint in Lake Chad (i.e., the point where the frontiers of Cameroon, Chad and Nigeria meet), the Court found that the legal interests of Chad did not constitute the very subject-matter of the judgment to be rendered on the merits and that the absence of Chad accordingly did not prevent the Court from ruling on the dispute. The Court indicated that, contrary to what Nigeria asserts, a dispute exists between Cameroon and Nigeria, at least as regards the legal bases of the boundary as a whole. The exact scope of that dispute cannot be determined at present. The Court did not uphold Nigeria's contention that Cameroon's Application is so sparse and imprecise that it could not be answered. The Court held that it lay within its discretion to arrange the order in which it would address the issues relating to the title of the Bakassi Peninsula and to the delimitation of the maritime boundary between the Parties. As to the question whether the determination of the maritime boundary beyond point G (situated, according to the Parties, some 17 nautical miles from the coast) would affect the rights and interests of third States, the Court found that it did not possess an exclusively preliminary character and would have to be settled during the proceedings on the merits.[15] By an Order of 30 June 1998, and after ascertaining the views of the Parties, the Court fixed 31 March 1999 as the time limit for the filing of the Counter-Memorial of Nigeria.[16]

On 28 October 1998, Nigeria filed a request for an interpretation of the Judgment delivered on 11 June 1998 by the International Court of Justice (ICJ) on the preliminary objections raised by Nigeria in the case brought against it by Cameroon concerning the land and maritime boundary dispute between these two countries. This is the first time that the ICJ has been seised of a request for the interpretation of a judgment on preliminary objections while the proceedings on the merits are still pending. Since a request for the interpretation of a judgment is made either by an application or by the notification of a special agreement, it gives rise to a new case. Nigeria's request, which does not fall into the category of incidental proceedings, does not therefore form part of the current proceedings in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria). In the view of Nigeria, the Court's Judgment does not specify which of the alleged incidents are to be considered as part of the merits of the case and accordingly, "the meaning and scope of the Judgment requires inter-

15. ICJ Communiqué Nos. 98/23 and 98/23bis of 11 June 1998.
16. ICJ Communiqué No. 98/25 of 1 July 1998.

pretation" as provided by Article 98 of the Rules of Court.[17] The Court fixed 3 December 1998 as the time limit for Cameroon to file written observations.

By a letter dated 23 February 1999, Nigeria, referring to the Request for Interpretation of the Court's Judgment of 11 June 1998 on Preliminary Objections, stated that it "[would] not be in a position to complete its Counter-Memorial until it [knew] the outcome of its Request for Interpretation". By a letter of 24 February 1999, Cameroon, for its part, had stated that it was "resolutely opposed" to any extension of the time limit, explaining that the Court "would create a precedent which in future would encourage parties [...] to make requests for interpretation or revision of judgments on preliminary objections". In the reasoning to its decision of 3 March 1999, the Court stated that a request for interpretation "cannot in itself suffice to justify the extension of a time-limit" but that, given the circumstances of the case, it considered that it should grant Nigeria an extension of the time limit of two months, until 31 May 1999.[18]

On 25 March the Court declared inadmissible Nigeria's request for interpretation of the Judgment delivered by the Court on 11 June 1998 in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections. In its Judgment, the Court first finds that, by virtue of Article 60 of its Statute, it has jurisdiction to entertain requests for interpretation of any judgment rendered by it and that it follows therefore that a judgment on preliminary objections, just as with a judgment on the merits of the dispute, can be the subject of a request for interpretation. It states that any request for interpretation must relate to the operative part of the judgment (the final paragraph which contains the Court's actual decision) and cannot concern the reasons for the judgment, except in so far as these are inseparable from the operative part. In the present case, Nigeria's request meets these conditions and the Court has jurisdiction to entertain it. The Court then goes on to consider the admissibility of the request for interpretation, observing that this question "needs particular attention because of the need to avoid impairing the finality, and delaying the implementation, of [...] judgments". Thus, it notes, the object of a request for interpretation "must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided". The Court points out that, in relation to Cameroon's submissions with regard to incidents involving the international responsibility of Nigeria, Nigeria had raised a preliminary objection (the sixth) in which it considered that Cameroon had to "confine itself essentially to the facts [...] presented in its Application" and that "additions" presented subsequently must be disregarded. The Court recalls that it rejected that preliminary objection in its Judgment of 11 June 1998 on the grounds, inter alia, that under to Article 38 of its Rules the statement of facts and grounds on which the Application is based may be added to after it has been

17. ICJ Communiqué No. 98/34, 29 October 1998.
18. ICJ Communiqué No. 99/11 of 5 March 1999.

filed. It reiterates that the limit on the freedom to present additional facts and legal considerations is that there must be no transformation of the dispute brought before it into another dispute which is different in character; and that in the present case "Cameroon has not so transformed the dispute". The Court concludes from the foregoing that it would be unable to entertain Nigeria's request without calling into question the effect of the Judgment concerned as final and without appeal, or to examine submissions seeking to remove from its consideration elements of law and fact which, in its Judgment of 11 June 1998, it has already authorized Cameroon to present. It follows that Nigeria's request for interpretation is inadmissible.[19]

On 30 June 1999 the Republic of Equatorial Guinea filed an Application for permission to intervene in the case. In its Application, Equatorial Guinea stated that the purpose of its intervention was "to protect [its] legal rights in the Gulf of Guinea by all legal means" and "to inform the Court of Equatorial Guinea's legal rights and interests so that these may remain unaffected as the Court proceeds to address the question of the maritime boundary between Cameroon and Nigeria". Equatorial Guinea made it clear that it did not seek to intervene in those aspects of the proceedings that relate to the land boundary between Cameroon and Nigeria, nor to become a party to the case. It further stated that, although it would be open to the three countries to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundary with these two States, Equatorial Guinea had made no such request and wished to continue to seek to determine its maritime boundary with its neighbours by negotiation. In support of its Application, Equatorial Guinea stressed that one of the claims presented by Cameroon in its Memorial of 16 March 1995 "ignore[s] the legal rights of Equatorial Guinea in the most flagrant way" because it disregards the median line (the line dividing maritime zones between two States of which every point is equidistant from the coasts of each of those States) and that, moreover, "in the bilateral diplomacy between Cameroon and Equatorial Guinea, Cameroon [...] never once hinted that it did not accept the median line as the maritime boundary between itself and Equatorial Guinea". Observing that "the general maritime area where the interests of Equatorial Guinea, Nigeria and Cameroon come together is an area of active oil and gas exploration and exploitation", Equatorial Guinea maintained that "any judgment extending the boundary between Cameroon and Nigeria across the median line with Equatorial Guinea [would] be relied upon by concessionaires who would likely ignore Equatorial Guinea's protests and proceed to explore and exploit resources to the legal and economic detriment" of that country.[20]

Under Article 83 of the Rules of Court, Equatorial Guinea's Application was immediately communicated to Cameroon and Nigeria, and the Court fixed 16 August 1999 as the time limit for the filing of written observations by those States.

19. ICJ Communiqués Nos. 99/14 and 99/14bis of 25 March 1999.
20. ICJ Communiqué No. 99/35 of 30 June 1999.

It will be for the Court to decide whether the Application for permission to intervene submitted by Equatorial Guinea should be granted. Should an objection be raised to the Application, the Court will hear the Parties and Equatorial Guinea before deciding.[21]

By an Order of 30 June 1999, the Court ruled that counter-claims submitted by Nigeria against Cameroon in the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) are "admissible as such and form part of the current proceedings". Nigeria submitted those claims in the Counter-Memorial that it filed in May. Contending that, in its written pleadings, "Cameroon cited [a] variety of 'incidents' along the border and, [...] with respect to some of these [...] brought in issue the international responsibility of Nigeria", Nigeria pointed out that "there are [however] many cases in which incursions are occurring along the border from the Cameroon side and for which Cameroon is internationally responsible". Nigeria accordingly asked the Court to declare that the incidents referred to "engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the Parties, then to be awarded by the Court in a subsequent phase of the case". Cameroon did not challenge Nigeria's right to submit counter-claims.[22]

The Court's ruling on the admissibility of Nigeria's counter-claims means that those claims will be examined by the Court simultaneously with Cameroon's claims during the proceedings on the merits. Under the Rules of Court (Art. 80(1)), a counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court. In its Order, the Court states that Nigeria's counter-claims do indeed come within its jurisdiction and that they are "directly connected with the subject-matter of the claim[s] of the other [P]arty": they "rest on facts of the same nature as the corresponding claims of Cameroon" and those facts "are alleged to have occurred along the frontier between the two States". Moreover, the claims of both States "pursue the same legal aim, namely the establishment of legal responsibility and the determination of the reparation due on this account". Taking into account these conclusions and the views expressed by the Agents of the Parties at a meeting held with them by Judge Schwebel, President of the Court, on 28 June 1999, the Court has decided that the Parties should submit further written pleadings on the merits of their respective claims. Cameroon is to file a Reply by 4 April 2000 and Nigeria a Rejoinder by 4 January 2001. In order to ensure equality between the Parties, the Court reserved the right of Cameroon to present its views in writing a second time on the Nigerian counter-claims, in an additional pleading which may be the subject of a subsequent Order.[23]

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21. *Id.*
22. ICJ Communiqué No. 99/37 of 2 July 1999.
23. *Id.*

1.3. Legality of Use of Force (Yugoslavia *v.* Belgium) (Yugoslavia *v.* Canada) (Yugoslavia *v.* France) (Yugoslavia *v.* Germany) (Yugoslavia *v.* Italy) (Yugoslavia *v.* Netherlands) (Yugoslavia *v.* Portugal) (Yugoslavia *v.* Spain) (Yugoslavia *v.* United Kingdom) (Yugoslavia *v.* United States of America)

The Federal Republic of Yugoslavia (FRY) instituted proceedings on 29 April 1999 before the International Court of Justice against (separately and in the following order) the United States of America, the United Kingdom, France, Germany, Italy, the Netherlands, Belgium, Canada, Portugal and Spain, accusing these States of bombing Yugoslav territory in violation of their obligation not to use force against another State. In its Applications, Yugoslavia maintained that the above-mentioned States have committed "acts by which [they] have violated [their] international obligation[s] not to use force against another State, not to intervene in [that State's] internal affairs" and "not to violate [its] sovereignty"; "the obligation to protect the civilian population and civilian objects in wartime, [and] to protect the environment; the obligation relating to free navigation on international rivers"; the obligation "regarding the fundamental rights and freedoms; and the obligation[s] not to use prohibited weapons [and] not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group".

Yugoslavia has requested the Court to adjudge and declare *inter alia* that the ten States against which it has instituted proceedings are "responsible for the violation of the above[-mentioned] international obligations", that they are "obliged to stop immediately" that violation and that they are "obliged to provide compensation for the damage done". According to Yugoslavia, the above-mentioned States, "together with the Governments of other Member States of NATO, took part in the acts of use of force against the FRY". Yugoslavia asserts that both military and civilian targets have come under attack during the bombings, causing many casualties ("about 1,000 civilians, including 19 children, were killed and more than 4,500 sustained serious injuries"), enormous damage to schools, hospitals, radio and television stations, cultural monuments and places of worship, the destruction of a large number of bridges, roads and railway lines, as well as oil refineries and chemical plants, resulting in serious health and environmental damage. As the legal basis for its claims, Yugoslavia cited the obligations not to use force against another State and not to intervene in its internal affairs, the provisions of the Geneva Convention of 1949 and of the Additional Protocol No. 1 of 1977 on the Protection of Civilians and Civilian Objects in Time of War, the 1948 Convention on Free Navigation on the Danube, the International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, and the Convention on the Prevention and Punishment of the Crime of Genocide. Yugoslavia further points out that the activities of the States involved are "contrary to Article 53, paragraph 1, of the Charter of the United Nations". Yugoslavia also filed, in each of the cases, a request for interim measures

of protection (provisional measures), asking the Court to order the States involved to "cease immediately [their] acts of use of force" and to "refrain from any act of threat or use of force against the Federal Republic of Yugoslavia". It maintained that if the proposed measures were not adopted, there would be "new losses of human life, further physical and mental harm inflicted on the population of the FRY, further destruction of civilian targets, heavy environmental pollution and further physical destruction of the people of Yugoslavia".[24] Hearings in this case were held on 10 and 11 May 1999.

On 2 June 1999, the Court rejected the requests for the indication of provisional measures. In two of the ten cases (Yugoslavia *v.* Spain and Yugoslavia *v.* United States of America), the Court held that it manifestly lacked jurisdiction and ordered that the cases be removed from its List. In eight of the ten cases (Yugoslavia *v.* Belgium; Yugoslavia *v.* Canada; Yugoslavia *v.* France; Yugoslavia *v.* Germany; Yugoslavia *v.* Italy; Yugoslavia *v.* Netherlands; Yugoslavia *v.* Portugal; Yugoslavia *v.* United Kingdom), the Court found that it lacked *prima facie* jurisdiction, which is a prerequisite for the issue of provisional measures, and that it therefore could not indicate such measures. A fuller consideration of the question of jurisdiction will take place later. The Court accordingly remains seized of those cases and has reserved the subsequent procedure for further decision.[25]

In its reasoning, the Court expressed its deep concern "with the human tragedy, the loss of life, and the enormous suffering in Kosovo which form the background" of the dispute and "with the continuing loss of life and human suffering in all parts of Yugoslavia". It set out its profound concern with the use of force in Yugoslavia, which "under the present circumstances [...] raises very serious issues of international law", and emphasized that "all parties before it must act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law". The Court explained that its jurisdiction depends upon consent, for there must be acceptance by a State of the Court's jurisdiction before the Court can determine whether particular acts are compatible with international law. "The latter question can only be reached when the Court deals with the merits having established its jurisdiction and having heard full legal arguments by both parties". The Court stressed however that, "whether or not States accept the jurisdiction of the Court, they remain in any event responsible for acts attributable to them that violate international law, including humanitarian law", and that "any disputes relating to the legality of such acts are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties". In this context, "the parties should take care not to aggravate or extend the dispute". The Court reaffirmed that "when such a dis-

24. ICJ Communiqué No. 99/17 of 29 April 1999.
25. ICJ Communiqué No. 99/23 of 2 June 1999.

pute gives rise to a threat to the peace, breach of the peace or act of aggression, the Security Council has special responsibilities under Chapter VII of the Charter".[26]

On 2 July 1999 the Court fixed time limits for the filing of written pleadings. By Orders of 30 June 1999, the Court decided that the Federal Republic of Yugoslavia (FRY) should submit a Memorial in each of the eight cases by 5 January 2000 and that the respondent States (Belgium, Canada, France, Germany, Italy, Netherlands, Portugal and United Kingdom) should each submit a Counter-Memorial by 5 July 2000. The Court fixed those time limits taking into account the relevant provisions of its Rules, in particular Article 45, which provides that "the pleadings in a case begun by means of an application shall consist, in the following order, of a Memorial by the applicant and a Counter-Memorial by the respondent". The Court further referred to the meeting held with the Parties on 28 June 1999 by Judge Weeramantry, Vice-President, Acting President. At that meeting the respondent States requested that the question of the jurisdiction of the Court – and, for certain States (Belgium, Canada, Netherlands and United Kingdom), the additional question of the admissibility of Yugoslavia's Applications – should be separately determined before any proceedings on the merits. Yugoslavia opposed those requests and stated that it wished to be permitted to submit a Memorial on the merits of the dispute. It pointed out that the respondent States would be entitled to raise preliminary objections (to the Court's jurisdiction and, if need be, to the admissibility of Yugoslavia's Applications) within the time limit fixed for their Counter-Memorials. Yugoslavia envisaged a time limit of approximately six months for the preparation of its written pleadings.[27]

1.4. Armed Activities on the Territory of the Congo (Congo *v.* Burundi) (Congo *v.* Uganda) (Congo *v.* Rwanda)

On 23 June 1999 the Democratic Republic of Congo (DRC) instituted proceedings before the International Court of Justice against Burundi, Uganda and Rwanda respectively for "acts of armed aggression committed [...] in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity (OAU)". In its Applications, the DRC contended that the invasion of Congolese territory by Burundian, Ugandan and Rwandan troops on 2 August 1998 (an invasion currently claimed to involve fighting in seven provinces) constitutes a "violation of [its] sovereignty and of [its] territorial integrity", as well as a "threat to peace and security in central Africa in general and in the Great Lakes region in particular". The DRC accused the three States of having attempted to "seize Kin-

26. *Id.*. The reasoning of the Court in each case is summarized in ICJ Communiqués No. 24 (Yugoslavia *v.* Belgium), in No. 25 (Yugoslavia *v.* Canada), in No. 26 (Yugoslavia *v.* France), in No. 27 (Yugoslavia *v.* Germany), in No. 28 (Yugoslavia *v.* Italy), in No. 29 (Yugoslavia *v.* Netherlands), in No. 30 (Yugoslavia *v.* Portugal), in No. 31 (Yugoslavia *v.* Spain), in No. 32 (Yugoslavia *v.* United Kingdom), and in No. 33 (Yugoslavia *v.* United States of America).

27. ICJ Communiqué No. 99/39 of 2 July 1999.

shasa through the lower Congo, in order to overthrow the Government of Public Salvation and assassinate President Laurent Désiré Kabila, with the object of installing a Tutsi régime or a régime under Tutsi control". The DRC also accused those States of "violations of international humanitarian law and massive violations of human rights" (massacres, rapes, attempted kidnappings and murders), and of the looting of large numbers of public and private institutions. It further claimed that "the assistance given to the Congolese rebellion or rebellions [...] and the issue of frontier security were mere pretexts designed to enable the aggressors to seize the assets of the territories invaded and hold the civil population to ransom".

The Democratic Republic of Congo accordingly asked the Court to declare that Burundi, Uganda and Rwanda are guilty of acts of aggression; that they have violated and continue to violate the 1949 Geneva Conventions and their 1977 Additional Protocols; that, by taking forcible possession of the Inga hydroelectric dam and deliberately regularly causing massive electric power cuts, they have made themselves responsible "for very heavy losses of life in the city of Kinshasa [...] and the surrounding region"; and that, in shooting down a Boeing 727 aircraft on 9 October 1998, the property of Congo Airlines, and thus causing the death of 40 civilians, they violated certain international treaties relating to civil aviation. The DRC further requested the Court to declare that the armed forces of Burundi, Uganda and Rwanda must "forthwith vacate the territory" of the Congo; that the said States "must secure the immediate and unconditional withdrawal from Congolese territory of [their] nationals, both individuals and corporate entities"; and that the DRC "is entitled to [...] compensation in respect of all acts of looting, destruction, removal of property and of persons and other unlawful acts attributable" to the States concerned.[28]

In its Application instituting proceedings against Uganda, the DRC invoked as a basis for the jurisdiction of the Court the declarations by which both States have accepted the compulsory jurisdiction of the Court in relation to any other State accepting the same obligation (Article 36(2), of the Statute of the Court). In its Applications instituting proceedings against Burundi and Rwanda, the DRC invoked Article 36(1), of the Statute of the Court, the New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971, and also Article 38(5), of the Rules of Court. This Article contemplates the situation where a State files an application against another State which has not accepted the jurisdiction of the Court. As to Article 36(1), it provides that "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".[29]

28. ICJ Communiqué No. 99/34 of 23 June 1999.
29. *Id.*

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

On 2 July 1999 the Republic of Croatia instituted proceedings before the International Court of Justice against the Federal Republic of Yugoslavia for violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide alleged to have been committed between 1991 and 1995. In its Application, Croatia contends that "by directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of [...] Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia, [Yugoslavia] is liable [for] the 'ethnic cleansing' of Croatian citizens from these areas [...] as well as extensive property destruction – and is required to provide reparation for the resulting damage". Croatia goes on to state that "in addition, by directing, encouraging, and urging Croatian citizens of Serb ethnicity in the Knin region to evacuate the area in 1995, as [...] Croatia reasserted its legitimate governmental authority [...] [Yugoslavia] engaged in conduct amounting to a second round of 'ethnic cleansing'". According to Croatia, "the aggression waged by [Yugoslavia]" resulted in 20,000 dead, 55,000 injured and over 3,000 individuals still unaccounted for. Of this number, 1,700 were killed and more than 4,000 injured in Vukovar alone. Furthermore, 10 per cent of the country's housing capacity is alleged to have been destroyed, with 590 towns and villages having suffered damage (including 35 razed to the ground), while 1,821 cultural monuments, 323 historical sites and 450 Croatian catholic churches were also destroyed or damaged. Croatia further claims that some 3 million explosive devices of various kinds were planted in Croatia, mostly anti-personnel and anti-tank devices, currently rendering some 300,000 hectares of arable land unusable, and that around 25 per cent of its total economic capacity, including major facilities such as the Adriatic pipeline, was damaged or destroyed.[30]

Accordingly, Croatia requested the Court to adjudge and declare that Yugoslavia "has breached its legal obligations" to Croatia under the Genocide Convention and that it "has an obligation to pay to [...] Croatia, in its own right and as parens patriae for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court".[31]

As a basis for the jurisdiction of the Court, Croatia invoked Article IX of the Genocide Convention to which both Croatia and Yugoslavia are parties. That Article provides that disputes between contracting parties relating to the interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice. [32]

30. ICJ Communiqué No. 99/38 of 2 July 1999.
31. *Id.*
32. *Id.*