HAGUE INTERNATIONAL TRIBUNALS

This section consists of the following subsections:

I. International Court of Justice
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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 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)(Libyan Arab Jamahiriya v. United States of America)

1.1.1. History of the Case

Libya filed two separate applications on 3 March 1992.[1] 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* is an update of the List of Current Proceedings as published in 13 LJIL (2000) at 599-602 and covers cases pending from 1 June 2000 onwards that merit attention because of a new procedural event. It describes the course of proceedings in these cases up to 1 October 2000. *See, generally,* the website of the Court: http://www.icj-cij.org.

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1. 1992 ICJ Rep. 3 and 114.

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Article 14, paragraph 1, of the Montreal Convention.[2] 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.

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.[3]

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.[4] 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.[5] 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.[6]

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

2. *See* 10 ILM 1151 (1971).
3. 1992 ICJ Rep. 3 and 114.
4. 1992 ICJ Rep. 231 and 234.
5. 1995 ICJ Rep. 282 and 285.
6. 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.[7]

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.[8]

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.[9]

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.[10] On 17 December 1998, Judge Oda, acting President, extended the time-limit to 31 March 1999.[11]

On 1 July 1999, the Court authorized the submission by Libya of a Reply in each of the cases instituted by it against the United Kingdom and the United States of America concerning the aerial incident at Lockerbie. 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.[12]

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

7. *Id.*
8. *Id.*
9. *Id.*
10. ICJ Communiqué No. 98/11 of 1 April 1998.
11. ICJ Communiqué No. 98/45 of 18 December 1998
12. ICJ Communiqué No. 99/36 of 1 July 1999.

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 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.[13]

1.1.2. Latest Developments

By Orders dated 6 September 2000, the President of the Court, Judge Gilbert Guillaume, taking account of the views of the United Kingdom and the United States of America, fixed 3 August 2001 as the time-limit for the filing of the Rejoinders in both cases.[14]

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

1.2.1. History of the Case

On 2 November 1992, Iran filed an application instituting proceedings against the United States in respect of a dispute arising out of the attack on and the destruction of three offshore oil production complexes.[15] In it, Iran contended that these acts constituted a fundamental breach of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, signed in 1955.[16]

In its Judgment of 12 December 1996, the Court held that the parties have a dispute as to the interpretation and the application of Article X, paragraph 1, of the Treaty. The Court furthermore held that the dispute falls within the scope of the compromisory clause in Article XXI of the Treaty of Amity, and that as a consequence it has jurisdiction in this case.[17] The Court fixed 23 June 1997 as the time limit for the Counter-Memorial of the United States on the merits.

In its Counter-Memorial the United States submitted a counter-claim. The United States requested the Court therein to adjudge and declare that "in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987-1988 that were dangerous and detrimental to maritime commerce", Iran had breached its obligations under Article X of the above mentioned Treaty of Amity, Economic Relations and Consular Rights of 1955. The United States

13. *Id.*
14. ICJ Communiqué No. 2000/27 of 13 September 2000.
15. 1992 ICJ Rep. 763.
16. 242 UNTS 93.
17. ICJ Communiqué No. 96/33 of 12 December 1996.

also requested the Court to declare that Iran was to make full reparation to the United States.

Pursuant to Article 80 paragraph 1 of the Rules of the Court, 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. Iran challenged the counter-claim. The Court received written observations on the issue and found that it was not necessary to hear the parties further. On 10 March 1998 the Court declared the counter-claim admissible as such and that it forms part of the current proceedings. This means that the counter-claim will be examined by the Court simultaneously with the Iranian claims during the proceedings on the merits. The Court has directed the parties to submit further written pleadings on the merits of their respective claims. Iran is to submit a Reply by 10 September 1998 and the United States a Rejoinder by 23 November 1999.[18] By Order of 26 May 1998, the Vice-President of the Court extended to 10 December 1998 the time-limit for the filing of the Reply of Iran and to 23 May 2000 the time-limit for the filing of the Rejoinder of the United States.[19] By an Order dated 8 December 1998 the Court extended to 10 March 1999 the time-limit for the filing of the Reply of Iran and to 23 November 2000 the time-limit for the filing of the Rejoinder of the United States.[20]

1.2.2. Latest Developments

The President of the Court, Judge Gilbert Guillaume, has extended by four months the time-limit for the filing of the Rejoinder of the United States in the case. In a letter dated 11 July 2000, the United States had requested the Court to extend until 23 March 2001 the time-limit for the filing of its Rejoinder, indicating the reasons for that request. Iran had expressed no objection to this extension, while pointing out that the Court, in its Order dated 10 March 1998, had reserved "the right of Iran to present its views in writing a second time on the United States counter-claim, in an additional pleading the filing of which may be the subject of a subsequent Order".[21]

By an Order dated 4 September 2000, the President acceded to the United States' request and extended from 23 November 2000 to 23 March 2001 the time-limit for the filing of its Rejoinder, taking into account the agreement between the Parties. The subsequent procedure was reserved for further decision.

18. ICJ Communiqué No. 98/10 of 19 March 1998.
19. ICJ Communiqué No. 98/19 of 26 May 1998.
20. ICJ Communiqué No. 98/42 of 9 December 1998
21. ICJ Communiqué No. 98/19 of 26 May 1998.

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

1.3.1 History of the Case

In a unilateral Application entitled "Application with a view to diplomatic protection" of 28 December 1998, Guinea requested the Court to "condemn the Democratic Republic of Congo for the grave breaches of international law perpetrated upon the person of a Guinean national"[22], Mr. Ahmadou Sadio Diallo. According to Guinea, Mr. Ahmadou Sadio Diallo, a businessman who had been a resident of the Democratic Republic of Congo for 32 years, was "unlawfully imprisoned by the authorities of that State" during two and a half months, "divested from his important investments, companies, bank accounts, movable and immovable properties, then expelled" on 2 February 1996 as a result of his attempts to recover sums owed to him by the Democratic Republic of Congo (especially by Gécamines, a State enterprise with a monopoly with regard to mining) and by oil companies operating in that country (Zaïre Shell, Zaïre Mobil and Zaïre Fina) by virtue of contracts concluded with businesses owned by him, Africom-Zaïre and Africontainers-Zaïre. As a basis of the Court's jurisdiction, Guinea invoked the declarations by which it and the Democratic Republic of Congo accepted the compulsory jurisdiction of the Court. Guinea deposited such a declaration on 11 November 1998 with the Secretary-General of the United Nations; the Democratic Republic of Congo (the former Zaïre) on 8 February 1989.

On 26 November 1999 the Court fixed time-limits for the filing of written pleadings in the case. In an Order dated 25 November 1999, the Court fixed 11 September 2000 as the time-limit for the filing of a Memorial by the Republic of Guinea and 11 September 2001 as the time-limit for the filing of a Counter-Memorial by the Democratic Republic of the Congo. The Court fixed those time-limits taking account of the agreement of the Parties.[23]

1.3.2. Latest Developments

By letter dated 4 September 2000, the Minister for Foreign Affairs of the Republic of Guinea had requested the Court to extend by nine months the time-limit for the filing of the Memorial of that State and explained the reasons for that request. By letter dated 7 September 2000, the Agent of the Democratic Republic of the Congo replied that a nine-month extension was excessive.

By an Order of 8 September 2000, the President of the Court extended to 23 March 2001 the time-limit for the filing of the Memorial of the Republic of

22. ICJ Communiqué No. 98/46 of 30 December 1998.
23. ICJ Communiqué No. 99/49 of 26 November 1999.

Guinea and to 4 October 2002 the time-limit for the filing of the Counter-Memorial of the Democratic Republic of the Congo. These time-limits had hitherto been fixed at 11 September 2000 and 11 September 2001 respectively.[24]

1.4. LaGrand Case (Germany *v.* United States of America)

1.4.1. History of the Case

Germany instituted proceedings in the Court against the United States of America on 2 March 1999, alleging violations of the Vienna Convention on Consular Relations of 24 April 1963 with respect to the case of Karl and Walter LaGrand, both of German nationality. Karl LaGrand, 35, was executed on 24 February 1999 for the murder of a bank manager in Arizona in 1982, in spite of all appeals for clemency and numerous diplomatic interventions at the highest level by the German Government. His brother Walter, 37, was to be executed for the same crime. Germany maintains that "Karl and Walter LaGrand were tried and sentenced to death without being advised of their rights to consular assistance", as required by the Vienna Convention. It contends that it was only in 1992 that the German consular officers were made aware, not by the authorities of the State of Arizona, but by the detainees themselves, of the case in question. Germany argues that "the failure to provide the required notification precluded it from protecting its nationals' interest in the United States at both the trial and the appeal level in the State courts". Accordingly, Germany asked the Court to adjudge and declare that the United States has violated its international legal obligations under the Vienna Convention, that the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void and should be recognized as void by the legal authorities of the United States, that the United States should provide reparation in the form of compensation and satisfaction for the execution of Karl LaGrand and that it should restore the status quo ante in the case of Walter LaGrand, that is to re-establish the situation that existed before the detention of, proceedings against, conviction and sentencing of that German national. Germany also requested the Court to declare that the United States should provide Germany with a guarantee of the non-repetition of the illegal acts.[25]

On 3 March the Court called on the United States to "take all measures at its disposal" to ensure that Mr. Walter LaGrand is not executed pending a final decision of the Court in the proceedings instituted by Germany. In its Order, which was adopted unanimously, the Court also requested the Government of the United States to inform it of all the measures taken in implementation thereof, and instructed it to transmit the Order to the Governor of the State of Arizona.

24. ICJ Communiqué No. 2000/28 of 13 September 2000.
25. ICJ Communiqué Nos. 99/07 and 99/08 of 2 and 3 March 1999.

This is the first time the Court has indicated provisional measures *proprio motu* and without any other proceedings, pursuant to Article 75, paragraph 1, of its Rules, which provides that "the Court may at any time decide to examine *proprio motu* whether 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". In the reasoning leading to its decision, the Court found that the execution of Mr. LaGrand "would cause irreparable harm to the rights claimed by Germany". It stated that "the international responsibility of a State is engaged by the action of the competent organs and authorities acting in that State, whatever they may be", and that consequently "the Governor of Arizona is under the obligation to act in conformity with the international undertakings of the United States". The Court nevertheless pointed out that the issues before it did "not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes" and recalled that its function was "to resolve international legal disputes between States [...] and not to act as a court of criminal appeal". It stated that "it [was] appropriate that the Court, with the co-operation of the Parties, ensure that any decision on the merits be reached with all possible expedition". The Court had established at the outset that a dispute existed prima facie between the Parties as to the application of the Vienna Convention and that it had jurisdiction prima facie to examine it. Germany and the United States are both parties to the Vienna Convention and to its Optional Protocol concerning the Compulsory Settlement of Disputes, Article I of which 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".[26] Walter LaGrand, 37, was executed on 3 March 1999.

The International Court of Justice (ICJ) has fixed time-limits for the filing of written pleadings. Germany is to file a Memorial by 16 September 1999 and the United States a Counter-Memorial by 27 March 2000.[27]

1.4.2. Latest Developments

The Court will hold public hearings from Monday 13 to Friday 17 November 2000 at the Peace Palace in The Hague.[28]

26. ICJ Communiqué Nos. 99/09 and 99/09bis of 3 and 5 March 1999.
27. ICJ Communiqué No. 99/12 of 8 March 1999.
28. ICJ Communiqué No. 2000/30 of 27 September 2000.

1.5. 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. United Kingdom)

1.5.1. History of the Case

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".[29] 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.[30]

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

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

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 dispute 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".[31]

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.[32]

1.5.2. Latest Developments

On 5 July 2000, within the time-limit for the filing of their Counter-Memorials, the respondent States in the eight above-mentioned cases (Belgium, Canada, France, Germany, Italy, Netherlands, Portugal and United Kingdom) raised certain preliminary objections of lack of jurisdiction and inadmissibility.

In each of the eight cases, the proceedings on the merits of the dispute are accordingly suspended pursuant to Article 79, paragraph 3, of the Rules of Court. The Court will decide on the preliminary objections at the end of a spe-

31. *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).

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

cial procedure, which will comprise the filing of written observations by the Applicant (Yugoslavia) and an oral phase on the issues of jurisdiction and admissibility. The time-limits for the filing of those written observations in each of the eight cases will be fixed later.[33]

The Vice-President Court, Judge Shi Jiuyong, Acting President in the cases, has fixed the time-limits within which Yugoslavia may present written statements on the preliminary objections raised by the Respondent States in the said cases. By Orders of 8 September 2000, the Vice-President, taking account of the views of the Parties and the special circumstances of the cases, fixed 5 April 2001 as the time-limit for the filing of those written statements. The Respondent States had raised certain preliminary objections on 5 July 2000, stating that the Court had no jurisdiction to examine the merits of the cases and that Yugoslavia's claims were inadmissible.[34]

At a meeting held on 6 September 2000 between the Vice-President and the Parties, Yugoslavia had indicated that it would require nine months for the preparation of written statements of its observations and submissions on those preliminary objections. The Respondent States had not objected to such a time-limit being fixed, but stressed that they expected that Yugoslavia would provide specific answers to the preliminary objections raised by them.

Vice-President Shi Jiuyong exercises the functions of the presidency in the eight cases, President Gilbert Guillaume being a national of one of the Parties and having decided not to exercise the functions of the presidency in any of those cases.[35]

1.6. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)

1.6.1. History of the Case

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 at-

33. ICJ Communiqué No. 2000/25 of 7 July 2000.
34. ICJ Communiqué No. 2000/29 of 14 September 2000.
35. *Id.*

tempted to "seize Kinshasa 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.[36]

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, paragraph 2, of the Statute of the Court).[37]

By Order dated 21 October 1999, the Court fixed time-limits for the filing of written pleadings in the above-mentioned cases. In the case against Uganda no objections were raised at this stage of the proceedings.

At a meeting held between the President of the Court, Judge Stephen M. Schwebel, and the Parties on 19 October 1999, the Agent of Burundi indicated that, in the case against Burundi, in the opinion of his Government the Court had no jurisdiction to entertain the Application. Accordingly, the Parties agreed to request the Court to determine separately the questions of jurisdiction and admissibility before any proceedings on the merits, on the understanding that Bu-

36. ICJ Communiqué No. 99/34 of 23 June 1999.
37. *Id.*

rundi would first present a Memorial dealing exclusively with those questions and that the DRC would reply to it in a Counter-Memorial confined to the same questions.

Taking into account the agreement between the Parties, the Court decided that the written proceedings should first address the questions of the jurisdiction of the Court to entertain the Application and of its admissibility. In the case against Uganda, the Court fixed 21 July 2000 as the time-limit for the filing of a Memorial by the DRC and 21 April 2001 as the time-limit for the filing of a Counter-Memorial by Uganda taking into account the agreement of the Parties, as expressed at a meeting held with them by the President of the Court on 19 October 1999.[38]

1.6.2. Latest Developments

On 19 June 2000 the DRC requested the Court to indicate provisional measures as a matter or urgency. In the request that it filed with the Registry, the DRC states that "since 5 June last, the resumption of fighting between the armed troops of [...] Uganda and another foreign army has caused considerable damage to the [DRC] and to its population" while "these tactics have been unanimously condemned, in particular by the United Nations Security Council".

The DRC maintains that "despite promises and declarations of principle [...] Uganda has pursued its policy of aggression, its brutal armed interventions, its harassment and its looting" and that "this war that [...] Uganda set off [...] is the third Kisangani war, after those of August 1999 and May 2000". The DRC notes that "these facts constitute just one further episode testifying to military and paramilitary intervention and to the occupation that the Republic of Uganda started in August 1998". It further states that "each passing day inflicts on the Democratic Republic of the Congo and its inhabitants grave and irreparable prejudice" and that "it is urgent that the rights of the Democratic Republic of the Congo be guaranteed".

Accordingly, the DRC requests the Court to indicate the following provisional measures:

> "(1) The Government of the Republic of Uganda must order its army to withdraw immediately and completely from Kisangani;
>
> (2) The Government of the Republic of Uganda must order its army to cease forthwith any fighting or military activity in the territory of the Democratic Republic of the Congo and to withdraw immediately and completely from that territory, and must forthwith desist from supplying any direct or indirect support to any State, group, organization, movement or individual engaged or planning to engage in military actions in the territory of the Democratic Republic of the Congo;

38. ICJ Communiqué No. 99/45 of 25 October 1999.

(3) The Government of the Republic of Uganda must take all measures in its power to ensure that any units, forces or agents actually or potentially coming under its authority and that enjoy, or might enjoy, its support, together with such organizations or persons as might be under its control, authority or influence, to desist forthwith from committing or encouraging the commission of war crimes or any other violence or unlawful act against all persons in the territory of the Democratic Republic of the Congo;

(4) The Government of the Republic of Uganda must forthwith discontinue any act having the aim or effect of interrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, particularly health and education;

(5) The Government of the Republic of Uganda must immediately cease any unlawful working of the natural resources of the Democratic Republic of the Congo and any unlawful transfer of assets, equipment or persons to its territory;

(6) The Government of the Republic of Uganda must henceforth fully respect the right possessed by the Democratic Republic of the Congo to sovereignty, political independence and territorial integrity, in addition to the fundamental rights and freedoms possessed by all persons in the territory of the Democratic Republic of the Congo."

The DRC's request for the indication of provisional measures has immediately been transmitted to the Government of Uganda. The subsequent procedure has been reserved.[39] The Court heard the Parties at public hearings that were held on Monday 26 and on Wednesday 28 June 2000.[40]

On 1 July 2000 the Court made an Order indicating provisional measures. The Court unanimously held that "both Parties must, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve".

The Court unanimously added that "both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000".

Finally, it unanimously stated that "both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law".[41]

39. ICJ Communiqué No. 2000/18 of 19 June 2000.
40. ICJ Communiqué No. 2000/20 of 21 June 2000.
41. ICJ Communiqué No. 2000/24 of 1 July 2000.

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

1.7.1. History of the Case

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.[42]

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".[43]

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 inter-

42. ICJ Communiqué No. 99/38 of 2 July 1999.
43. *Id.*

pretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice. [44]

By an Order of 14 September 1999, the Court had initially fixed 14 March and 14 September 2000 as the time-limits for the filing of a Memorial by Croatia and a Counter-Memorial by Yugoslavia.[45] By an Order of 10 March 2000, these time-limits had been respectively extended to 14 September 2000 and 14 September 2001.[46]

1.7.2. Latest Developments

By an Order dated 27 June 2000, the Court extended to 14 March 2001 the time-limit for the filing of a Memorial by the Republic of Croatia and to 16 September 2002 the time-limit for the filing of a Counter-Memorial by the Federal Republic of Yugoslavia. This new extension for the filing of the written pleadings was made at the request of Croatia, which wanted an additional period of six months for the filing of its Memorial. Yugoslavia had asked that, if the Court granted the extension requested by Croatia, then Yugoslavia should be allowed an identical total period for the preparation of its Counter-Memorial, namely 18 months. The subsequent procedure has been reserved for further decision.[47]

1.8 Case concerning the Aerial Incident of 10 August 1999 (Pakistan v. India)

1.8.1. History of the Case

On 21 September 1999, the Islamic Republic of Pakistan instituted proceedings before the Court against the Republic of India in respect of a dispute concerning the destruction on 10 August 1999 of a Pakistani aircraft. As a basis for the Court's jurisdiction, Pakistan invoked in its Application Article 36, paragraphs 1 and 2, of the Statute of the Court and the declarations whereby both States have accepted the compulsory jurisdiction of the Court. In a letter dated 2 November 1999, India stated that it had "preliminary objections to the assumption of jurisdiction by the [...] Court [...] on the basis of Pakistan's Application".

At a meeting held on 10 November 1999 by the then President of the Court, Judge Schwebel, with the Parties, the latter provisionally agreed to request the Court to determine separately the question of the Court's jurisdiction before any proceedings on the merits of the case. That agreement was later confirmed in writing by Pakistan. By an Order of 19 November 1999, the Court fixed 10

44. *Id.*
45. ICJ Communiqué No. 99/41 of 16 September 1999.
46. ICJ Communiqué No. 2000/9 of 17 March 2000.
47. ICJ Communiqué No. 2000/21 of 28 June 2000.

January 2000 and 28 February 2000 respectively as the time-limits for the filing of a Memorial by Pakistan and a Counter-Memorial by India on the question of the Court's jurisdiction.[48]

1.8.2. Latest Developments

On 21 June 2000 a Judgment was delivered by the Court concerning the question of the Court's jurisdiction in the case. The Court declared that it had no jurisdiction to adjudicate upon the dispute brought before it.The decision was taken by a vote of fourteen to two. Since the Court included on the Bench no judge of the nationality of Pakistan or India, the two States had each appointed a judge *ad hoc*.[49]

48. ICJ Communiqué No. 2000/6 of 24 February 2000.
49. ICJ Communiqué No. 2000/19 of 21 June 2000. A summary of the Judgment can be found on the Internet: http://www.icj-cij.org/icjwww/ipresscom/IPress2000/ipresscom2000-19bis_ipi_20000621.htm.