HAGUE INTERNATIONAL TRIBUNALS

This section consists of the following subsections:

I. International Court of Justice
II. International Criminal Tribunal for the Former Yugoslavia
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*

*Compiled by Juan M. Amaya-Castro***

1. CONTENTIOUS CASES BEFORE THE FULL COURT

1.1. Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)

Indonesia and Malaysia jointly seized the Court on 2 November 1998 of their dispute concerning sovereignty over Pulau Ligitan and Pulau Sipadan, two islands in the Celebes Sea. They did so by notifying the Court of a Special Agreement, which was signed between them on 31 May 1997 at Kuala Lumpur and entered into force on 14 May 1998. In the Special Agreement, the Parties request the Court "to determine on the basis of the treaties, agreements and any other evidence furnished by [them], whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia." They express the wish to settle their dispute "in the spirit of friendly relations existing

* This *List of Current Proceedings: Update* covers cases pending from 1 August 1999 onwards that merit attention because of a new procedural event. It describes the course of proceedings in these cases up to 15 October 1999. *See also*, on the Internet: http://www. icj-cij.org.

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between [them] as enunciated in the 1976 Treaty of Amity and Co-operation in Southeast Asia" and declare in advance that they will "accept the Judgment of the Court given pursuant to [the] Special Agreement as final and binding upon them."[1]

On 16 September 1999, the Court extended until 2 July 2000 the time-limit for the filing of a Counter-Memorial by each of the Parties in the case. Taking into account the provisions of the Special Agreement between the Parties by which they submitted the case, the Court had initially fixed 2 March 2000 as the time-limit for the filing of the two Counter-Memorials. However, in a joint letter of 18 August 1999, the Agents of Indonesia and of Malaysia asked the Court for a four-month extension of the above-mentioned time-limit, stating that it did not leave them sufficient time to address issues that might be raised in their respective Memorials. The Parties stressed that, apart from this modification, the Special Agreement remained unchanged, including the time-limit fixed for the filing of Memorials (2 November 1999). Taking account of the agreement of the Parties, the Court granted the requested extension by an Order of 14 September 1999. The subsequent procedure has been reserved for further decision.[2]

1.2. 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 his-

1. ICJ Communiqués Nos. 98/35 of 2 November 1998 and 98/37 of 11 November 1998.
2. ICJ Communiqué No. 99/40 of 16 September 1999.

torical 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.[3]

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."[4]

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. [5]

In an Order dated 14 September 1999, the Court fixed 14 March 2000 as the time-limit for the filing of a Memorial by Croatia and 14 September 2000 as the time-limit for the filing of a Counter-Memorial by Yugoslavia. The Court fixed those time-limits taking account of the agreement of the Parties, as expressed at a meeting held with them by the President of the Court, Judge Schwebel, on 13 September 1999. The subsequent procedure has been reserved for further decision.[6]

1.3. Proceedings instituted by Pakistan (Pakistan *v.* India)

On 22 September 1999 the Islamic Republic of Pakistan instituted proceedings against India before the International Court of Justice concerning the shooting down of a Pakistani aircraft by Indian air force planes on 10 August 1999. In its Application filed in the Registry on 21 September 1999 Pakistan contends that the "unarmed Atlantique aircraft of the Pakistan navy was on a routine training mission with sixteen personnel on board" and "while flying over Pakistan air space it was fired upon with air to air missiles by Indian air force planes, without warning", resulting in the death of all 16 personnel, "mostly young naval trainees." It maintains that the aircraft, when shot down, was in an area situated approximately 70 to 90 miles east of Karachi and that it was "carrying out various training exercises and manoeuvres of instrument." According to Pakistan, after radar contact

3. ICJ Communiqué No. 99/38 of 2 July 1999.
4. *Id.*
5. *Id.*
6. ICJ Communiqué No. 99/41 of 16 September 1999.

was lost with the aircraft at 10.55 a.m, an intensive search was undertaken by Pakistani aircraft and helicopters and the wreckage was discovered around 2.55 p.m. 2 kilometres inside Pakistan territory. Pakistan further maintains that in the two and a half hours which elapsed between the shooting down and the discovery of the wreckage, "Indian helicopters [...] .sneaked into Pakistan's territory to pick up a few items from the debris [...] in order to produce 'evidence' for [India's] initial claim that the Atlantique had been shot down over Indian air space". However, according to Pakistan, because of the "overwhelming evidence [...] Indian officials were obliged to admit that the Atlantique had indeed been shot down over Pakistan's air space."[7]

In its Application, Pakistan states that the above-mentioned acts constitute breaches of the obligation to refrain from the threat or use of force under Article 2, paragraph 4, of the Charter of the United Nations; of the provisions of the Agreement of 6 April 1991 between Pakistan and India on Prevention of Air Space Violations; and of the obligations under customary international law not to use force and not to violate the sovereignty of another State. Pakistan therefore requests the Court to judge and declare that "the acts of India [...] constitute breaches of the[se] various obligations [...] for which [...] India bears exclusive legal responsibility" and that "India is under an obligation to make reparations to [...] Pakistan for the loss of the aircraft and as compensation to the heirs of those killed." As a basis for the Court's jurisdiction, Pakistan invokes the declarations by which both States have accepted the compulsory jurisdiction of the Court.[8]

7. ICJ Communiqué No. 99/43 of 22 September 1999.
8. *Id.*