HAGUE INTERNATIONAL TRIBUNALS

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

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

I. INTERNATIONAL COURT OF JUSTICE

(a) List of Current Proceedings*

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1. CONTENTIOUS CASES BEFORE THE FULL COURT

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

On 8 July 1991, Qatar filed an application instituting proceedings against Bahrain in respect of certain disputes between the two states relating to sovereignty over the Hawar Islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two states.[1]

In its first judgment, on jurisdiction and admissibility, of 1 July 1994,[2] the Court decided that the exchange of letters between the King of Saudi Arabia and the Amir of Bahrain and the document headed 'Minutes' and signed by the Ministers for Foreign Affairs of Bahrain, Qatar, and Saudi Arabia were international agreements creating rights and obligations for the parties. As such the Court could be seized of the entire dispute. The Court fixed 30 November 1994

* This *List of Current Proceedings* covers all cases pending from 1 September 1998 onwards. It describes the course of proceedings in these cases up to 1 January 1999. *See*, on the Internet: http://www.icj-cij.org.

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1. 1991 ICJ Rep. 50.
2. 1994 ICJ Rep. 112.

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as the time limit within which the parties were, jointly or separately, to take action to this end. Both parties met this time limit.

On 15 February 1995, the Court found that it had jurisdiction to adjudicate upon the dispute submitted to it. The Court also found the application of Qatar of 30 November 1994 to be admissible.[3]

A Memorial on the merits was filed by the parties within the extended time limit of 30 September 1996. By an Order of 30 October 1996, the Court has fixed 31 December 1997 as the time limit for the filing by each of the parties of a Counter-Memorial on the merits.[4] By an Order of 30 March 1998, the Court decided on a further round of written pleadings and directed the submission, by each of the parties of a Reply on the merits by 30 March 1999. The Court also noted that Bahrain had challenged the authenticity of several documents produced by Qatar and decided that Qatar should file an interim report on this question by 30 September 1998. [5]

1.2. 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.[6] In the applications, Libya contended that it had not been possible to settle this dispute by negotiations and that the parties were 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 Article 14, paragraph 1, of the Montreal Convention.[7] 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 juris-

3. 1995 ICJ Rep. 6.
4. ICJ Communiqué No. 96/30 of 22 November 1996.
5. ICJ Communiqué No. 98/12 of 1 April 1998.
6. 1992 ICJ Rep. 3 and 114.
7. *See* 10 ILM 1151 (1971).

diction 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.[8]

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.[9] 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.[10] 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.[11]

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 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.[12]

As regards the objection against the admissibility of the Libyan claims, based on the argument that Libya was endeavouring 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 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.[13]

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8. 1992 ICJ Rep. 3 and 114.
9. 1992 ICJ Rep. 231 and 234.
10. 1995 ICJ Rep. 282 and 285.
11. ICJ Communiqué No. 98/04, 98/04bis, 98/05, and 98/05bis of 27 February 1998.
12. *Id.*
13. *Id.*

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.[14]

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.[15] On 17 December 1998, Judge Oda, acting President, extended the time-limit to 31 March 1999.[16]

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

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.[17] 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.[18]

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

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14. *Id.*
15. ICJ Communiqué 98/11 of 1 April 1998.
16. ICJ Communiqué 98/45 of 18 December 1998
17. 1992 ICJ Rep. 763.
18. 242 UNTS 93.
19. ICJ Communiqué 96/33 of 12 December 1996.

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.[20] 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.[21] 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.[22]

1.4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina *v.* Yugoslavia (Serbia and Montenegro))

On 20 March 1993, Bosnia-Herzegovina filed an application against Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948.[23] The application invoked Article IX of the Genocide Convention as the basis of the jurisdiction of the Court.

On 20 March 1993, immediately after filing its application, Bosnia-Herzegovina submitted a request for the indication of provisional measures under Article 41 of the Statute. On 1 April 1993, Yugoslavia submitted written observations on Bosnia-Herzegovina's request for provisional measures, in which, in turn, it recommended the Court to order the application of provisional measures to Bosnia-Herzegovina. By Order of 8 April 1993, the Court indicated certain provisional measures with a view to the protection of rights under the Genocide Convention.[24]

20. ICJ Communiqué No. 98/10 of 19 March 1998.
21. ICJ Communiqué No. 98/19 of 26 May 1998.
22. ICJ Communiqué No. 98/42 of 9 December 1998
23. *See* 78 UNTS 277.
24. 1993 ICJ Rep. 3.

On 27 July 1993, Bosnia-Herzegovina submitted a new request for the indication of provisional measures; and, by a series of subsequent communications, it stated that it was amending or supplementing that request, as well as, in some cases, the application, including the basis of jurisdiction relied on therein. As additional bases for the jurisdiction of the Court in the case, Bosnia-Herzegovina invoked the Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats, and Slovenes on the Protection of Minorities, signed at Saint-Germain-en-Laye on 10 September 1919, and the customary and conventional international laws of war and international humanitarian law. On 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures, and, on 10 and 23 August 1993, it filed written observations on Bosnia-Herzegovina's new request, as amended or supplemented. By an Order of 13 September 1993, and after hearing the parties, the Court reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented.[25]

On 26 June 1995, within the time-limit for the filing of its Counter-Memorial, Yugoslavia filed certain preliminary objections. By its judgment of 11 July 1996, the Court found that, on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it had jurisdiction to adjudicate upon the dispute and that the application was admissible.[26] Within the time-limit fixed by the Court, i.e. 23 July 1997, Yugoslavia filed its Counter-Memorial on the merits as well as a counter claim. Yugoslavia requested the Court to adjudge that "Bosnia and Herzegovina is responsible for the acts committed against the Serbs in Bosnia and Herzegovina" and that "it has the obligation to punish the persons held responsible" for these acts. It also asked the Court to rule that "Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated" and "to eliminate all consequences of the violation" of the Genocide Convention. By an Order of 17 December 1997, the Court held that the counter-claims submitted by Yugoslavia are "admissible as such" and that they "form part of the current proceedings".[27]

The Court further directed the parties to present their views on their respective claims. Bosnia and Herzegovina was to submit a Reply by 23 January 1998 and Yugoslavia a Rejoinder by 23 July 1998. On 22 January 1998 the President of the Court extended to 23 April 1998 the time-limit for the filing of the Reply of Bosnia and Herzegovina and to 22 January 1999 the time-limit for the filing of the Rejoinder of Yugoslavia.[28] The time-limit for the Rejoinder was later extended to 22 February 1999.[29]

25. 1993 ICJ Rep. 325.
26. ICJ Communiqué No. 96/25 of 11 July 1996.
27. ICJ Communiqué No. 97/18 of 17 December 1997.
28. ICJ Communiqué No. 98/01 of 22 January 1998.
29. ICJ Communiqué No. 98/44 of 17 December 1998.

1.5. The Gabčíkovo-Nagymaros Project (Hungary/Slovakia)

On 2 July 1993, Hungary and Slovakia notified jointly to the Court a Special Agreement signed on 7 April 1993 for the submission of certain issues arising out of differences regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the construction and operation of the Gabčíkovo-Nagymaros barrage system.

In 1989, Hungary suspended and subsequently abandoned completion of the project alleging that it entailed grave risks to the Hungarian environment and the water supply of Budapest. Slovakia denied these allegations and insisted that Hungary carry out its treaty obligations. It planned and subsequently put into operation an alternative project only on Slovak territory, whose operation had effects on Hungary's access to the water of the Danube.

Hearings in the case were held between 3 March and 15 April 1997, the Court paying a site visit (the first ever in its history) to the Gabčíkovo-Nagymaros Project between those dates. In its judgment of 25 September 1997, the Court found that both Hungary and Slovakia had breached their legal obligations. It called on both states to negotiate in good faith in order to ensure the achievement of the objectives of the 1977 Budapest Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989.[30]

On 3 September 1998, Slovakia filed a request for an additional judgment, arguing that such a judgment was necessary because of the unwillingness of Hungary to implement the judgment delivered by the Court on 25 September 1997. In its request, Slovakia stated that the parties had conducted a series of negotiations on the modalities for executing the Court's Judgment and had initialled a draft Framework Agreement, which was approved by the government of Slovakia on 10 March 1998. Slovakia, however, contended that following the May elections, the new Hungarian government proceeded to disavow the agreement and was now further delaying the implementation of the Judgment.[31] By a decision of the President of the Court on 7 October 1998, Hungary is to file by 7 December 1998 a written statement of its position.[32]

1.6. 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 deter-

30. ICJ Communiqué No. 97/10 and 97/10bis of 25 September 1997.
31. ICJ Communiqué No. 98/28 of 3 September 1998.
32. ICJ Communiqué No. 98/31 of 7 October 1998.

mine 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.[33] On 13 December 1995, Nigeria filed preliminary objections. 15 May 1996 was fixed by the Court as the time limit for Cameroon to present its observations and submissions on the preliminary objections raised by Nigeria.[34]

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.[35] 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 judgment 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 seize 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 seize the Court. It cannot therefore be reproached with having violated the principle of good faith. The Court held that the 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

33. 1994 ICJ Rep. 105.
34. 1996 ICJ Rep. 4.
35. 1996 ICJ Rep. 12.

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.[36] 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.[37]

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 seized 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 interpretation" as provided by Article 98 of the Rules of Court.[38] The Court fixed 3 December 1998 as the time-limit for Cameroon to file written observations.

1.7. Fisheries Jurisdiction Case (Spain *v.* Canada)

On 28 March 1995, Spain instituted proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the rules of application of that Act, as well as to certain measures taken on the basis of that legislation, most particularly the boarding on

36. ICJ Communiqué 98/23 and 98/23bis of 11 June 1998.
37. ICJ Communiqué 98/25 of 1 July 1998.
38. ICJ Communiqué No. 98/34, 29 October 1998.

the high seas on 9 March 1995 of a fishing boat, the *Estai*, sailing under the Spanish flag.

The Court fixed 29 September 1995 and 29 February 1996 as the time-limits for the filing, respectively, of the Memorial by Spain and the Counter-Memorial by Canada on the question of jurisdiction.[39] By Order of 8 May 1996, the Court decided not to authorize the filing of a Reply by the applicant and a Rejoinder by the respondent on the question of jurisdiction and reserved the subsequent procedure for further decision.[40] Hearings in the preliminary phase of this case were held in the month of June 1998.

On 4 December 1998 the Court declared that it had no jurisdiction to adjudicate upon the dispute. The Court found that the essence of the dispute is whether Canada's acts violated Spain's rights under international law and require reparation. The Court held that this dispute constitutes a dispute "arising out of" and "concerning" "conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and the enforcement of such measures". It follows that the dispute comes within the terms of the reservation contained in Canada's declaration.[41]

1.8. Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)

Botswana and Namibia jointly brought this case to the Court on 29 May 1996. The parties asked the Court to determine, on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island. By Order of 24 June 1996, the Court fixed 28 February 1997 for the filing by each of the parties of a Memorial, and 28 November 1997 for the filing by each of the parties of a Counter-Memorial.[42] By an Order of 27 February 1998, the Court has fixed 27 November 1998 as the time limit for the filing of a Reply by each of the parties, taking into account the agreement between the parties.[43] Hearings on the merits of this case were held in February and March 1999.[44]

1.9. Case Concerning the Vienna Convention on Consular Relations (Paraguay *v.* United States of America)

On 3 April 1998 Paraguay instituted proceedings against the United States in a dispute concerning alleged violations of the 1963 Vienna Convention on Con-

39. 1995 ICJ Rep. 87.
40. 1996 ICJ Rep. 57.
41. ICJ Communiqué No. 98/41 of 4 December 1998.
42. ICJ Communiqué No. 96/20 of 26 June 1996.
43. ICJ Communiqué No. 98/06 of 27 February 1998.
44. ICJ Communiqué No. 98/29 of 1 October 1998.

sular Relations.[45] The Paraguayan national, Francisco Breard, was arrested, tried, convicted, and sentenced to death for the crime of murder in the state of Virginia. This took place without Virginia advising him of his right of assistance by consular officers. Paraguayan consular officers were never notified by the United States. Accordingly, Paraguay requested the Court to adjudge and declare that the United States has violated its international legal obligations under the Vienna Convention and that Paraguay is entitled to "restitution in kind", that is, the re-establishment of the situation that existed before the United States failed to provide the required notification.[46]

In view of the urgency of that case, Paraguay also requested the Court to indicate provisional measures to the effect that the United States should refrain from executing Mr Breard before the Court could consider Paraguay's claims. On 9 April 1998, the Court indicated provisional measures, calling on the United States to "take all measures at its disposal" to prevent the execution of Mr Breard, pending a final decision of the Court in the proceedings instituted by Paraguay.[47] The Vice-President of the Court fixed the time limit for the Paraguayan Memorial on 9 June 1998 and for the Counter-Memorial of the United States by 9 September 1998.[48] Nevertheless, the state of Virginia executed Mr Breard on 14 April 1998.

By Order of 9 June 1998 the Vice-President of the Court extended the time-limit for the filing of the Memorial by Paraguay to 9 October 1998 and the time-limit for the filing of the Counter-Memorial of the United States to 9 April 1999.[49] On 2 November 1998, Paraguay informed the Court that, in spite of the fact that it had filed a Memorial on the merits of the case, it did not wish to go on with the proceedings and requested that the case be removed from the Court's List. The case was removed on 11 November 1998.[50]

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

Indonesia and Malaysia jointly seized the Court on 2 November last year? 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

45. 596 UNTS 261.
46. ICJ Communiqué No. 98/13 of 3 April 1998.
47. ICJ Communiqué No. 98/17 of 9 April 1998.
48. ICJ Communiqué No. 98/18 of 9 April 1998.
49. ICJ Communiqué No. 98/22 of 9 June 1998..
50. ICJ Communiqué No..98/36 of 11 November 1998.

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 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".[51]

1.11. Application With a View to Diplomatic Protection (Guinea *v.* Democratic Republic of Congo)

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"[52], 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.

2. REQUESTS FOR ADVISORY OPINIONS

2.1. Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights (Request by the ECOSOC)

Mr Dato' Param Cumaraswamy is a Malaysian jurist who was appointed Special Rapporteur on the independence of judges and lawyers in 1994 by the Commission on Human Rights, an organ of ECOSOC. According to a note addressed to

51. ICJ Communiqués Nos. 98/35 of 2 November 1998 and 98/37 of 11 November 1998.
52. ICJ Communiqué No. 98/46 of 30 December 1998.

ECOSOC by the UN Secretary-General, Mr Kofi Annan, on 28 July 1998, Mr Cumaraswamy currently faces four lawsuits filed in Malaysian courts by different plaintiffs for damages in a total amount of 112 million US dollars following an interview that he gave in November 1995 to International Commercial Litigation, a magazine published in the United Kingdom but also circulated in Malaysia. In that interview, he commented on certain litigations that had been carried out in Malaysian courts. The plaintiffs assert that the words of Mr Cumaraswamy were defamatory.

After the first lawsuit was filed, the UN Legal Counsel, Mr Hans Corell, acting on behalf of the Secretary-General, considered the circumstances of the interview and of the controverted passages of the article and determined that Mr Cumaraswamy had spoken in his official capacity as Special Rapporteur. He stated that accordingly, by virtue of Section 22 of Article VI of the Convention on the Privileges and Immunities of the United Nations, Mr Cumaraswamy was immune from legal process. On 15 January 1997, the Legal Counsel sent a Note Verbale to the Permanent Representative of Malaysia to the United Nations, requesting the competent Malaysian authorities "to promptly advise the Malaysian courts of the Special Rapporteur's immunity from legal process".

On 7 March 1997, the Secretary-General issued a note confirming that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission" and that he was "immune from legal process with respect thereto". Identical certificates of the Special Rapporteur's immunity were issued later when new lawsuits were filed. According to the Secretary-General however, these notes did not lead to any appropriate intervention in the Malaysian courts by the Malaysian government to ensure respect for Mr Cumaraswamy 's immunity, nor were they taken into account by these courts.

Considering that a difference had arisen between the United Nations and the government of Malaysia with respect to the immunity from legal process of Mr Cumaraswamy, on 5 August 1998, ECOSOC adopted a resolution requesting the Court to give, on a priority basis, an advisory opinion: "on the legal question of the applicability of Article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General, and on the legal obligations of Malaysia in this case". The request for an advisory opinion was received in the Registry of the Court on 10 August 1998 by telefax from the UN Secretary-General. The government of Malaysia has already indicated that it did not oppose the submission of the matter to the Court and that it would make its own presentations to the ICJ.[53]

53. ICJ Communiqué No. 98/26 of 10 August 1998.

In an Order of 10 August 1998, the Senior Judge and acting President of the Court, Judge Oda, decided that the United Nations and the states parties to the Convention on the Privileges and Immunities of the United Nations (the interpretation of which is the source of the difference) were likely to furnish information on the question submitted by the Court. He fixed 7 October 1998 as the time-limit within which written statements on the question may be submitted to the Court and 6 November 1998 as the time-limit within which states and organizations having presented written statements may submit written comments on other written statements.[54] Besides the Secretary General of the United Nations, several states have submitted written statements: Costa Rica, Germany, Greece, Italy, Luxemburg Malaysia, Sweden, United Kingdom, and United States of America.[55] Hearings in this case were held in the second week of December 1998.

54. ICJ Communiqué No. 98/27 of 12 August 1998.
55. ICJ Communiqués Nos. 98/32 of October 1998, 98/38 of 13 November 1998, and 98/43 of 10 December 1998.