HAGUE INTERNATIONAL TRIBUNALS

This section consists of the following subsections:

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*

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1. CONTENTIOUS CASES BEFORE THE 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]

* This *List of Current Proceedings* covers all cases pending from 1 September 1999 onwards. It describes the course of proceedings in these cases up to 1 January 2000. *See, generally*, the website of the Court: http://www.icj-cij.org.

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1. 1991 ICJ Rep. 50.

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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 Emir 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 seised of the entire dispute. The Court fixed 30 November 1994 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]

In the interim report Qatar decided to disregard, for purposes of the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar *v.* Bahrain), the 82 documents annexed to its written pleadings which had been challenged by Bahrain. On 17 February 1999 the Court, taking into account the views of the Parties, accordingly decided that the Replies yet to be filed by Qatar and by Bahrain would not rely on these documents. The Court granted a two-month extension of the time-limit for the submission of these Replies.[6]

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.[7] In the applications, Libya contended that it had not been possible to settle this dispute by negotia-

2. 1994 ICJ Rep. 112.
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. ICJ Communiqué No. 99/05 of 18 February 1999.
7. 1992 ICJ Rep. 3 and 114.

tions 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(1) of the Montreal Convention.[8] 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.[9]

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.[10] 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.[11] 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.[12]

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 Secu-

8. *See* 10 ILM 1151 (1971).
9. 1992 ICJ Rep. 3 and 114.
10. 1992 ICJ Rep. 231 and 234.
11. 1995 ICJ Rep. 282 and 285.
12. ICJ Communiqué No. 98/04, 98/04bis, 98/05, and 98/05bis of 27 February 1998.

rity 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.[13]

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 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.[14]

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.[15]

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

On 1 July 1999. The International Court of Justice (ICJ) 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.[18]

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

13. *Id.*
14. *Id.*
15. *Id.*
16. ICJ Communiqué No. 98/11 of 1 April 1998.
17. ICJ Communiqué No. 98/45 of 18 December 1998
18. ICJ Communiqué No. 99/36 of 1 July 1999.

authorized to submit a Reply in each of the cases and that it sought a time-limit of twelve months for the preparation of that Reply. The representatives of the United Kingdom and of the United States did not oppose that request but expressed the wish that no date be fixed at this stage of the proceedings 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.[19]

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.[20] 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.[21]

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(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.[22] 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.

Pursuant to Article 80(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 exam-

19. *Id.*
20. 1992 ICJ Rep. 763.
21. 242 UNTS 93.
22. ICJ Communiqué No. 96/33 of 12 December 1996.

ined 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.[23] 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.[24] 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.[25]

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

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.[26] 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.[27]

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 provi-

23. ICJ Communiqué No. 98/10 of 19 March 1998.
24. ICJ Communiqué No. 98/19 of 26 May 1998.
25. ICJ Communiqué No. 98/42 of 9 December 1998.
26. *See* 78 UNTS 277.
27. 1993 ICJ Rep. 3.

sional 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.[28]

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.[29] 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".[30]

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.[31] The time-limit for the Rejoinder was later extended to 22 February 1999.[32]

1.5. 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

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

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.[33]

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.[34] 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.[35]

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 determine part of the maritime boundary between the two states. On 6 June 1994, Cameroon filed an additional application for the purpose of extending the subject of the dispute relating to the question over a part of the territory of Cameroon in the area of Lake Chad, while also asking the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. The parties agreed that the two applications be joined and the whole be examined as a single case.

By Order of 16 June 1994, the Court fixed 16 March 1995 and 18 December 1995 as the time limits for the filing, respectively, of a Memorial by Cameroon and a Counter-Memorial by Nigeria.[36] On 13 December 1995, Nigeria filed preliminary objections. 15 May 1996 was fixed by the Court as the time limit for

33. ICJ Communiqué No. 97/10 and 97/10bis of 25 September 1997.
34. ICJ Communiqué No. 98/28 of 3 September 1998.
35. ICJ Communiqué No. 98/31 of 7 October 1998.
36. 1994 ICJ Rep. 105.

Cameroon to present its observations and submissions on the preliminary objections raised by Nigeria.[37]

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.[38] 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 seise the Court weeks later. According to the Court, only the deposit of the declaration with the Secretary-General of the United Nations is relevant as it establishes the mutual consent to the Court's jurisdiction. Moreover, nothing obliged Cameroon to inform Nigeria of its intention to seise the Court. It cannot therefore be reproached with having violated the principle of good faith. The Court held that the fact that both States had attempted to solve their dispute bilaterally did not imply that either one had excluded the possibility of bringing it before the Court. Neither in the Charter nor otherwise in international law is any rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court. The fact that negotiations are ongoing in the Lake Chad Basin Commission cannot prevent the Court from exercising its functions. The Commission is not a judicial body and its authority is not exclusive. Concerning the possible consequences of Cameroon's Application on the tripoint in Lake Chad (i.e., the point where the frontiers of Cameroon, Chad and Nigeria meet), the Court found that the legal interests of Chad did not constitute the very subject-matter of the judgment to be rendered on the merits and that the absence of Chad accordingly did not prevent the Court from ruling on the dispute. The Court indicated that, contrary to what Nigeria asserts, a dispute exists between Cameroon and Nigeria, at least as regards the legal bases of the boundary as a whole. The exact scope of that dispute cannot be determined at present. The Court did not uphold Nigeria's contention that Cameroon's Application is so sparse and imprecise that it could not be answered. The Court held that it lay within its discretion to arrange the order in which it would address the issues relating to the title of the Bakassi Peninsula and to the delimitation of the maritime boundary between the Parties. As to the question whether the determination of the maritime boundary beyond point G (situated, according to the Parties, some 17 nautical miles from the coast) would affect the rights and interests of third States, the Court found that it did not possess an exclusively preliminary character and would have to be set-

37. 1996 ICJ Rep. 4.
38. 1996 ICJ Rep. 12.

tled during the proceedings on the merits.[39] 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.[40]

On 28 October 1998, Nigeria filed a request for an interpretation of the Judgment delivered on 11 June 1998 by the International Court of Justice (ICJ) on the preliminary objections raised by Nigeria in the case brought against it by Cameroon concerning the land and maritime boundary dispute between these two countries. This is the first time that the ICJ has been seised of a request for the interpretation of a judgment on preliminary objections while the proceedings on the merits are still pending. Since a request for the interpretation of a judgment is made either by an application or by the notification of a special agreement, it gives rise to a new case. Nigeria's request, which does not fall into the category of incidental proceedings, does not therefore form part of the current proceedings in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon *v.* Nigeria). In the view of Nigeria, the Court's Judgment does not specify which of the alleged incidents are to be considered as part of the merits of the case and accordingly, "the meaning and scope of the Judgment requires interpretation" as provided by Article 98 of the Rules of Court.[41] The Court fixed 3 December 1998 as the time-limit for Cameroon to file written observations.

By a letter dated 23 February 1999, Nigeria, referring to the Request for Interpretation of the Court's Judgment of 11 June 1998 on Preliminary Objections, stated that it "[would] not be in a position to complete its Counter-Memorial until it [knew] the outcome of its Request for Interpretation". By a letter of 24 February 1999, Cameroon, for its part, had stated that it was "resolutely opposed" to any extension of the time-limit, explaining that the Court "would create a precedent which in future would encourage parties [...] to make requests for interpretation or revision of judgments on preliminary objections". In the reasoning to its decision of 3 March 1999, the Court stated that a request for interpretation "cannot in itself suffice to justify the extension of a time-limit" but that, given the circumstances of the case, it considered that it should grant Nigeria an extension of the time-limit of two months, until 31 May 1999.[42]

On 25 March the Court declared inadmissible Nigeria's request for interpretation of the Judgment delivered by the Court on 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon *v.* Nigeria), Preliminary Objections. In its Judgment, the Court first finds that, by virtue of Article 60 of its Statute, it has jurisdiction to entertain requests for interpretation of any judgment rendered by it and that it follows therefore that a judgment on preliminary objections, just as with a judgment on the merits of the dis-

39. ICJ Communiqué Nos. 98/23 and 98/23bis of 11 June 1998.
40. ICJ Communiqué No. 98/25 of 1 July 1998.
41. ICJ Communiqué No. 98/34, 29 October 1998.
42. ICJ Communiqué No. 99/11 of 5 March 1999.

pute, can be the subject of a request for interpretation. It states that any request for interpretation must relate to the operative part of the judgment (the final paragraph which contains the Court's actual decision) and cannot concern the reasons for the judgment, except in so far as these are inseparable from the operative part. In the present case, Nigeria's request meets these conditions and the Court has jurisdiction to entertain it. The Court then goes on to consider the admissibility of the request for interpretation, observing that this question "needs particular attention because of the need to avoid impairing the finality, and delaying the implementation, of [...] judgments". Thus, it notes, the object of a request for interpretation "must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided". The Court points out that, in relation to Cameroon's submissions with regard to incidents involving the international responsibility of Nigeria, Nigeria had raised a preliminary objection (the sixth) in which it considered that Cameroon had to "confine itself essentially to the facts [...] presented in its Application" and that "additions" presented subsequently must be disregarded. The Court recalls that it rejected that preliminary objection in its Judgment of 11 June 1998 on the grounds, *inter alia*, that under Article 38 of its Rules the statement of facts and grounds on which the Application is based may be added to after it has been filed. It reiterates that the limit on the freedom to present additional facts and legal considerations is that there must be no transformation of the dispute brought before it into another dispute which is different in character; and that in the present case "Cameroon has not so transformed the dispute". The Court concludes from the foregoing that it would be unable to entertain Nigeria's request without calling into question the effect of the Judgment concerned as final and without appeal, or to examine submissions seeking to remove from its consideration elements of law and fact which, in its Judgment of 11 June 1998, it has already authorized Cameroon to present. It follows that Nigeria's request for interpretation is inadmissible.[43]

On 30 June 1999 the Republic of Equatorial Guinea filed an Application for permission to intervene in the case. In its Application, Equatorial Guinea stated that the purpose of its intervention was "to protect [its] legal rights in the Gulf of Guinea by all legal means" and "to inform the Court of Equatorial Guinea's legal rights and interests so that these may remain unaffected as the Court proceeds to address the question of the maritime boundary between Cameroon and Nigeria". Equatorial Guinea made it clear that it did not seek to intervene in those aspects of the proceedings that relate to the land boundary between Cameroon and Nigeria, nor to become a party to the case. It further stated that, although it would be open to the three countries to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundary with these two States, Equatorial Guinea had made no such request and wished to continue to seek to determine its maritime boundary with its neighbours

43. ICJ Communiqués Nos. 99/14 and 99/14bis of 25 March 1999.

by negotiation. In support of its Application, Equatorial Guinea stressed that one of the claims presented by Cameroon in its Memorial of 16 March 1995 "ignore[s] the legal rights of Equatorial Guinea in the most flagrant way" because it disregards the median line (the line dividing maritime zones between two States of which every point is equidistant from the coasts of each of those States) and that, moreover, "in the bilateral diplomacy between Cameroon and Equatorial Guinea, Cameroon [...] never once hinted that it did not accept the median line as the maritime boundary between itself and Equatorial Guinea". Observing that "the general maritime area where the interests of Equatorial Guinea, Nigeria and Cameroon come together is an area of active oil and gas exploration and exploitation", Equatorial Guinea maintained that "any judgment extending the boundary between Cameroon and Nigeria across the median line with Equatorial Guinea [would] be relied upon by concessionaires who would likely ignore Equatorial Guinea's protests and proceed to explore and exploit resources to the legal and economic detriment" of that country.[44]

Under Article 83 of the Rules of Court, Equatorial Guinea's Application was immediately communicated to Cameroon and Nigeria, and the Court fixed 16 August 1999 as the time-limit for the filing of written observations by those States. It will be for the Court to decide whether the Application for permission to intervene submitted by Equatorial Guinea should be granted. Should an objection be raised to the Application, the Court will hear the Parties and Equatorial Guinea before deciding.[45]

By an Order of 30 June 1999, the Court ruled that counter-claims submitted by Nigeria against Cameroon in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon *v.* Nigeria) are "admissible as such and form part of the current proceedings". Nigeria submitted those claims in the Counter-Memorial that it filed in May. Contending that, in its written pleadings, "Cameroon cited [a] [...] variety of 'incidents' along the border and, [...] with respect to some of these [...] brought in issue the international responsibility of Nigeria", Nigeria pointed out that "there are [however] many cases in which incursions are occurring along the border from the Cameroon side and for which Cameroon is internationally responsible". Nigeria accordingly asked the Court to declare that the incidents referred to "engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the Parties, then to be awarded by the Court in a subsequent phase of the case". Cameroon did not challenge Nigeria's right to submit counter-claims.[46]

The Court's ruling on the admissibility of Nigeria's counter-claims means that those claims will be examined by the Court simultaneously with Cameroon's claims during the proceedings on the merits. Under the Rules of Court (Art.

44. ICJ Communiqué No. 99/35 of 30 June 1999.
45. *Id.*
46. ICJ Communiqué No. 99/37 of 2 July 1999.

80(1)), a counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court. In its Order, the Court states that Nigeria's counter-claims do indeed come within its jurisdiction and that they are "directly connected with the subject-matter of the claim[s] of the other [P]arty": they "rest on facts of the same nature as the corresponding claims of Cameroon" and those facts "are alleged to have occurred along the frontier between the two States". Moreover, the claims of both States "pursue the same legal aim, namely the establishment of legal responsibility and the determination of the reparation due on this account". Taking into account these conclusions and the views expressed by the Agents of the Parties at a meeting convened by Judge Schwebel, President of the Court, on 28 June 1999, the Court has decided that the Parties should submit further written pleadings on the merits of their respective claims. Cameroon is to file a Reply by 4 April 2000 and Nigeria a Rejoinder by 4 January 2001. In order to ensure equality between the Parties, the Court reserved the right of Cameroon to present its views in writing a second time on the Nigerian counter-claims, in an additional pleading which may be the subject of a subsequent Order.[47]

By an Order of 21 October 1999 the International Court of Justice (ICJ) authorized Equatorial Guinea to intervene in the case "to the extent, in the manner and for the purposes set out in its Application for permission to intervene". The Court took the decision unanimously. In its Order, the Court fixed 4 April 2001 as the time-limit for the filing of a written statement by Equatorial Guinea and 4 July 2001 as the time-limit for the filing of written observations by Cameroon and by Nigeria on that statement.

1.7. 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.[48] 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.[49] Hearings in this case were held between 15 February and 5 March 1999.

In its Judgment of 13 December 1999, the Court finds, by eleven votes to four, that "the boundary between the Republic of Botswana and the Republic of Na-

47. *Id.*
48. ICJ Communiqué No. 96/20 of 26 June 1996.
49. ICJ Communiqué No. 98/06 of 27 February 1998.

mibia follows the line of the deepest soundings in the northern channel of the Chobe River around Kasikili/Sedudu Island" and, by eleven votes to four again, that "Kasikili/Sedudu Island forms part of the territory of the Republic of Botswana".[50] In the Court's opinion, the real dispute between the Parties concerns the location of that main channel, Botswana contending that it is the channel running north of Kasikili/Sedudu Island and Namibia the channel running south of the island. Since the Treaty does not define the notion of "main channel", the Court itself proceeds to determine which is the main channel of the Chobe River around the Island.

In order to do so, it takes into consideration, *inter alia*, the depth and the width of the channel, the flow (i.e., the volume of water carried), the bed profile configuration and the navigability of the channel. After having considered the figures submitted by the Parties, as well as surveys carried out on the ground at different periods, the Court concludes that "the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel". After evoking the object and purpose of the 1890 Treaty, and its *travaux préparatoires*, the Court examines at length the subsequent practice of the parties to the Treaty. The Court finds that this practice did not result in any agreement between them regarding the interpretation of the Treaty or the application of its provisions. The Court further states that it cannot draw conclusions from the cartographic material "in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty" and "in the light of the uncertainty and inconsistency" of the maps submitted by the Parties to the dispute. The Court finally considers Namibia's alternative argument that it and its predecessors have prescriptive title to Kasikili/Sedudu Island by virtue of the exercise of sovereign jurisdiction over it since the beginning of the century, with full knowledge and acceptance by the authorities of Botswana and its predecessors. The Court finds that while the Masubia of the Caprivi Strip (territory belonging to Namibia) did indeed use the Island for many years, they did so intermittently, according to the seasons, and for exclusively agricultural purposes, without it being established that they occupied the Island *à titre de souverain*, i.e., that they were exercising functions of State authority there on behalf of the Caprivi authorities. The Court therefore rejects this argument. After concluding that the boundary between Botswana and Namibia around Kasikili/Sedudu Island follows the line of deepest soundings in the northern channel of the Chobe and that the Island forms part of the territory of Botswana, the Court recalls that, under the terms of an agreement concluded in May 1992 (the "Kasane Communiqué"), the Parties have undertaken to one another that there shall be unimpeded navigation for craft of their nationals and flags in the channels around the Island.[51]

50. ICJ Communiqué No. 99/53 and 99/53bis of 13 December 1999.
51. *Id.*

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

Indonesia and Malaysia jointly seised 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 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".[52]

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.[53]

1.9. Ahmadou Sadio Diallo (Republic of Guinea *v.* Democratic Republic of the 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",[54] 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

52. ICJ Communiqués Nos. 98/35 of 2 November 1998 and 98/37 of 11 November 1998.
53. ICJ Communiqué No. 99/40 of 16 September 1999.
54. ICJ Communiqué No. 98/46 of 30 December 1998.

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.[55]

1.10. LaGrand (Germany *v.* United States of America)

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[56] 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

55. ICJ Communiqué No. 99/49 of 26 November 1999.
56. 1963 Vienna Convention on Consular Relations, 596 UNTS 261.

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.[57]

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. This is the first time the Court has indicated provisional measures *proprio motu* and without any other proceedings, pursuant to Article 75(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".[58] Walter LaGrand, 37, was executed on 3 March 1999.

57. ICJ Communiqué Nos. 99/07 and 99/08 of 2 and 3 March 1999.
58. ICJ Communiqué Nos. 99/09 and 99/09bis of 3 and 5 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.[59]

1.11. 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)

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[60] and of the Additional Protocol No. 1 of

59. ICJ Communiqué No. 99/12 of 8 March 1999.
60. 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287 (1950).

1977 on the Protection of Civilians and Civilian Objects in Time of War,[61] the 1948 Convention on Free Navigation on the Danube, the International Covenant on Civil and Political Rights,[62] the 1966 International Covenant on Economic, Social and Cultural Rights,[63] and the Convention on the Prevention and Punishment of the Crime of Genocide.[64] 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".[65] 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.[66]

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

61. 1977 Geneva Protocol I Additional to the Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflict, 1125 UNTS 3 (1979), 16 ILM 1391 (1977).
62. 1966 International Covenant on Civil and Political Rights, 6 ILM 368 (1967).
63. 1966 International Covenant on Economic, Social and Cultural Rights, 6 ILM 360 (1967)
64. 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277 (1951).
65. ICJ Communiqué No. 99/17 of 29 April 1999.
66. ICJ Communiqué No. 99/23 of 2 June 1999.

compatible with international law. "The latter question can only be reached when the Court deals with the merits having established its jurisdiction and having heard full legal arguments by both parties". The Court stressed however that, "whether or not States accept the jurisdiction of the Court, they remain in any event responsible for acts attributable to them that violate international law, including humanitarian law", and that "any disputes relating to the legality of such acts are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties". In this context, "the parties should take care not to aggravate or extend the dispute". The Court reaffirmed that "when such a 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".[67]

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.[68]

67. *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).
68. ICJ Communiqué No. 99/39 of 2 July 1999.

1.12. Armed activities on the territory of the Congo (Democratic Republic of the Congo *v.* Burundi) (Democratic Republic of the Congo *v.* Rwanda) (Democratic Republic of the Congo *v.* Uganda)

On 23 June 1999 the Democratic Republic of Congo (DRC) instituted proceedings before the International Court of Justice against Burundi, Uganda and Rwanda respectively for "acts of armed aggression committed [...] in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity (OAU)". In its Applications, the DRC contended that the invasion of Congolese territory by Burundian, Ugandan and Rwandan troops on 2 August 1998 (an invasion currently claimed to involve fighting in seven provinces) constitutes a "violation of [its] sovereignty and of [its] territorial integrity", as well as a "threat to peace and security in central Africa in general and in the Great Lakes region in particular". The DRC accused the three States of having attempted to "seize 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.[69]

69. ICJ Communiqué No. 99/34 of 23 June 1999.

In its Application instituting proceedings against Uganda, the DRC invoked as a basis for the jurisdiction of the Court the declarations by which both States have accepted the compulsory jurisdiction of the Court in relation to any other State accepting the same obligation (Article 36(2) of the Statute of the Court). In its Applications instituting proceedings against Burundi and Rwanda, the DRC invoked Article 36(1) of the Statute of the Court, the New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984[70] and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971,[71] and also Article 38(5) of the Rules of Court. This Article contemplates the situation where a State files an application against another State which has not accepted the jurisdiction of the Court. As to Article 36(1), it provides that "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force".[72]

By Orders dated 21 October 1999, the Court fixed time-limits for the filing of written pleadings in the above-mentioned cases. In the cases against Burundi and Rwanda, the respondent States (Burundi and Rwanda) indicated their intention to raise preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Accordingly, the Court decided that the written proceedings should first address those questions. In the case against Uganda no such objections have been raised at this stage of the proceedings and the Court fixed time-limits for the filing of written pleadings on the merits of the dispute.

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 Burundi 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. It fixed 21 April 2000 as the time-limit for the filing of a Memorial by Burundi and 23 October 2000 as the time-limit for the filing of a Counter-Memorial by the DRC.

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

70. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 23 ILM 1027 (1984).
71. 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 10 ILM 1151 (1971).
72. *Id.*

Parties, as expressed at a meeting held with them by the President of the Court on 19 October 1999.

In the case against Rwanda, the Agent of Rwanda indicated at the meeting held between the President of the Court and the Parties on 19 October 1999, that 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 Rwanda 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. It fixed 21 April 2000 as the time-limit for the filing of a Memorial by Rwanda and 23 October 2000 as the time-limit for the filing of a Counter-Memorial by the DRC.

1.13. 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[73] 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, cur-

73. *Supra* note 64.

rently 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.[74]

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".[75]

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. [76]

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.[77]

1.14. Aerial Incident of 10 August 1999 (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" when "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 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

74. ICJ Communiqué No. 99/38 of 2 July 1999.
75. *Id.*
76. *Id.*
77. ICJ Communiqué No. 99/41 of 16 September 1999.

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".[78]

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(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.[79]

By an Order of 19 November 1999 the Court fixed 10 January 2000 and 28 February 2000 respectively as the time-limits for the filing of a Memorial by Pakistan and of a Counter-Memorial by India on the question of the Court's jurisdiction in the case concerning *Aerial Incident* of 10 August 1999 (Pakistan *v.* India).[80] In so doing, the Court took account of the statement by India in a letter of 2 November 1999, that it had "preliminary objections to the assumption of jurisdiction by the [...] Court [...] on the basis of Pakistan's Application" and of the provisional agreement reached by the Parties at a meeting on 10 November 1999 with the President of the Court, Judge Stephen M. Schwebel, to request the Court to determine separately the question of jurisdiction in the case before any proceedings on the merits. That agreement was later confirmed in writing by Pakistan.[81]

1.15. Proceedings instituted by Nicaragua (Nicaragua *v.* Honduras)

On 8 December 1999, Nicaragua instituted proceedings against Honduras with regard to "legal issues subsisting" between the two States "concerning maritime delimitation" in the Caribbean Sea. In its Application, Nicaragua states inter alia that it has for decades "maintained the position that its maritime Caribbean border with Honduras has not been determined", while Honduras' position is said to

78. ICJ Communiqué No. 99/43 of 22 September 1999.
79. *Id.*
80. ICJ Communiqué No. 99/48 of 24 November 1999.
81. *Id.*

be that "there in fact exists a delimitation line that runs straight easterly on the parallel of latitude from the point fixed in [an Arbitral Award of 23 December 1906 made by the King of Spain concerning the land boundary between Nicaragua and Honduras, which was found valid and binding by the ICJ on 18 November 1960] on the mouth of the Coco river". According to Nicaragua, "the position adopted by Honduras [...] has brought repeated confrontations and mutual capture of vessels of both nations in and around the general border area". Nicaragua further states that "diplomatic negotiations have failed".[82]

Nicaragua therefore requests the Court "to determine the course of the single maritime boundary between areas of territorial sea, continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Honduras, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary".[83]

Nicaragua further indicates that it "reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua, found to the north of the parallel of latitude 14°59'08" claimed by Honduras to be the course of the delimitation line".[84] It also reserves "the right to claim compensation for any natural resources that may have been extracted or may be extracted in the future to the south of the line of delimitation that will be fixed by the Judgment of the Court". As a basis for the Court's jurisdiction, Nicaragua invokes Article XXXI of the American Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), signed on 30 April 1948, to which both Nicaragua and Honduras are parties, as well as the declarations under Article 36(2), of the Statute of the Court, by which both States have accepted the compulsory jurisdiction of the Court.[85]

82. ICJ Communiqué No. 99/52 of 8 December 1999.
83. *Id.*
84. *Id.*
85. *Id.*