variety of States,[21] in stark contrast to the rather more restrictive approach the Court takes to intervention in its contentious cases.

Secondly, the technical means of seisin of the Court in advisory cases differs from that in contentious cases and in the present case this meant that the question posed by ECOSOC differed from that which would have been put by either of the disputant parties themselves.

Thirdly, the proper extent of both the adversarial and investigative aspects of the Court's procedure may be raised. The Court is very much in the hands of the parties which choose which information to put before it, and in this case the pleadings of the primary disputants largely addressed the issue of principle as to the powers of the Secretary-General, rather than the correctness of his findings in the circumstances of the case. In his dissenting opinion Judge Koroma found the case involved a mixed question of fact and law and considered the Court unable to make the factual findings whilst maintaining its judicial character.[22]

Fourthly, though not a contentious issue in the present case, the Court considers the giving of an advisory opinion as its participation in the activities of the UN. Clearly its role in disputes to which the UN is a party requires a somewhat different rationale, stressing its independence from, rather than its participation in, the work of other UN organs.

A final difficulty raised by the case concerns the place to be given to the advisory opinion within the national legal system. Where the Court's findings differ from those of the municipal court, complex and delicate questions may arise as to how to give the advisory opinion effect, without undermining the municipal court's independence and authority. Although Malaysia specifically accepted the decisive nature of the Court's findings,[23] it remains to be seen how it will live up to this commitment given that the local court of first instance has subsequently held that the Opinion had no binding effect upon it.[24]

CHANAKA WICKREMASINGHE

LEGALITY OF USE OF FORCE (*YUGOSLAVIA* v. *BELGIUM*) (*YUGOSLAVIA* v. *CANADA*) (*YUGOSLAVIA* v. *FRANCE*) (*YUGOSLAVIA* v. *GERMANY*) (*YUGOSLAVIA* v. *ITALY*) (*YUGOSLAVIA* v. *NETHERLANDS*) (*YUGOSLAVIA* v. *PORTUGAL*) (*YUGOSLAVIA* v. *SPAIN*) (*YUGOSLAVIA* v. *UNITED KINGDOM*) (*YUGOSLAVIA* v. *UNITED STATES OF AMERICA*): PROVISIONAL MEASURES[1]

A. Introduction

In April 1999 the Federal Republic of Yugoslavia (hereafter Yugoslavia) brought cases before the ICJ against ten NATO member States for illegal use of force.

21. In the *Cumaraswamy* case all States Parties to the General Convention (over 130 States) were invited to furnish information.

22. Dissenting Opinion of Judge Koroma at §14.

23. Statement of the Malaysian Solicitor General, Oral Pleadings, 10.12.98.

24. See UN Human Rights Centre press release of 19.10.99.

1. I.C.J. Rep. 1999. For convenience references will be made to the judgment in *Belgium* v. *Yugoslavia* where there are no significant differences between the judgments.

NATO forces were then in the middle of an air campaign against Yugoslavia, begun in March 1999 in response to massacres and forced expulsion of ethnic Albanians in Kosovo by Yugoslav police and security forces. In all ten cases Yugoslavia sought declaratory judgments: that by taking part in the bombing each respondent State was in breach of the obligation not to use force; that by taking part in training the Kosovo Liberation Army each respondent was in breach of its obligation not to intervene in the affairs of another State; that each respondent State had violated international humanitarian law on the protection of civilian population and objects, the protection of the environment, the use of prohibited weapons; that each respondent State had violated the obligation in the Genocide Convention not to impose deliberately on a national group conditions of life calculated to bring about the physical destruction of the group.

These cases are instances of a recent trend by States to take claims concerning this most sensitive subject matter—the use of force—to the Court for judicial resolution.[2] The USA argument in *Military and Paramilitary Activities in and against Nicaragua*[3] that cases concerning the on-going use of armed force are not admissible because they are not a proper matter for the ICJ has not been generally accepted. On the same day that Yugoslavia brought its case against the ten NATO member States, it also sought provisional measures under Article 41 of the Statute of the Court. It asked the ICJ to indicate that each respondent "shall cease immediately its acts of use of force and shall refrain from any act of threat or use of force against Yugoslavia"; if not, there would be new losses of human life, physical and mental harm, destruction of civilian targets, heavy environmental pollution and further physical destruction of the people of Yugoslavia.

In these cases the Court did not examine the law on the use of force; most of the States in their oral argument had said that this was not necessary or appropriate at the provisional measures stage. Yugoslavia had set out at some length its argument on the illegality of the NATO action, but Belgium alone of the respondent States made out a detailed case for the NATO action.[4] Nevertheless, the Court was prepared to indicate concern at the situation in Kosovo in its reasoning; it was even-handed in its language. It said, "Whereas the Court is deeply concerned with the human tragedy, the loss of life, and the enormous suffering in Kosovo which form the background of the present dispute, and with the continuing loss of life and human suffering in all parts of Yugoslavia; whereas the Court is profoundly concerned with the use of force in Yugoslavia; whereas under the present circumstances such use raises very serious issues of international law".[5]

2. See also *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Preliminary Objections)* I.C.J. Rep. 1998, 275; *Oil Platforms (Islamic Republic of Iran* v. *USA), Preliminary Objections*, I.C.J. Rep. 1996, 803. In 1999 Pakistan brought the *Aerial Incident of 10 August 1999* case against India and the Democratic Republic of Congo brought a case on *Armed Activities on the Territory of the Congo* against Uganda, Rwanda and Burundi.

3. I.C.J. Rep. 1984, 392, paras89–98.

4. For a discussion of the arguments on the legality of the use of force see Gray, "The legality of NATO's military action in Kosovo: is there a right of humanitarian intervention?", in *International Law in the Post-Cold War World* (eds. Wang Tieya and S. Yee, Routledge, 2000).

5. *Belgium* v. *Yugoslavia* Judgment, paras16–17.

However, the Court resisted the urging of the four dissenting judges[6] that it should go further on the basis of its duty as the principal judicial organ of the UN to contribute to the maintenance of international peace. They said it should either include in the operative part of its Order a provisional measure calling on all parties to desist from acts of violence of any sort whatever or alternatively make a separate general statement appealing to the parties to act in compliance with obligations under the UN Charter and humanitarian law.

B. The question of prima facie *jurisdiction*

Yugoslavia's application for provisional measures was refused in all ten cases. The main reason given for rejection was the lack of *prima facie* jurisdiction on the merits of the case. It is well established in the jurisprudence of the Court that provisional measures will be indicated only if there is sufficient likelihood of jurisdiction on the merits of the case. However, the ICJ had never before this case refused provisional measures on this ground. Perhaps the refusal may be explained by special circumstances. Many of the respondent States in their oral arguments laid great stress on what they saw as the bad faith of the applicant; they denounced the application as politically motivated and an abuse of process. They said that Yugoslavia had not come to the Court with clean hands. Germany argued that Yugoslavia had not observed the provisional measures in the *Bosnia Genocide* case;[7] other respondents focused on Yugoslavia's behaviour in Kosovo. They urged the Court to use its discretion to refuse provisional measures on these grounds. The Court did not address these arguments directly, but its reasoning gives rise to the inference that it was nevertheless affected by them.

The cases can be divided into two main groups: in all ten cases Yugoslavia based the Court's jurisdiction on Article IX of the 1948 Genocide Convention; in six of the ten cases it claimed there was also jurisdiction under the Optional Clause.[8]

C. Jurisdiction under the Genocide Convention

The Court accepted that Yugoslavia was a party to the Genocide Convention and that the treaty therefore provided a possible basis on which jurisdiction might be

6. Judge Kreca dissented in nine of the ten cases and gave a Separate Opinion in the case against Spain. Judges Weeramantry, Shi and Vereshchetin dissented in the cases against Belgium, Canada, Netherlands and Portugal, mainly on the question of the proper interpretation of Yugoslavia's Optional Clause declaration.

7. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro) Provisional Measures*, Orders of 8 April and 13 September 1993, I.C.J. Rep. 1993, 3, 325, noted by C. Gray, (1994) 43 I.C.L.Q. 704.

8. In the cases against Belgium and the Netherlands Yugoslavia also invoked treaties of 1930 and 1931 respectively as giving jurisdiction; it did so at the second stage of oral argument. The Court rejected this attempt to bring in new grounds of jurisdiction as jeopardising procedural fairness (*Belgium* v. *Yugoslavia* Judgment, paras.42–44; *Netherlands* v. *Yugoslavia* Judgment, paras.42–44). Judge Kreca in his Dissenting Opinion criticised this decision as inconsistent with the Court's earlier jurisprudence.

founded.[9] Two of the respondent States, the USA and Spain, had made reservations to Article IX of the Genocide Convention, excluding the application to them of the dispute settlement provisions obliging them to submit to the jurisdiction of the ICJ. The Court took this at face value and held that these reservations meant that there was a manifest lack of jurisdiction, and these cases were removed from the Court's List.[10]

In the other eight cases the Court considered the scope of its jurisdiction under the Genocide Convention: were the particular breaches alleged by Yugoslavia capable of falling within the provisions of the Geneva Convention?[11] The respondent States argued that the breaches alleged by Yugoslavia to have been committed by the NATO air campaign did not amount to genocide and accordingly the Court did not have *prima facie* jurisdiction under the Genocide Convention. The respondent States offered a variety of arguments on the question of the concept of genocide. Some focused on the issue as to whether the particular actions complained of could amount to genocide; they said the mere fact that armed force had been used did not mean that there had been genocide. Others argued that Yugoslavia had not shown the necessary intent on the part of NATO States; it had taken the position that the necessary intent could be inferred from action.

The Court examined Article 2 of the Genocide Convention; it said that the essential characteristic of genocide was the "intended destruction of a national, ethnical, racial or religious group". It found that the threat or use of force against a State could not in itself constitute an act of genocide within Article II. Also it did not appear that the NATO bombings entailed the element of intent required. This crucial finding by the Court was made very briefly in one paragraph.[12] Therefore the Court said that it was not in a position to find at this stage of the proceedings that the acts imputed to the respondents were capable of coming within the provisions of the Genocide Convention. Article IX could not constitute a basis on which the jurisdiction of the Court could *prima facie* be founded. Although this was said to be only a provisional determination on the concept of genocide, it is difficult to imagine the Court coming to a different conclusion on this point at the jurisdictional stage. The provisional finding will also be significant in the other cases on genocide currently before the Court.[13]

9. There was apparently no support for the view of Judge Oda, expressed earlier in the *Bosnia Genocide* case (*supra* n.7) and repeated in his Separate Opinion in this case, that Article IX of the Genocide Convention does not allow actions for State responsibility for genocide. Yugoslavia has apparently reversed its position on this point since the *Bosnia Genocide* case.

10. Judge Kreca in his Dissenting Opinion concurred in this with regard to Spain, but he said that the US reservation to Article IX was much more far reaching than Spain's reservation and therefore was an absolute nullity.

11. This is similar to the question before the Court at the Preliminary Objections stage of the *Oil Platforms* case: did the Court have jurisdiction over the particular subject matter of the case? (*supra* n.2).

12. *Belgium* v. *Yugoslavia*, Judgment, para.40. Judge Kreca in his Dissenting Opinion was critical of the Court for accepting the NATO argument on this crucial issue.

13. These are the *Bosnia Genocide* case (*supra* n.7) and the new case, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, brought by Croatia against Yugoslavia in 1999.

D. Jurisdiction Under the Optional Clause: Validity of the Yugoslav Declaration

In six cases—against Belgium, Canada, Netherlands, Portugal, UK and Spain—Yugoslavia based the jurisdiction of the Court not only on the Genocide Convention but also on the Optional Clause. Some respondent States made the fundamental argument that Yugoslavia was not a party to the Statute of the Court and so was not able to accept the Optional Clause under Article 36(2) of the Statute. They relied on Security Council and General Assembly Resolutions rejecting any claim by Yugoslavia to succeed automatically to the UN membership of the Socialist Federal Republic of Yugoslavia. They said it was not a member of the UN and for that reason not a party to the Statute of the Court. In reply Yugoslavia argued that there was a distinction between membership and participation; whereas it had been excluded from participation in the General Assembly it remained a member of the UN as shown by the continuation of the seat and flag of Yugoslavia in the UN. Moreover it had paid its UN dues and these had been accepted. The Court avoided any decision on the question, just as it had earlier avoided the same issue in the *Bosnia Genocide* case when it said only that the question was not without difficulty.[14] Here it held that it need not consider this question of the validity of Yugoslavia's declaration in view of its finding that the terms of the Yugoslav declaration *prima facie* excluded the jurisdiction of the Court.[15]

Three judges said that the Court should have decided this issue of the validity of Yugoslavia's acceptance of the Optional Clause. Judges Oda and Kooijmans said that Yugoslavia was not a member of the UN and therefore was not able to accept the Optional Clause; Judge Kreca accepted Yugoslavia's argument that it was a member and therefore a party to the Statute, able to make a valid acceptance of the Optional Clause. All three saw this question as logically preliminary to the interpretation of the terms of Yugoslavia's acceptance of the Optional Clause. In contrast, Judge Higgins argued that it was the practice of the Court that weighty and complex arguments would not be addressed at the provisional measures stage. Here no final determination should be made of the issue of Yugoslavia's membership of the UN. She wrote of the unavoidable tensions between the demands of logic and the inability to determine with finality when operating under urgency in response to a request for provisional measures.

E. Jurisdiction Under the Optional Clause: Application of the Yugoslav Declaration

Yugoslavia lodged its acceptance of the Optional Clause with the UN Secretary-General on 26 April 1999; on 29 April it brought its action against the ten NATO States. Its declaration said that it accepted the jurisdiction of the Court "in all disputes arising or which may arise after the signature of the present Declaration, with regard to situations or facts subsequent to this signature". This is a common type of reservation, generally called a reservation *ratione temporis*. It is clear that the terms of the declaration were designed to protect Yugoslavia from being sued

14. Order of 8 April, at para.8 (*supra* n.7).
15. *Belgium* v. *Yugoslavia* Judgment para.33.

for its own actions in Kosovo before the NATO air campaign began. But this provision seriously backfired on Yugoslavia.

In the cases against Spain and the UK the Court found that the Optional Clause did not provide a basis for jurisdiction because the respondent States had made reservations protecting them against exactly this type of opportunist action. Thus the UK reservation protected it against actions "where the acceptance of the Court's compulsory jurisdiction on behalf of any other Party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court". The Court gave effect to these reservations and found that therefore there was no *prima facie* jurisdiction in these two cases.

In the other four Optional Clause cases (against Belgium, Canada, Netherlands and Portugal) it was the interpretation of the Yugoslav declaration that was crucial. The Court gave full effect to the reservation *ratione temporis* in the Yugoslav declaration and this led it to deny that there was *prima facie* jurisdiction on the merits.[16] In earlier cases before the ICJ such reservations *ratione temporis* had generally proved ineffective to deprive the Court of jurisdiction; typically the Court went to some lengths to find that disputes arose or continued *after* the critical date and that therefore the reservation *ratione temporis* did not deprive the Court of jurisdiction.[17] In contrast, in these four cases the Court found that the dispute arose *before* the Yugoslav acceptance of the Optional Clause and therefore the effect of the Yugoslav reservation was to deprive the Court of jurisdiction. This was the most controversial part of the Court's reasoning; four judges dissented strongly on this point.[18] The crucial question which divided the court was whether the case concerned one, on-going, indivisible dispute or a series of distinct disputes. The Court found that Yugoslavia's application was directed in essence against the bombing of Yugoslavia. This had begun on 24 March 1999 and had been conducted continuously over a period extending beyond 25 April 1999. Accordingly a legal dispute arose well before 25 April concerning the legality of the bombings. The fact that the bombings had continued after 25 April and that the dispute had persisted did not alter the date on which the dispute arose.

The dissenting judges said that the Court's position was not legally tenable; after the start of bombing each subsequent attack gave rise to a disagreement on a point of law or fact. The bombing campaign was a series of acts, not a unity; different legal obligations were violated in different attacks. Some involved attacks on civilians, some the use of prohibited weapons, and some attacks on protected historical monuments. This seems plausible and it is difficult to resist the conclusion that the majority were not willing that Yugoslavia should make opportunist use of the Court to bring an action against the NATO States while at the same time protecting itself from counterclaims for its own actions in Kosovo. The Court's construction of the Yugoslav declaration ran counter to the manifest

16. It did so even in the case against Belgium where the respondent did not argue this point, preferring to base itself on the claim that Yugoslavia was not a party to the Statute of the Court, Judgment, para.24.

17. J. G. Merrills, "The Optional Clause Revisited", (1993) 64 B.Y.I.L. 197 at 213–219.

18. *Supra* n.6. Judge Koroma also indicated his disagreement with the majority on this point in his Declaration.

intention of Yugoslavia to entrust the Court with the resolution of those disputes about the legality of the NATO bombing; it is therefore not easy to reconcile with the reasoning of the Court in the recent *Fisheries Jurisdiction* (*Spain* v. *Canada*) case in which the Court held that regard should be paid to the intent of the State making the reservation.[19] However, the Court was not willing openly to espouse Judge Oda's position that "acceptance by Yugoslavia of the Court's jurisdiction only a matter of days before it filed its application with the Court is not an act done in good faith and is contrary to the proper concept of acceptance of the compulsory acceptance of the Court under the optional clause in the Statute."

F. Conclusions

In these cases Yugoslavia attempted to bring claims against ten NATO States for their air campaign, while at the same time protecting itself from counterclaims for its own actions in Kosovo. The Court was not willing openly to condemn Yugoslavia for abuse of process. However, the Court's decision to refuse provisional measures on the basis of lack of *prima facie* jurisdiction on the merits contained certain controversial features that may best be understood as a result of its determination not to be manipulated by an opportunist State.

As far as the Genocide Convention was concerned, the Court's main decision that this did not provide *prima facie* jurisdiction over the subject matter of Yugoslavia's claims rested on a crucial determination as to the concept of genocide. Its finding that intent to destroy a national, ethnical, racial or religious group had to be provided by Yugoslavia and could not be inferred from NATO's actions was decisive in the rejection of Yugoslavia's application for provisional measures. It is also likely to be important in other cases, but nevertheless this finding by the Court was made extremely briefly and without doctrinal discussion.

As far as the Optional Clause was concerned, the Court's central decision was based on an interpretation of the Yugoslav reservation *ratione temporis*. The Court construed this without giving predominance to Yugoslavia's intentions in making the reservation. Its determination that the dispute was a unity, arising at the start of the bombing campaign, and that it could not be broken up into a series of separate legal disputes meant that the Yugoslav reservation operated against Yugoslavia's own interest and deprived the Court of *prima facie* jurisdiction.

Although these decisions by the Court were nominally provisional, in fact they make it extremely unlikely that Yugoslavia will succeed in establishing the jurisdiction of the Court to hear the merits of the cases.

CHRISTINE GRAY

KASIKILI/SEDUDU ISLAND (BOTSWANA/NAMIBIA)

A commentary on this case will appear in the October issue of this Journal.

II. CASES BEFORE THE COURT*

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

19. I.C.J. Rep. 1998, para.49.

* As at 31 May 2000.

Qatar instituted proceedings against Bahrain on 8 July 1991 in a dispute concerning sovereignty, sovereign rights and the delimitation of maritime areas. Bahrain raised preliminary objections in July 1991. Following its judgments of 1 July 1994[1] and 15 February 1995[2] the Court found that it had jurisdiction and that the application (as reformulated on 30 November 1994) was admissible.[3] By an order of 28 April 1995[4] memorials were to be submitted by both States by 29 February 1998, subsequently extended to 30 September by an order of 1 February 1996.[5] By an order of 30 October 1996[6] counter-memorials were to be submitted by 31 December 1997. However, on 25 September 1997 Bahrain challenged the authenticity of 81 documents annexed to the Qatar memorial and sought clarification of their status as a preliminary issue. By an order of 30 March 1998[7] the Court set 30 March 1999 as the time limit for the filing of replies by both States but also decided that Qatar should file an interim report on the status of the disputed documents by 30 September 1998 and that Bahrain's reply should contain its observations on this report. In its interim report, submitted on 30 September 1998, Qatar announced that it would not rely on the disputed documents and, in an order of 17 February 1999,[8] the Court decided that the replies to be filed by both States would not rely on them and extended the time limit for submission until 30 May 1999. Both replies were filed within the time limit and the oral hearings on the merits opened on 29 May 2000.[9]

2. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya* v. *United Kingdom*).

Libya instituted proceedings against the United Kingdom and the United States on 3 March 1992, arguing that it was entitled itself under the Montreal Convention to try those suspected of the destruction of Pan Am Flight 103 over Lockerbie and requested an award of provisional measures to prevent further action to compel their surrender pending the outcome of the case. In its orders of 14 April 1992[10] the Court declined to do so. In orders of 19 June 1992[11] the following time limits were set for the submission of written pleadings: Libya, memorial, 20 December 1993; United Kingdom and the United States, counter-memorials, 20 June 1995. Preliminary objections were filed by the United Kingdom and the United States on 16 and 20 June 1995 respectively but in its judgments of 27 February 1998[12] the Court found it did have jurisdiction and that the application was admissible. In orders of 30 March 1998[13] the time limit for the filing of counter-memorials by the United Kingdom and the United States was set as 30 December 1998 but by orders of 17 December 1998[14] this was extended to 31 March 1999. In an order of 29 June 1999[15] the Court fixed 29 June 2000 as the time limit for the filing of a reply by Lybia and authorized the filing of a rejoinder by the United Kingdom and the United States but without setting a date for this.

1. I.C.J. Rep. 1994, 112.
2. I.C.J. Rep. 1995, 6.
3. See M. D. Evans, Case Note, (1995) 44 I.C.L.Q. 691.
4. I.C.J. Rep. 1995, 83.
5. I.C.J. Rep. 1996, 6.
6. I.C.J. Rep. 1996, 800.
7. I.C.J. Rep. 1998, 243.
8. I.C.J. Rep. 1999, 3.
9. I.C.J. Press Communiqué No. 2000/13.
10. I.C.J. Rep. 1992, 3, 14. See F. Beveridge, "The Lockerbie Affair", (1992) 41 I.C.L.Q. 907.
11. I.C.J. Rep. 1992, 231, 234.
12. See F. Beveridge, Case Note, (1999) 48 I.C.L.Q. 658.
13. I.C.J. Rep. 1998, 237, 240.
14. I.C.J. Rep. 1998, 746, 749.
15. I.C.J. Press Communiqué No. 99/36.

3. 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*).

See previous entry.

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

Iran instituted proceedings against the United States on 2 November 1992 with respect to the destruction of Iranian oil platforms, allegedly in breach of the 1955 Treaty of Amity, Economic Relations and Consular Rights. By an order of 4 December 1992[16] the following time limits were set for the submission of written pleadings: Iran, memorial, 31 May 1993; United States, counter-memorial, 30 November 1993. These were extended by an order of 3 June 1993[17] to: Iran, memorial, 8 June 1993; United States, counter-memorial, 16 December 1993. On 16 December 1993 the United States filed preliminary objections. In its judgment of 12 December 1996[18] the Court found that it had jurisdiction to entertain the claims[19] and, by an order of 16 December 1996,[20] fixed 23 June 1997 as the date for the submission of the United State's counter-memorial. The counter-memorial, submitted on 23 June 1997, contained a counter-claim against Iran and, in an order of 19 March 1998,[21] the Court held this to be admissible and that it formed a part of the current proceedings. The following time limits were set for the written pleadings on the merits: Iran, reply, 10 September 1998; United States, rejoinder, 23 November 1999. By an order of 26 May 1998[22] these were extended to: Iran, reply, 10 December 1998; United States, rejoinder, 23 May 2000. By an order of 8 December 1998[23] they were further extended to: Iran, reply, 10 March 1999; United States, rejoinder, 23 November 2000.

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

The Republic of Bosnia and Herzegovina instituted proceedings against Yugoslavia on 20 March 1993 alleging violations of the 1949 Genocide Convention and requesting an indication of provisional measures which was made in an order of 8 April 1993.[24] This was reaffirmed in an order of 13 September 1993,[25] following a second request for provisional measures made by Bosnia and Herzegovina on 27 July 1993 and a request made by Yugoslavia on 10 August 1993.[26] By an order of 16 April 1993[27] the following time limits were set for the filing of the written pleadings: Bosnia and Herzegovina, memorial, 15 October 1993; Yugoslavia, counter-memorial, 15 April 1994. By an order of 7 October 1993[28] these were extended to: Bosnia and Herzegovina, memorial, 15 April 1994; Yugoslavia, counter-memorial, 15 April 1995 and, by order of 21 March 1995,[29] the date for the submission of the Yugoslavian counter-memorial was again extended to 30 June 1995. On 26 June 1995 Yugoslavia

16. I.C.J. Rep. 1992, 763.
17. I.C.J. Rep. 1993, 35.
18. I.C.J. Rep, 1996, 803.
19. See M. D. Evans, Case Note, (1997) 46 I.C.L.Q. 693.
20. I.C.J. Rep. 1996, 902.
21. I.C.J. Rep. 1998, 190.
22. I.C.J. Rep. 1998, 269.
23. I.C.J. Rep. 1998, 740.
24. I.C.J. Rep. 1993, 3.
25. I.C.J. Rep. 1993, 325.
26. See C. Gray, Case Note, (1994) 43 I.C.L.Q. 705.
27. I.C.J. Rep. 1993, 29.
28. I.C.J. Rep. 1993, 470.
29. I.C.J. Rep. 1995, 80.

submitted preliminary objections which were rejected by the Court in its order of 11 July 1996.[30] By an order of 23 July 1996[31] the time limit for filing the Yugoslav counter-memorial was fixed as 23 July 1997. The counter-memorial was filed on 22 July 1997 and contained counter-claims against Bosnia and Herzegovina and, in an order of 17 December 1997,[32] the Court held this to be admissible and that it formed a part of the current proceedings. The following time limits were set for the written pleadings on the merits: Bosnia and Herzegovina, reply, 23 January,1998; Yugoslavia, rejoinder, 23 July 1998. By an order of 22 January 1998[33] these were extended to Bosnia and Herzegovina, reply, 23 April 1998; Yugoslavia, rejoinder, 22 January 1999. By an order of 11 December 1998[34] the time limit for the submission of the Yugoslav rejoinder was further extended, to 22 February 1999.

6. Gabčikovo-Nagymaros Project (*Hungary/Slovakia*).

On 2 July 1993, in pursuance of a Special Agreement of 7 April 1993, Hungary and Slovakia requested the Court to determine certain issues arising out of the implementation and termination of a 1977 Agreement on the construction and operation of the Gabčikovo-Nagymaros barrage system. In its judgment of 25 September 1997[35] the Court found both States to be in breach of their obligations and called on them to negotiate a settlement in good faith.[36] On 3 September 1998 Slovakia filed a request for an additional judgment, arguing that Hungary was unwilling to implement to judgment[37]and it was subsequently agreed that Hungary would file a written statement of its position regarding this request by 7 December 1998.[38]

7. Land and Maritime Boundary between Cameroon and Nigeria *(Cameroon* v. *Nigeria*).

Cameroon instituted proceedings against Nigeria on 29 March 1994 in a dispute concerning sovereignty over the Bakasi Peninsula and over their maritime frontier and, by an additional application on 6 June 1994, requested the Court to determine the frontier between the two States from Lake Chad to the sea, order withdrawal of Nigerian troops from Cameroonian territory and determine reparations. By an order of 16 June 1994[39] the following time-limits were set for the submission of written pleadings: Cameroon, memorial, 16 March 1995; Nigeria, counter-memorial, 18 December 1995. On 13 December 1995 Nigeria raised objections to the jurisdiction of the Court and the admissibility of the claims. On 12 February 1996 Cameroon made a request for an award of provisional measures. The Court made an order concerning an award of provisional measures on 15 March 1996[40] and in its judgment of 11 June 1998[41] ruled that it had jurisdiction and found the claim admissible.[42] In an order of 30 June 1998[43] the time limit for the filing of the Nigerian counter-memorial was fixed as 31 March 1999 but by an order of 3 March 1999[44] this was extended to 31

30. I.C.J. Rep. 1996, 595. See C. Gray, Case Note, (1997) 46 I.C.L.Q. 688.
31. I.C.J. Rep. 1996, 797.
32. I.C.J. Rep. 1997, 243.
33. I.C.J. Rep. 1998, 3.
34. I.C.J. Rep. 1998, 743.
35. I.C.J. Rep. 1997, 7.
36. See P.N. Okowa, Case Note, (1998) 47 I.C.L.Q. 688.
37. I.C.J. Press Communiqué No. 98/28
38. I.C.J. Press Communiqué No. 98/31.
39. I.C.J. Rep. 1994, 105.
40. I.C.J. Rep. 1996, 13. See J. G. Merrills, Case Note, (1997) 46 I.C.L.Q. 676.
41. I.C.J. Rep. 1998, 275.
42. See J. G. Merrills, *supra* p.720.
43. I.C.J. Rep. 1998, 420.
44. I.C.J. Rep. 1999, 24.

May 1999. The Nigerian counter-memorial contained a number of counter-claims against Cameroon and, in an order of 30 June 1999, the Court held them to be admissible and that they formed a part of the current proceedings.[45] Meanwhile, on 29 October1998 Nigeria made a request for an interpretation of the Court's judgment of 11 June 1988,[46] which was declared inadmissible in the Court's judgment of 25 March 1999.[47] On 30 June 1999 Equatorial Guinea filed an application to intervene[48] which was authorised by the Court in its order of 21 October 1999.[49]

8. Sovereignty over Pulau Ligitan and Pulua Sipadan (*Indonesia/Malaysia*).

On 2 November 1998, in pursuance of a Special Agreement dated 31 May 1997 (in force 14 May 1998), Indonesia and Malaysia seised the Court of their dispute concerning the sovereignty of the above named islands. In an order of 10 November 1998,[50] the following time limits were set for the submission of written pleadings by both parties: memorials, 2 November 1999, counter-memorials, 2 March 2000. By an order of 14 September 1999[51] the time limit for the filing of the counter-memorials was extended to 2 July 2000 and, by an order of 11 May 2000, this time limit was further extended to 2 August 2000.[52]

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

Guinea instituted proceedings against the Democratic Republic of Congo on 28 December 1998 alleging grave breaches of international law perpetrated upon a national of Guinea. By an order of 25 November 1999[53] the following time limits were set for the submission of written pleadings: Republic of Guinea, memorial, 11 September 2000; Democratic Republic of the Congo, counter-memorial, 11 September 2001.

10. LeGrand (*Germany* v. *United States of America*).

Germany instituted proceedings against the United States on 2 March 1999, alleging violations of the 1963 Vienna Convention on Consular Relations with respect two German nationals convicted of murder in Arizona. The Court issued an order for provisional measures on 3 March 1999.[54] In an order of 5 March 1999[55] the following time limits were set for the submission of written pleadings: Germany, memorial, 16 September 1999; United States, counter-memorial, 27 March 2000.

11. Legality of Use of Force (*Yugoslavia* v. *Belgium*).

Yugoslavia instituted proceedings against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States of America on 29 April 1999, alleging that they had been involved in the bombing of Yugoslav territory in violation of their obligations not to use force against another State and requested an award of provisional measures calling upon them to cease doing so. In its orders of 2 June 1999[56] the Court declined to do so and struck the

45. I.C.J. Press Communiqué No. 99/37.
46. I.C.J. Communiqué No. 98/34.
47. I.C.J. Press Communiqué No. 99/14. See J. G. Merrills, Case Note, (1999) 48 I.C.L.Q. 651.
48. I.C.J. Press Communiqué No. 99/35.
49. I.C.J. Press Communiqué No. 99/44. See J.G. Merrills, Case Note, *supra* p.731.
50. I.C.J. Rep. 1998, 429.
51. I.C.J. Press Communiqué No. 99/40.
52. I.C.J. Press Communiqué No. 2000/14.
53. I.C.J. Press Communiqué No. 99/49.
54. I.C.J. Rep. 1999, 9. See M. K Addo, Case Note, (1999) 58 I.C.L.Q. 673.
55. I.C.J. Rep. 1999, 28.
56. I.C.J. Press Communiqué No. 99/39.

applications against Spain and the United States of America from its list.[57] In orders of 30 June 1999[58] the following time limits were set by the Court for the submission of written pleadings: Yugoslavia, memorial, 5 January 2000; respondent States, counter-memorials, 5 July 2000.

12. Legality of Use of Force (*Yugoslavia* v. *Canada*).

See previous entry.

13. Legality of Use of Force (*Yugoslavia* v. *France*).

See previous entry.

14. Legality of Use of Force (*Yugoslavia* v. *Germany*).

See previous entry.

15. Legality of Use of Force (*Yugoslavia* v. *Italy*).

See previous entry.

16. Legality of Use of Force (*Yugoslavia* v. *Netherlands*).

See previous entry.

17. Legality of Use of Force (*Yugoslavia* v. *Portugal*).

See previous entry.

18. Legality of Use of Force (*Yugoslavia* v. *United Kingdom*).

See previous entry.

19. Armed activities on the territory of the Congo (*Democratic Republic of the Congo* v. *Burundi*).

The Democratic Republic of the Congo (DRC) instituted proceedings against Burundi, Uganda and Rwanda on account of "acts of armed aggression". On 19 October 1999 Burundi and Rwanda raised preliminary objections to the jurisdiction of the Court and the admissibility of the claims. In an order of 21 October 1999[59] the following time limits were set for the submission of written proceedings on these preliminary issues: Burundi and Rwanda, memorials, 21 April 2000; DRC, counter-memorials, 23 October 2000.

20. Armed activities on the territory of the Congo (*Democratic Republic of the Congo* v. *Rwanda*).

See previous entry.

21. Armed activities on the territory of the Congo (*Democratic Republic of the Congo* v. *Uganda*).

The Democratic Republic of the Congo (DRC) instituted proceedings against Burundi, Uganda and Rwanda on account of "acts of armed aggression". In an order of 21 October 1999[60] the following time limits were set for the submission of written proceedings on the merits of the dispute: DRC, memorial, 21 July 2000; Uganda, counter-memorial, 21 April 2001.

57. See C. Gray, Case Note, *supra* p.730.
58. I.C.J. Press Communiqué No. 99/33.
59. I.C.J. Press Communiqué No. 99/45.
60. *Ibid.*

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

Croatia instituted proceedings against Yugoslavia on 2 July 1999, alleging violations of the 1949 Genocide Convention and seeking reparations. In an order of 14 September 1999[61] the following time limits were set for the submission of written pleadings: Croatia, memorial, 14 March 2000; Yugoslavia, counter-memorial, 14 September 2000. In an order of 10 March 2000[62] these were extended to: Croatia, memorial, 14 September 2000, Yugoslavia, counter-memorial, 14 September 2001.

23. Aerial Incident of 10 August 1999 (*Pakistan* v. *India*).

Pakistan instituted proceedings against India on 21 September 1999 in respect of a dispute concerning the destruction of a Pakistani aircraft. On 2 November 1999 India raised preliminary objections to the jurisdiction of the Court and in an order of 19 November 1999[63] the following time limits were set for the submission of written pleadings on the question of jurisdiction: Pakistan, memorial, 10 January 2000; India, counter-memorial, 28 February, 2000. Public hearings were held from 3–6 April 2000[64] and judgment is expected in autumn 2000.

24. Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua* v. *Honduras*).

Nicaragua instituted proceedings against Honduras on 8 December 1999 regarding a dispute concerning the delimitation of maritime zones between them in the Caribbean Sea and requesting that the Court determine the course of a single maritime boundary between their respective areas of territorial sea, continental shelf and exclusive economic zone. In an order of 21 March 2000[65] the following time limits were set for the submission of written pleadings: Nicaragua, memorial, 21 March 2001; Honduras, counter-memorial, 21 March 2002.

III. OTHER DEVELOPMENTS

1. In the triennial election of five members to the Court held on 3 November 1999 the UN General Assembly and Security Council re-elected Judges Gilbert Guillaume (France), Raymond Ranjeva (Madagascar), Rosalyn Higgins (United Kingdom), Gonzalo Parra-Aranguren (Venezuela) and elected Awn Shawkat Al-Khasawneh (Jordan). These terms of offices began on 6 February 2000 and will expire on 5 February 2009.

2. On 7 February 2000 Judge Guillaume was elected President and Judge Jiuyong elected Vice-President of the Court. Both will serve a three year term of office.

3. On 8 February 2000 the Court determined the membership of its Chamber of Summary Procedure as comprising Judges Guillaume, Jiuyong, Herczegh, Koroma and Parra-Aranguren and of its Chamber for Environmental Matters as comprising Judges Guillaume, Jiuyong, Bedjaoui, Ranjeva, Herczegh, Rezek and Al-Khasawneh.

4. On 10 February 2000 Mr Phillipe Couvreur was elected Registrar following the resignation of Mr Valencia-Ospina.

61. I.C.J. Press Communiqué No. 99/41.
62. I.C.J. Rep. 2000, 3.
63. I.C.J. Press Communiqué No. 99/48.
64. I.C.J. Press Communiqué No. 2000/12.
65. I.C.J. Rep. 2000, 6.

5. On 2 March 2000 the UN General Assembly and Security Council elected Mr Thomas Buergenthal (United States of America) to be a member of the Court, filling the vacancy caused by the resignation of Judge Schwebel as of 29 February 2000. This term of office expires on 5 February 2006.