
HAGUE INTERNATIONAL TRIBUNALS

I. International Court of Justice

II. International Criminal Tribunal for the Former Yugoslavia

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

I. INTERNATIONAL COURT OF JUSTICE

(a) List of Current Proceedings*

I. CONTENTIOUS CASES BEFORE THE FULL COURT

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

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

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

* This *List of Current Proceedings: Update* covers cases pending from 1 May 1998 onwards that merit attention because of a new procedural event. It describes the course of proceedings in these cases up to 1 May 1998.

1. 1991 ICJ Rep. 50.

2. 1994 ICJ Rep. 112.

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

A Memorial on the merits was filed by the parties within the extended time limit of 30 September 1996. By an Order of 30 October 1996, the Court has fixed 31 December 1997 as the time limit for the filing by each of the parties of a Counter-Memorial on the merits.⁴ By an Order of 30 March 1998, the Court decided on a further round of written pleadings and directed the submission, by each of the parties of a Reply on the merits by 30 March 1999. The Court also noted that Bahrain had challenged the authenticity of several documents produced by Qatar and decided that Qatar should file an interim report on this question by 30 September 1998.⁵

1.2. Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom); and Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)

Libya filed two separate applications on 3 March 1992.⁶ In the applications, Libya contended that it had not been possible to settle this dispute by negotiations and that the parties were unable to agree on the organization of an arbitration to hear the matter. It accordingly submitted the disputes to the Court on the basis of Article 14, paragraph 1, of the Montreal Convention.⁷ Libya refers in the applications to the charging of two Libyan nationals, by the Lord Advocate of Scotland, and by a Grand Jury of the United States, respectively, with having caused a bomb to be placed aboard a Pan-Am flight, which bomb subsequently exploded, causing the aeroplane to crash. Libya contends that the United Kingdom and the United States, respectively, by rejecting the Libyan efforts to resolve the matter within the framework of international law, including the Montreal Convention, are pressuring it into surrendering the two Libyan nationals for trial. In this connection, Libya refers to Article 1 of the Montreal Convention, according to which the charge constitutes an offence, and to the several other articles of that Convention which are relevant to Libya's alleged right to jurisdiction over the matter

3. 1995 ICJ Rep. 6.

4. ICJ Communiqué No. 96/30 of 22 November 1996.

5. ICJ Communiqué No. 98/12 of 1 April 1998.

6. 1992 ICJ Rep. 3 and 114.

7. 10 ILM 1151 (1971).

and the prosecution thereof. Libya alleges that these obligations are breached by the United Kingdom and the United States respectively.

On the same day, Libya made two separate requests to the Court to indicate provisional measures. In its two Orders of 14 April 1992, the Court considered Resolution 748 (1992) of the UN Security Council, relating to the dispute and adopted three days after the oral hearings before the Court, and found that the rights of the United Kingdom and the United States under Resolution 748 could not be impaired by an indication of provisional measures. The Court therefore found that the circumstances of the case were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.⁸

By two Orders of 19 June 1992, the Court fixed 20 December 1993 as time limit for filing of the Memorial(s) by Libya, and 20 June 1995 for the filing of the Counter-Memorials by the United Kingdom and the United States.⁹ On 22 September 1995, the Court fixed the time limits for the filing of written statements of its observations and submissions on the preliminary objections raised by the United Kingdom and by the United States.¹⁰ This time limit was met by Libya. After hearing the oral pleadings of the parties in October 1997, the Court found on 27 February 1998 that it has jurisdiction to deal with the merits of the case and that the Libyan claims are admissible.¹¹

Concerning the preliminary objections of the United States and of the United Kingdom that the Court did not have jurisdiction because the dispute was not of a legal nature, the Court finds that since the parties differ on the question whether the destruction of the Pan Am aircraft over Lockerbie is governed by the Montreal Convention, a legal dispute thus exists. As to the claim that any rights conferred to Libya by the Montreal Convention are superseded by Security Council resolutions 748 (1992) and 883 (1992), the Court decided that the resolutions were adopted after the filing of the Application on 3 March 1992. If the Court had jurisdiction on that date, it continues to do so.¹²

As regards the objection against the admissibility of the Libyan claims, based on the argument that Libya was endeavoring to “undo the Council’s actions” (United States), and that the issues in dispute “are now regulated by decisions of the Security Council” (United Kingdom), the Court finds that the date on which Libya filed its Application, 3 March 1992, is the only relevant date for determining the admissibility of the Application. As to the

8. 1992 ICJ Rep. 3 and 114.

9. 1992 ICJ Rep. 231 and 234.

10. 1995 ICJ Rep. 282 and 285.

11. ICJ Communiqué No. 98/04, 98/04bis, 98/05, and 98/05bis of 27 February 1998.

12. *Id.*

resolution 731 (1992), adopted before the filing of the Application, it could not form a legal impediment since it was a mere recommendation without binding effect.¹³

The United States and the United Kingdom also claimed that the claims of Libya became moot and without object because of the resolutions of the Security Council. The Court, however, finds that it cannot rule on this objection since that would mean ruling on the merits and affecting Libya's rights. The Court will consider this question when considering the merits of the case. As to the argument of the United States, requesting the Court in the alternative "to resolve the case in substance now", the Court indicates that by raising preliminary objections, the United States has made a procedural choice the effect of which is to suspend the proceedings on the merits.¹⁴

By way of Orders dated 30 March 1998, and taking into account the views of the parties, the Court fixed 30 December 1998 as the time limit for the filing of the Counter-Memorials of the United Kingdom and the United States.¹⁵

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.¹⁶ 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 1955.¹⁷

In its Judgment of 12 December 1996, the Court held that the parties have a dispute as to the interpretation and the application of Article X, paragraph 1, of the Treaty. The Court furthermore held that the dispute falls within the scope of the compromisory clause in Article XXI of the Treaty of Amity, and that as a consequence it has jurisdiction in this case.¹⁸ 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

13. *Id.*

14. *Id.*

15. ICJ Communiqué 98/11 of 1 April 1998.

16. 1992 ICJ Rep. 763.

17. 242 UNTS 93.

18. ICJ Communiqué 96/33 of 12 December 1996.

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 paragraph 1 of the Rules of the Court, a counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court. Iran challenged the counter-claim. The Court received written observations on the issue and found that it was not necessary to hear the parties further. On 19 March 1998 the Court declared the counter-claim admissible as such and that it forms part of the current proceedings. This means that the counter-claim will be examined by the Court simultaneously with the Iranian claims during the proceedings on the merits. The Court has directed the parties to submit further written pleadings on the merits of their respective claims. Iran is to submit a Reply by 10 September 1998 and the United States a Rejoinder by 23 November 1999.¹⁹

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

On 20 March 1993, Bosnia-Herzegovina filed an application against Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948.²⁰ 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.²¹

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

19. ICJ Communiqué No. 98/10 of 19 March 1998.

20. 78 UNTS 277.

21. 1993 ICJ Rep. 3.

on therein. As additional bases for the jurisdiction of the Court in the case, Bosnia-Herzegovina invoked the Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats, and Slovenes on the Protection of Minorities, signed at Saint-Germain-en-Laye on 10 September 1919, and the customary and conventional international laws of war and international humanitarian law. On 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures, and, on 10 and 23 August 1993, it filed written observations on Bosnia-Herzegovina's new request, as amended or supplemented. By an Order of 13 September 1993, and after hearing the parties, the Court reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented.²²

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.²³ 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".²⁴

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. This decision was made in accordance with the views of the parties.²⁵

22. 1993 ICJ Rep. 325.

23. ICJ Communiqué No. 96/25 of 11 July 1996.

24. ICJ Communiqué No. 97/18 of 17 December 1997.

25. ICJ Communiqué No. 98/01 of 22 January 1998.

1.5. 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.²⁶ On 13 December 1995, Nigeria filed preliminary objections. 15 May 1996 was fixed by the Court as the time limit for Cameroon to present its observations and submissions on the preliminary objections raised by Nigeria.²⁷

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.²⁸ Hearings in the preliminary phase of this case were held in the first weeks of March 1998. The Court is currently deliberating.

1.6. Fisheries Jurisdiction Case (Spain v. Canada)

On 28 March 1995, Spain instituted proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the rules of application of that Act, as well as to certain measures taken on the basis of that legislation, most particularly the boarding on the high seas on 9 March 1995 of a fishing boat, the *Estai*, sailing under the Spanish flag.

The Court fixed 29 September 1995 and 29 February 1996 as the time limits for the filing, respectively, of the Memorial by Spain and the Counter-Memorial by Canada on the question of jurisdiction.²⁹ By Order of 8 May 1996, the Court decided not to authorize the filing of a Reply by the applicant and a Rejoinder by the respondent on the question of jurisdiction and

26. 1994 ICJ Rep. 105.

27. 1996 ICJ Rep. 4.

28. 1996 ICJ Rep. 12.

29. 1995 ICJ Rep. 87.

reserved the subsequent procedure for further decision.³⁰ Hearings in the preliminary phase of this case were held in the month of June 1998.

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.³¹ 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.³²

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

On 3 April 1998 Paraguay instituted proceedings against the United States in a dispute concerning alleged violations of the 1963 Vienna Convention on Consular Relations.³³ The Paraguayan national, Francisco Breard, was arrested, tried, convicted, and sentenced to death for the crime of murder in the state of Virginia. This took place without Virginia advising him of his right of assistance by consular officers. Paraguayan consular officers were never notified by the United States. Accordingly, Paraguay requested the Court to adjudge and declare that the United States has violated its international legal obligations under the Vienna Convention and that Paraguay is entitled to "restitution in kind", that is, the re-establishment of the situation that existed before the United States failed to provide the required notification.³⁴

In view of the urgency of that case, Paraguay also requested the Court to indicate provisional measures to the effect that the United States should refrain from executing Mr Breard before the Court could consider Paraguay's claims. On 9 April 1998, the Court indicated provisional measures, calling on the United States to "take all measures at its disposal" to prevent the exe-

30. 1996 ICJ Rep. 57.

31. ICJ Communiqué No. 96/20 of 26 June 1996.

32. ICJ Communiqué No. 98/06 of 27 February 1998.

33. 596 UNTS 261.

34. ICJ Communiqué No. 98/13 of 3 April 1998.

cution of Mr Breard, pending a final decision of the Court in the proceedings instituted by Paraguay.³⁵

The Vice-President of the Court fixed the time limit for the Paraguayan Memorial on 9 June 1998 and for the Counter-Memorial of the United States by 9 September 1998.³⁶ Nevertheless, the State of Virginia executed Mr Breard on 14 April 1998.

35. ICJ Communiqué No. 98/17 of 9 April 1998.

36. ICJ Communiqué No. 98/18 of 9 April 1998.