
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: Update*

1. CONTENTIOUS CASES BEFORE THE FULL COURT

1.1. 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.¹ 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 1955.²

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.³ The Court fixed 23 June 1997 as the time limit for the Counter-Memorial of the United States on the merits.

* 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 7 October 1998. See generally the website of the International Court of Justice: <http://www.icj-cij.org>.

1. 1992 ICJ Rep. 763.

2. 242 UNTS 93.

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

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, paragraph 1, of the Rules of the Court, a counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court. Iran challenged the counter-claim. The Court received written observations on the issue and found that it was not necessary to hear the parties further. On 10 March 1998 the Court declared the counter-claim admissible as such and that it forms part of the current proceedings. This means that the counter-claim will be examined by the Court simultaneously with the Iranian claims during the proceedings on the merits. The Court has directed the parties to submit further written pleadings on the merits of their respective claims. Iran is to submit a Reply by 10 September 1998 and the United States a Rejoinder by 23 November 1999.⁴ 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.⁵

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

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

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

Hearings in the case were held between 3 March and 15 April 1997, the Court paying a site visit (the first ever in its history) to the Gabčíkovo-Nagymaros Project between those dates. In its Judgment of 25 September

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

5. ICJ Communiqué No. 98/19 of 26 May 1998.

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 1989.⁶

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 initialed 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.⁷ 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.⁸

1.3. 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.⁹ 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.¹⁰

6. ICJ Communiqué No. 97/10 and 97/10bis of 25 September 1997.

7. ICJ Communiqué No. 98/28 of 3 September 1998.

8. ICJ Communiqué No. 98/31 of 7 October 1998.

9. 1994 ICJ Rep. 105.

10. 1996 ICJ Rep. 4.

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.¹¹ Hearings in the preliminary phase of this case were held in the first weeks of March 1998. On 11 June 1998 the Court found that it has jurisdiction to deal with the merits of the case. It also found that Cameroon's claims are admissible.

In its judgment the Court rejected Nigeria's argument that Cameroon had no right to invoke its declaration as a basis of jurisdiction because it had omitted to inform Nigeria that it had made such a declaration and that it was preparing to seize the Court weeks later. According to the Court, only the deposit of the declaration with the Secretary-General of the United Nations is relevant as it establishes the mutual consent to the Court's jurisdiction. Moreover, nothing obliged Cameroon to inform Nigeria of its intention to seize the Court. It cannot therefore be reproached with having violated the principle of good faith. The Court held that the fact that both states had attempted to solve their dispute bilaterally did not imply that either one had excluded the possibility of bringing it before the Court. Neither in the Charter nor otherwise in international law is any rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court. The fact that negotiations are ongoing in the Lake Chad Basin Commission cannot prevent the Court from exercising its functions. The Commission is not a judicial body and its authority is not exclusive. Concerning the possible consequences of Cameroon's Application on the tripoint in Lake Chad (i.e., the point where the frontiers of Cameroon, Chad, and Nigeria meet), the Court found that the legal interests of Chad did not constitute the very subject matter of the judgment to be rendered on the merits and that the absence of Chad accordingly did not prevent the Court from 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

11. 1996 ICJ Rep. 12.

not possess an exclusively preliminary character and would have to be settled during the proceedings on the merits.¹²

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.¹³

1.4. 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.¹⁴ 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.¹⁵ Hearings on the merits of this case are to be held from 15 February to 5 March 1999.¹⁶

1.5. 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.¹⁷ 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.¹⁸

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 re-

12. ICJ Communiqué 98/23 and 98/23bis of 11 June 1998.

13. ICJ Communiqué 98/25 of 1 July 1998.

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

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

16. ICJ Communiqué No. 98/29 of 1 October 1998.

17. 596 UNTS 261.

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

frain from executing Mr Breard before the Court could consider Paraguay's claims. On 9 April 1998, the Court indicated provisional measures, calling on the United States to "take all measures at its disposal" to prevent the execution of Mr Breard, pending a final decision of the Court in the proceedings instituted by Paraguay.¹⁹ 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 1998.²⁰ Nevertheless, the state of Virginia executed Mr Breard on 14 April 1998.

By Order of 9 June 1998 the Vice-President of the Court extended the time limit for the filing of the Memorial by Paraguay to 9 October 1998 and the time limit for the filing of the Counter-Memorial of the United States to 9 April 1999.²¹

2. REQUESTS FOR ADVISORY OPINIONS

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

Mr Dato' Param Kumaraswamy is a Malaysian jurist who was appointed Special Rapporteur on the independence of judges and lawyers in 1994 by the Commission on Human Rights, an organ of ECOSOC. According to a note addressed to ECOSOC by the UN Secretary-General, Mr Kofi Annan, on 28 July 1998, Mr Kumaraswamy currently faces four lawsuits filed in Malaysian courts by different plaintiffs for damages in a total amount of US\$ 112 million following an interview that he gave in November 1995 to *International Commercial Litigation*, a magazine published in the United Kingdom but also circulated in Malaysia. In that interview, he commented on certain litigations that had been carried out in Malaysian courts. The plaintiffs assert that the words of Mr Kumaraswamy were defamatory.

After the first lawsuit was filed, the UN Legal Counsel, Mr Hans Corell, acting on behalf of the Secretary-General, considered the circumstances of the interview and of the controverted passages of the article and determined that Mr Kumaraswamy had spoken in his official capacity as Special Rapporteur. He stated that accordingly, by virtue of Section 22 of Article VI of the Convention on the Privileges and Immunities of the United Nations,²² Mr Kumaraswamy was immune from legal process. On 15 January 1997, the Legal

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

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

21. ICJ Communiqué No. 98/22 of 9 June 1998.

22. 1946 Convention on the Privileges and Immunities of the United Nations, 1 UNTS 15 (1946).

Counsel sent a Note Verbale to the Permanent Representative of Malaysia to the United Nations, requesting the competent Malaysian authorities “to promptly advise the Malaysian courts of the Special Rapporteur’s immunity from legal process”.

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

Considering that a difference had arisen between the United Nations and the government of Malaysia with respect to the immunity from legal process of Mr Cumaraswamy, on 5 August 1998, ECOSOC adopted a resolution requesting the Court to give, on a priority basis, an advisory opinion: “on the legal question of the applicability of Article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato’ Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General, and on the legal obligations of Malaysia in this case”. The request for an advisory opinion was received in the Registry of the Court on 10 August 1998 by telefax from the UN Secretary-General. The government of Malaysia has already indicated that it did not oppose the submission of the matter to the Court and that it would make its own presentations to the ICJ.²³

In an Order of 10 August 1998, the Senior Judge and acting President of the Court, Judge Oda, decided that the United Nations and the states parties to the Convention on the Privileges and Immunities of the United Nations (the interpretation of which is the source of the difference) were likely to furnish information on the question submitted by the Court. He fixed 7 October 1998 as the time limit within which written statements on the question may be submitted to the Court and 6 November 1998 as the time limit within which states and organizations having presented written statements may submit written comments on other written statements. The subsequent procedure has been reserved for further decision.²⁴

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

24. ICJ Communiqué No. 98/27 of 12 August 1998.