HAGUE INTERNATIONAL TRIBUNALS

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I. INTERNATIONAL COURT OF JUSTICE

(a) List of Current Proceedings: Update*

*Compiled by Rosanne van Alebeek*** *& Ursula E.A. Weitzel****

1. CONTENTIOUS CASES BEFORE THE COURT

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

1.1.1. History of the case

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 warn-

* This *List of Current Proceedings: Update* covers cases pending from 1 January 2000 onwards that merit attention because of a new procedural event. It describes the course of proceedings in these cases up to 1 April 2000. *See, generally*, the website of the Court: http://www.icj-cij.org.

** Doctoral Research Fellow, E.M. Meijers Institute for Legal Research, Leiden University.
*** Editor, Hague International Tribunals.

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ing", 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 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."[1]

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, paragraph 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.[2]

At a meeting held on 10 November 1999 by the then President of the Court, Judge Schwebel, with the Parties, the latter provisionally agreed to request the Court to determine separately the question of the Court's jurisdiction before any proceedings on the merits of the case. That agreement was later confirmed in writing by Pakistan.

1.1.2. Latest developments

Public hearings will open on Monday 3 April 2000 before the International Court of Justice (ICJ). The hearings, which will last a week, will be dedicated exclusively to the issue of the Court's jurisdiction to deal with the dispute.[3]

1. ICJ Communiqué No. 99/43 of 22 September 1999.
2. *Id.*
3. ICJ Communiqué No. 2000/6 of 24 February 2000.

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

1.2.1. History of the case

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 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, currently 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.[4]

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."[5]

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 interpreta-

4. ICJ Communiqué No. 99/38 of 2 July 1999.
5. *Id.*

tion, application or fulfilment of the Convention shall be submitted to the International Court of Justice. [6]

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.[7]

1.2.2. Latest developments

By an Order dated 10 March 2000, President Gilbert Guillaume extended to 14 September 2000 the time-limit for the filing of a Memorial by the Republic of Croatia and to 14 September 2001 the time-limit for the filing of a Counter-Memorial by the Federal Republic of Yugoslavia. This extension was made on the request of Croatia and after the views of Yugoslavia had been ascertained.[8]

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

1.3.1. History of the case

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 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."[9]

6. *Id.*
7. ICJ Communiqué No. 99/41 of 16 September 1999.
8. ICJ Communiqué No. 2000/9 of 17 March 2000.
9. ICJ Communiqué No. 99/52 of 8 December 1999.

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."[10]

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."[11] 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, paragraph 2, of the Statute of the Court, by which both States have accepted the compulsory jurisdiction of the Court.[12]

1.3.2. Latest developments

By an Order dated 21 March 2000, the Court decided that Nicaragua would file a Memorial by 21 March 2001 and that Honduras would file a Counter-Memorial by 21 March 2002.[13]

10. *Id.*
11. *Id.*
12. *Id.*
13. ICJ Communiqué No. 2000/10 of 23 March 2000.