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*

*Compiled by Juan M. Amaya-Castro***

1. 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-

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

** Research Assistant at the Institute of Globalization, International Economic Law and Dispute Settlement (GLODIS), Faculty of Law, Erasmus University, Rotterdam, The Netherlands.

1. 1991 ICJ Rep. 50.
2. 1994 ICJ Rep. 112.

https://doi.org/10.1017/S0922156599000175 Published online by Cambridge University Press

limit within which the parties were, jointly or separately, to take action to this end. Both parties met this time-limit.

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

A Memorial on the merits was filed by the parties within the extended time-limit of 30 September 1996. By an Order of 30 October 1996, the Court has fixed 31 December 1997 as the time-limit for the filing by each of the parties of a Counter-Memorial on the merits.[4] By an Order of 30 March 1998, the Court decided on a further round of written pleadings and directed the submission, by each of the parties of a Reply on the merits by 30 March 1999. The Court also noted that Bahrain had challenged the authenticity of several documents produced by Qatar and decided that Qatar should file an interim report on this question by 30 September 1998.[5] In the interim report Qatar decided to disregard, for purposes of the case concerning *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar* v. *Bahrain)* the 82 documents annexed to its written pleadings which had been challenged by Bahrain. On 17 February 1999 the Court, taking into account the views of the parties, accordingly decided that the Replies yet to be filed by Qatar and by Bahrain would not rely on these documents. The Court granted a two-month extension of the time-limit for the submission of these Replies.[6]

1.2. 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.[7] On 13 December 1995, Nigeria filed pre-

3. 1995 ICJ Rep. 6.
4. ICJ Communiqué No. 96/30 of 22 November 1996.
5. ICJ Communiqué No. 98/12 of 1 April 1998.
6. ICJ Communiqué No. 99/05 of 18 February 1999.
7. 1994 ICJ Rep. 105.

liminary 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.[8]

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

In its judgment the Court rejected Nigeria's argument that Cameroon had no right to invoke its declaration as a basis of jurisdiction because it had omitted to inform Nigeria that it had made such a declaration and that it was preparing to seise the Court weeks later. According to the Court, only the deposit of the declaration with the Secretary-General of the United Nations is relevant as it establishes the mutual consent to the Court's jurisdiction. Moreover, nothing obliged Cameroon to inform

Nigeria of its intention to seise the Court. It cannot therefore be reproached with having violated the principle of good faith. The Court held that the fact that both states had attempted to solve their dispute bilaterally did not imply that either one had excluded the possibility of bringing it before the Court. Neither in the Charter nor otherwise in international law is any rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court. The fact that negotiations are ongoing in the Lake Chad Basin Commission cannot prevent the Court from exercising its functions. The Commission is not a judicial body and its authority is not exclusive. Concerning the possible consequences of Cameroon's Application on the tripoint in Lake Chad (i.e., the point where the frontiers of Cameroon, Chad, and Nigeria meet), the Court found that the legal interests of Chad did not constitute the very subject-matter of the judgment to be rendered on the merits and that the absence of Chad accordingly did not prevent the Court from ruling on the dispute. The Court indicated that, contrary to what Nigeria asserts, a dispute exists between Cameroon and Nigeria, at least as regards the legal bases of the boundary as a whole. The exact scope of that dispute cannot be determined at present. The Court did not uphold Nigeria's contention that Cameroon's Application is so sparse and imprecise that it could not be answered. The Court held that it lay within its discretion to arrange the order in which it would address the issues relating to the title of the Bakassi Peninsula and to the delimitation of the maritime boundary between the Parties. As to the question whether the determination of the maritime boundary beyond point G (situated, according to the parties, some 17 nautical miles from the coast) would affect the rights and interests of third states, the Court found that it

8. 1996 ICJ Rep. 4.
9. 1996 ICJ Rep. 12.

did not possess an exclusively preliminary character and would have to be settled during the proceedings on the merits.[10] 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.[11]

On 28 October 1998, Nigeria filed a request for an interpretation of the judgment delivered on 11 June 1998 by the International Court of Justice (ICJ) on the preliminary objections raised by Nigeria in the case brought against it by Cameroon concerning the land and maritime boundary dispute between these two countries. This is the first time that the ICJ has been seised of a request for the interpretation of a judgment on preliminary objections while the proceedings on the merits are still pending. Since a request for the interpretation of a judgment is made either by an application or by the notification of a special agreement, it gives rise to a new case. Nigeria's request, which does not fall into the category of incidental proceedings, does not therefore form part of the current proceedings in the case concerning the *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon* v. *Nigeria)*. In the view of Nigeria, the Court's judgment does not specify which of the alleged incidents are to be considered as part of the merits of the case and accordingly, "the meaning and scope of the Judgment requires interpretation" as provided by Article 98 of the Rules of Court.[12] The Court fixed 3 December 1998 as the time-limit for Cameroon to file written observations.

By a letter dated 23 February 1999, Nigeria, referring to the Request for Interpretation of the Court's Judgment of 11 June 1998 on Preliminary Objections, stated that it "[would] not be in a position to complete its Counter-Memorial until it [knew] the outcome of its Request for Interpretation". By a letter of 24 February 1999, Cameroon, for its part, had stated that it was "resolutely opposed" to any extension of the time-limit, explaining that the Court "would create a precedent which in future would encourage parties [...] to make requests for interpretation or revision of judgments on preliminary objections". In the reasoning to its decision of 3 March 1999, the Court stated that a request for interpretation "cannot in itself suffice to justify the extension of a time-limit" but that, given the circumstances of the case, it considered that it should grant Nigeria an extension of the time-limit of two months, until 31 May 1999.[13]

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

10. ICJ Communiqué 98/23 and 98/23*bis* of 11 June 1998.
11. ICJ Communiqué 98/25 of 1 July 1998.
12. ICJ Communiqué No. 98/34 of 29 October 1998.
13. ICJ Communiqué No. 99/11 of 5 March 1999.

ment on preliminary objections, just as with a judgment on the merits of the dispute, can be the subject of a request for interpretation. It states that any request for interpretation must relate to the operative part of the judgment (the final paragraph which contains the Court's actual decision) and cannot concern the reasons for the judgment, except in so far as these are inseparable from the operative part. In the present case, Nigeria's request meets these conditions and the Court has jurisdiction to entertain it. The Court then goes on to consider the admissibility of the request for interpretation, observing that this question "needs particular attention because of the need to avoid impairing the finality, and delaying the implementation, of [...] judgments". Thus, it notes, the object of a request for interpretation "must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided". The Court points out that, in relation to Cameroon's submissions with regard to incidents involving the international responsibility of Nigeria, Nigeria had raised a preliminary objection (the sixth) in which it considered that Cameroon had to "confine itself essentially to the facts [...] presented in its Application" and that "additions" presented subsequently must be disregarded. The Court recalls that it rejected that preliminary objection in its judgment of 11 June 1998 on the grounds, *inter alia*, that under to Article 38 of its Rules the statement of facts and grounds on which the Application is based may be added to after it has been filed. It reiterates that the limit on the freedom to present additional facts and legal considerations is that there must be no transformation of the dispute brought before it into another dispute which is different in character; and that in the present case "Cameroon has not so transformed the dispute". The Court concludes from the foregoing that it would be unable to entertain Nigeria's request without calling into question the effect of the judgment concerned as final and without appeal, or to examine submissions seeking to remove from its consideration elements of law and fact which, in its judgment of 11 June 1998, it has already authorized Cameroon to present. It follows that Nigeria's request for interpretation is inadmissible.[14]

1.3. 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.[15] By an Order of 27 February 1998, the Court has fixed 27 November 1998 as the time limit for the filing of a Reply

14. ICJ Communiqués Nos. 99/14 and 99/14*bis* of 25 March 1999.
15. ICJ Communiqué No. 96/20 of 26 June 1996.

by each of the parties, taking into account the agreement between the parties.[16] Hearings in this case were held between 15 February and 5 March 1999. The judgment is expected to be rendered in the autumn.[17]

1.4. Diplomatic Dispute (Eritrea *v.* Ethiopia)

In February 1999 Eritrea initiated proceedings in the International Court of Justice (ICJ) in a dispute with Ethiopia concerning the alleged violation of the premises and of the staff of Eritrea's diplomatic mission in Addis Ababa. In its Application, Eritrea contends that, during the week of 8 February 1999, the government of Ethiopia repeatedly violated the diplomatic immunities of Eritrea's accredited representative to Ethiopia and to the Organization of African Unity, Ghirma Asmeron, who was finally declared *persona non grata* and had to leave Ethiopia on 10 February 1999. It maintains that the premises of its Embassy in Addis Ababa have been forcibly broken into on 11 February 1999 and remain occupied by Ethiopia since then. Eritrea also contends that Embassy staff members, including Eritrea's *chargé d'affaires* in Addis Ababa, Saleh Omar, are being detained incommunicado or held hostage by Ethiopia. In filing its Application, Eritrea stated that "it does not appear that Ethiopia has at the present time given its consent for the Court to be seised of jurisdiction in this case". It invited Ethiopia to accept that jurisdiction. Eritrea's Application, which was accompanied by a request for the indication of provisional measures, has been transmitted to the government of Ethiopia. However, unless and until Ethiopia has given its consent to the Court's jurisdiction, the Court cannot take any action in the proceedings.[18]

1.5. LaGrand Case (Germany *v.* United States of America)

Germany instituted proceedings in the Court against the United States of America on 2 March 1999, alleging violations of the Vienna Convention on Consular Relations of 24 April 1963 with respect to the case of Karl and Walter LaGrand, both of German nationality. Karl LaGrand, 35, was executed on 24 February 1999 for the murder of a bank manager in Arizona in 1982, in spite of all appeals for clemency and numerous diplomatic interventions at the highest level by the German government. His brother Walter, 37, was to be executed for the same crime. Germany maintains that "Karl and Walter LaGrand were tried and sentenced to death without being advised of their rights to consular assistance", as required by the Vienna Convention. It contends that it was only in 1992 that the German consular officers were made aware, not by the authorities of the State of Arizona, but by the detainees themselves, of the case in question. Germany argues that "the failure to

16. ICJ Communiqué No. 98/06 of 27 February 1998.
17. ICJ Communiqué No. 99/10 of 5 March 1999.
18. ICJ Communiqué No. 99/04 of 16 February 1999.

provide the required notification precluded it from protecting its nationals' interest in the United States at both the trial and the appeal level in the State courts". Accordingly, Germany asked the Court to adjudge and declare that the United States has violated its international legal obligations under the Vienna Convention, that the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void and should be recognized as void by the legal authorities of the United States, that the United States should provide reparation in the form of compensation and satisfaction for the execution of Karl LaGrand and that it should restore the status quo ante in the case of Walter LaGrand, that is to re-establish the situation that existed before the detention of, proceedings against, conviction and sentencing of that German national. Germany also requested the Court to declare that the United States should provide Germany with a guarantee of the non-repetition of the illegal acts.[19]

On 3 March the Court called on the United States to "take all measures at its disposal" to ensure that Mr Walter LaGrand is not executed pending a final decision of the Court in the proceedings instituted by Germany. In its Order, which was adopted unanimously, the Court also requested the government of the United States to inform it of all the measures taken in implementation thereof, and instructed it to transmit the Order to the Governor of the State of Arizona. This is the first time the Court has indicated provisional measures *proprio motu* and without any other proceedings, pursuant to Article 75, paragraph 1, of its Rules, which provides that "the Court may at any time decide to examine proprio motu whether circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties". In the reasoning leading to its decision, the Court found that the execution of Mr LaGrand "would cause irreparable harm to the rights claimed by Germany". It stated that "the international responsibility of a State is engaged by the action of the competent organs and authorities acting in that State, whatever they may be", and that consequently "the Governor of Arizona is under the obligation to act in conformity with the international undertakings of the United States". The Court nevertheless pointed out that the issues before it did "not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes" and recalled that its function was "to resolve international legal disputes between States [...] and not to act as a court of criminal appeal". It stated that "it [was] appropriate that the Court, with the co-operation of the Parties, ensure that any decision on the merits be reached with all possible expedition". The Court had established at the outset that a dispute existed *prima facie* between the parties as to the application of the Vienna Convention and that it had jurisdiction *prima facie* to examine it. Germany and the United States are both parties to the Vienna Convention and to its Optional Protocol concerning the Compulsory Settlement of Disputes, Article I of which provides that "disputes arising out of the interpretation or

19. ICJ Communiqué Nos. 99/07 and 99/08 of 2 and 3 March 1999.

application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice".[20] Walter LaGrand, 37, was executed on 3 March 1999.

The International Court of Justice has fixed time-limits for the filing of written pleadings. Germany is to file a Memorial by 16 September 1999 and the United States a Counter-Memorial by 27 March 2000.[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 Cumaraswamy 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 Cumaraswamy currently faces four lawsuits filed in Malaysian courts by different plaintiffs for damages in a total amount of 112 million US dollars 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 Cumaraswamy 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 Cumaraswamy 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, Mr Cumaraswamy was immune from legal process. On 15 January 1997, the Legal 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

20. ICJ Communiqué Nos. 99/09 and 99/09*bis* of 3 and 5 March 1999.
21. ICJ Communiqué No. 99/12 of 8 March 1999.

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.[22]

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.[23] Besides the Secretary General of the United Nations, several states have submitted written statements: Costa Rica, Germany, Greece, Italy, Luxembourg Malaysia, Sweden, United Kingdom, and United States of America.[24] Hearings in this case were held between 7 and 10 of December 1998 during which the United Nations, Costa Rica, Italy, and Malaysia made oral submissions.

22. ICJ Communiqué No. 98/26 of 10 August 1998.
23. ICJ Communiqué No. 98/27 of 12 August 1998.
24. ICJ Communiqués Nos. 98/32 of October 1998, 98/38 of 13 November 1998, and 98/43 of 10 December 1998.