Chapter I

International Court of Justice

In 2001, the International Court of Justice (ICJ) delivered three Judgments, made 18 Orders and had 25 contentious cases pending before it.

On 31 October, the ICJ President informed the General Assembly that the Court's docket remained overburdened and that solutions would have to be found to avoid excessive delays in examining cases that were ready to be heard. Noting that administrative and procedural efforts made by the Court to redress the situation would not be sufficient, he appealed to the Assembly to ensure the financial and human resources required for the Court to perform its duties properly. The President stated that ICJ could play an important role in preventing conflicts, particularly territorial ones, and encouraged States to refer their disputes to the Court by way of Special Agreement.

Judicial work of the Court

During 2001, the Court delivered its Judgment on the merits in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* and in the *LaGrand Case (Germany v. United States)*. It also delivered its Judgment on the Application of the Philippines for permission to intervene in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*.

The Court or its President made further Orders on the conduct of the proceedings in the cases concerning *Oil Platforms (Iran v. United States)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*; *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)* and *(Yugoslavia v. United Kingdom)*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Burundi)*, *(Democratic Republic of the Congo v. Uganda)* and *(Democratic Republic of the Congo v. Rwanda)*; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*; and *Certain Property (Liechtenstein v. Germany)*.

ICJ activities in 2001 were covered in two reports to the General Assembly, for the periods 1 August 2000 to 31 July 2001 [A/56/4] and 1 August 2001 to 31 July 2002 [A/57/4]. On 30 October, the Assembly took note of the 2000/01 report (**decision 56/407**).

Maritime delimitation and territorial questions (Qatar v. Bahrain)

Qatar instituted proceedings in 1991 [YUN 1991, p. 820] against Bahrain in respect of disputes 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.

In 1992, a Memorial by Qatar and a Counter-Memorial by Bahrain were filed [YUN 1992, p. 982], as were their respective Reply and Rejoinder.

Following hearings, the Court delivered a Judgment on 1 July 1994 [YUN 1994, p. 1279].

The Court received a letter from Qatar on 30 November 1994 transmitting an "Act to comply with paragraphs (3) and (4) of the operative paragraph 41 of the Judgment of the Court dated 1 July 1994". On the same day, Bahrain transmitted a "Report of the State of Bahrain to the International Court of Justice on the Attempt by the Parties to Implement the Court's Judgment of 1 July 1994".

In 1995, the Court delivered a Judgment on jurisdiction and admissibility [YUN 1995, p. 1305], by which it found that it had jurisdiction and that the Application of Qatar as formulated on 30 November 1994 was admissible.

In 1996, each Party filed a Memorial on the merits [YUN 1996, p. 1176]. Counter-Memorials of the Parties were filed on 23 December 1997 [YUN 1997, p. 1312].

On 17 March 1998, the President held a meeting to ascertain the views of the Parties on a procedure concerning the authenticity of documents produced by Qatar in 1997 [YUN 1997, p. 1312]. By an Order of 30 March 1998 [YUN 1998, p. 1184], the Court fixed 30 September 1998 as the time limit for the filing of an interim report by Qatar on the authenticity of the documents and directed the filing of a Reply by each of the Parties within the time limit of 30 March 1999. In its interim report filed in September 1998, Qatar stated that it would not rely on the disputed documents for the purposes of the case so as to enable the Court to address the merits of the case without further procedural complications. In Decem-

ber 1998, Qatar requested "a two-month extension of the time limit for the filing of a Reply by each of the Parties, to 30 May 1999" [ibid.].

In February 1999 [YUN 1999, p. 1202], the Court placed on record Qatar's decision to disregard the 82 documents annexed to its written pleadings, which had been challenged by Bahrain, and decided that the Replies yet to be filed by Qatar and by Bahrain would not rely on those documents. After filing their Replies within the extended time limit, Qatar and Bahrain submitted, with the approval of the Court, certain additional expert reports and historical documents.

At the conclusion of sittings held from 29 May to 29 June 2000 [YUN 2000, p. 1210], Qatar requested the Court to adjudge and declare that it had sovereignty over the Hawar Islands, and Dibal and Qit'at Jaradah shoals; and that Bahrain had no sovereignty over the island of Janan or over Zubarah, and that any claim by it concerning archipelago baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation. Qatar also requested that the Court draw a single maritime boundary between the areas of seabed, subsoil and superjacent waters appertaining to Qatar and Bahrain on the basis that Zubarah, the Hawar Islands and Janan appertained to it and not to Bahrain, that boundary being based on a delimitation agreement between Bahrain and Iran (1971), a 23 December 1947 decision of the United Kingdom, and a delimitation agreement between Bahrain and Saudi Arabia (1958). Bahrain's final submission asked the Court to adjudge and declare that it was sovereign over Zubarah and the Hawar Islands, including Janan and Hadd Janan, and that the maritime boundary between Bahrain and Qatar was as described in its Memorial.

At a public sitting of 16 March 2001, the Court delivered its Judgment. It unanimously found that Qatar had sovereignty over Zubarah and, by 12 votes to 5, that Bahrain had sovereignty over the Hawar Islands. By 13 votes to 4, the Court found that Qatar had sovereignty over Janan Island, including Hadd Janan and, by 12 votes to 5, that Bahrain had sovereignty over the island of Qit'at Jaradah. The Court unanimously found that the low-tide elevation of Fasht ad Dibal fell under the sovereignty of Qatar and, by 13 votes to 4, decided that the single maritime boundary dividing the various maritime zones of Qatar and Bahrain should be drawn as indicated in paragraph 250 of its Judgment.

Judge Oda appended a separate opinion to the Judgment; Judges Bedjaoui, Ranjeva and Koroma, a joint dissenting opinion; Judges Herczegh, Vereshchetin and Higgins, declarations; and Judges Parra-Aranguren, Kooijmans and Al-Khasawneh, separate opinions. Judge ad hoc Torres Bernárdez appended a dissenting opinion to the Judgment, and Judge ad hoc Fortier, a separate opinion.

Questions of interpretation and application of the 1971 Montreal Convention arising from the aerial incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States)

The Libyan Arab Jamahiriya instituted in 1992 [YUN 1992, p. 982] separate proceedings against the United Kingdom and the United States in respect of a dispute over the interpretation and application of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation [YUN 1971, p. 739], which arose from its alleged involvement in the crash of Pan Am flight 103 over Lockerbie, Scotland, on 21 December 1988. In the Applications, Libya referred to the charging and indictment of two of its nationals by the Lord Advocate of Scotland and by a United States Grand Jury for having caused a bomb to be placed aboard Pan Am flight 103, which exploded, caused the aircraft to crash and killed all 270 persons aboard.

The United Kingdom and the United States, on 16 and on 20 June 1995, respectively [YUN 1995, p. 1306], filed preliminary objections to the jurisdiction of the Court to entertain Libya's Applications. Libya presented a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom and the United States within the prescribed time limits set by the Court. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by the United Kingdom and the United States were held in October 1997 [YUN 1997, p. 1313].

In February 1998 [YUN 1998, p. 1184], the Court delivered the two Judgments on the preliminary objections, by which it rejected the objection to jurisdiction raised by the United Kingdom and the United States on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention; found that it had jurisdiction, on the basis of article 14, paragraph 1, of the Convention, to hear the disputes between Libya and the United Kingdom and Libya and the United States concerning the interpretation or application of the provisions of the Convention; rejected the objection to admissibility derived by the United Kingdom and the United States from Security Council resolutions 748(1992) [YUN 1992, p. 55] and 883(1993) [YUN 1993, p. 101]; found that the Applications filed by Libya on 3 March 1992

were admissible; and declared that the objection raised by both countries according to which the same Council resolutions had rendered the claims of Libya without object did not, in the circumstances of the case, have an excessively preliminary character.

The time limit of 30 December 1998 fixed by the Court [YUN 1998, p. 1185] for the filing of the Counter-Memorials of the United Kingdom and the United States was extended to 31 March 1999 following a proposal of the United Kingdom and the United States, which referred to diplomatic initiatives [ibid., p. 163], and after the views of Libya had been ascertained. The Counter-Memorials were filed within the time limit.

Taking account of the agreement of the Parties and the special circumstances of the case, the Court, by Orders of 29 June 1999 [YUN 1999, p. 1203], authorized the submission of a Reply by Libya and Rejoinders by the United Kingdom and the United States, which fixed 29 June 2000 as the time limit for the filing of the Reply. The Court fixed no date for the filing of the Rejoinders; the representatives of the Respondent States had expressed the desire that no such date be fixed at that stage of the proceedings, "in view of the new circumstances consequent upon the transfer of the two accused to the Netherlands for trial by a Scottish court". Libya's Reply was filed within the prescribed time limit.

By Orders of 6 September 2000 [YUN 2000, p. 1211], the President of the Court, taking account of the Parties' views, fixed 3 August 2001 as the time limit for filing the Rejoinders of the United Kingdom and the United States. The Rejoinders were filled within the prescribed time limit.

Oil platforms (Iran v. United States)

Iran instituted proceedings against the United States in 1992 [YUN 1992, p. 983] regarding a dispute in which Iran alleged that the destruction by United States warships, on 19 October 1987 and 18 April 1988, of three offshore oil production complexes owned and operated by the National Iranian Oil Company constituted a breach of international law and the 1955 Iran/United States Treaty of Amity, Economic Relations and Consular Rights. Iran requested the Court to rule on the matter.

Orders of the Court in 1992 [YUN 1992, p. 983] and 1993 [YUN 1993, p. 1183] fixed time limits for the filing of the Memorial by Iran and for a Counter-Memorial by the United States. Iran filed its Memorial, while the United States filed certain preliminary objections to the jurisdiction of the Court. In 1994 [YUN 1994, p. 1280], Iran presented a written statement of its observations and submissions on the United States objections, in accordance with an Order of the Court.

The Court delivered its Judgment in 1996 [YUN 1996, p. 1178], by which it rejected the preliminary objection of the United States and found that it had jurisdiction to entertain the claims made by Iran.

By an Order of 16 December 1996 [YUN 1996, p. 1178], the President of the Court fixed 23 June 1997 as the time limit for the filing of the Counter-Memorial of the United States. Within that time limit, the United States filed the Counter-Memorial and a counter-claim [YUN 1997, p. 1313].

In November and December 1997, respectively, Iran and the United States submitted written observations on the question of the admissibility of the United States counter-claim.

In 1998 [YUN 1998, p. 1185], the Court found that the counter-claim presented by the United States in its Counter-Memorial was admissible. It further directed Iran to submit a Reply and the United States to submit a Rejoinder, fixing the time limits for those pleadings at 10 September 1998 and 23 November 1999, respectively.

In May 1998 [YUN 1998, p. 1185], the Vice-President of the Court, Acting President, extended, at the request of Iran and taking into account the views expressed by the United States, the time limits for Iran's Reply and the United States Rejoinder to 10 December 1998 and 23 May 2000, respectively. In December 1998, the Court further extended those time limits to 10 March 1999 for Iran's Reply and 23 November 2000 for the United States Rejoinder. Iran's Reply was filed within the time limit thus extended.

In September 2000 [YUN 2000, p. 1211], the President of the Court extended, at the request of the United States and taking into account the agreement between the Parties, the time limit for filing the United States Rejoinder to 23 March 2001. The Rejoinder was filed within the time limit thus extended.

By an Order of 28 August 2001, the Vice-President of the Court, taking account of the agreement of the Parties, authorized the submission by Iran of an additional pleading relating solely to the counter-claim submitted by the United States and fixed 24 September 2001 as the time limit for the filing of that pleading. The additional pleading was filed by Iran within the prescribed time limit.

Application of the Convention on the Prevention

and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)

Bosnia and Herzegovina instituted proceedings in 1993 [YUN 1993, p. 1138] against the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY) for alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly in resolution 260 A (III) [YUN 1948-49, p. 959]. The time limits were fixed for the filing of a Memorial by Bosnia and Herzegovina and a Counter-Memorial by FRY [YUN 1993, p. 1138]. The Memorial by Bosnia and Herzegovina was filed within the prescribed time limit [YUN 1994, p. 1281].

The time limit for the filing of the Counter-Memorial by FRY was extended in 1995 [YUN 1995, p. 1307]. Within the time limit, FRY filed certain preliminary objections. The objections related, first, to the admissibility of the Application and, second, to the jurisdiction of the Court to deal with the case. By virtue of the Rules of Court, proceedings on the merits were suspended. Pursuant to an Order of the Court [ibid.], Bosnia and Herzegovina presented a written statement of its observations and submissions on the preliminary objections raised by FRY, within the prescribed time limit.

The Court delivered its Judgment on 11 July 1996 on the preliminary objections [YUN 1996, p. 1179], by which it rejected the objections raised by FRY. In accordance with an Order of 23 July 1996 [ibid.], FRY filed a Counter-Memorial that included counter-claims against Bosnia and Herzegovina [YUN 1997, p. 1315].

Both Parties accepted in 1997 that their respective Governments would submit written observations on the question of the admissibility of the FRY counter-claims and did so. The Court found that the counter-claims submitted by FRY in its Counter-Memorial were admissible and directed Bosnia and Herzegovina to submit a Reply and FRY to submit a Rejoinder, fixing the time limits for those pleadings at 23 January and 23 July 1998, respectively. In January 1998 [YUN 1998, p. 1186], those time limits were extended to 23 April 1998 and 22 January 1999, respectively. The Reply of Bosnia and Herzegovina was filed within the prescribed time limit. The Court, in December 1998 [ibid.], extended the time limit for the filing of FRY's Rejoinder to 22 February 1999, which was filed within the time limit [YUN 1999, p. 1204].

By an Order of 10 September 2001, the President of the Court placed on record the withdrawal by FRY of the counter-claims submitted in its Counter-Memorial. The Order was made after FRY had informed the Court that it intended to withdraw its counter-claims and Bosnia and Herzegovina had indicated to the latter that it had no objection to the withdrawal.

Application for Revision of the Judgment of 11 July 1996 concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)

On 24 April 2001, FRY filed an Application for revision of the Judgment delivered by the Court on 11 July 1996 in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections* [YUN 1996, p. 1179] (see above). FRY contended that a revision of the Judgment was necessary, since it had become clear that, before 1 November 2000 (the date on which it was admitted as a new Member of the United Nations), FRY did not continue the international legal and political personality of the Socialist Federal Republic of Yugoslavia, was not a UN Member State, was not a State party to the Statute of the Court, and was not a State party to the 1948 Convention on Genocide (which was open only to UN Member States or to non-member States invited by the General Assembly to sign or accede).

FRY based its Application for revision on Article 61 of the Court's Statute, which provided that an "application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence". FRY stated that its admission to the United Nations as a new Member on 1 November 2000 constituted "a new fact", which was "obviously unknown to both the Court and to [Yugoslavia] at the time of the 1996 Judgment". It added that "since membership in the United Nations, combined with the status of a party to the Statute [of the Court] and to the Genocide Convention represent the only basis on which jurisdiction over the FRY was assumed, and could be assumed, the disappearance of this assumption . . . [is] clearly of such a nature [as] to be a decisive factor".

FRY asserted that no alternative basis for the Court's jurisdiction existed or could have existed in the case. It further noted that, while on 8 March 2001 it submitted to the United Nations Secretary-General a notification seeking accession to the Genocide Convention, that instru-

ment included a reservation to article IX. According to FRY, accession had no retroactive effect; even if it had such an effect, it could not encompass the compromissory clause in article IX of the Genocide Convention, because FRY never accepted article IX, and FRY's accession to the Convention did not encompass that article.

FRY requested the Court to declare that there was a "new fact of such a character as to lay the case open to revision under Article 61 of the Statute of the Court". It further asked the Court to suspend proceedings regarding the merits of the case until a decision on the Application was rendered.

Copies of the pleadings were made available to the Government of Croatia, at its request.

On 3 December 2001, within the time limit fixed by the President of the Court at a meeting with representatives of the Parties, Bosnia and Herzegovina filed written observations regarding the admissibility of FRY's Application, in accordance with Article 99, paragraph 2, of the Rules of Court.

Land and maritime boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)

Cameroon instituted proceedings against Nigeria in March 1994 [YUN 1994, p. 1281] in a dispute concerning the question of sovereignty over the peninsula of Bakassi and requested the Court to determine the course of the maritime frontier between the two States insofar as that frontier had not already been established in 1975. The Application was amended by an Additional Application in June 1994. Cameroon's Memorial was filed in 1995 [YUN 1995, p. 1308]. In December 1995, within the time limit for the filing of its Counter-Memorial, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the claims of Cameroon.

In 1996 [YUN 1996, p. 1180], Cameroon presented a written statement of its observations and submissions on the preliminary objections raised by Nigeria. Following hearings in March 1996, the Court made an Order indicating that neither Party should take any action of any kind, and that both should lend every assistance to a fact-finding mission to be sent by the United Nations Secretary-General [ibid., p. 146].

In June 1998 [YUN 1998, p. 1187], the Court delivered its Judgment on the preliminary objections, by which it rejected seven of Nigeria's eight preliminary objections; declared that the eighth did not have, in the circumstances of the case, an exclusively preliminary character; and found that, on the basis of Article 36, paragraph 2, of the ICJ Statute, it had jurisdiction to adjudicate on the dispute and that the Application filed by Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, was admissible. The Court, having been informed of the views of the Parties, fixed 31 March 1999 as the time limit for the filing of the Counter-Memorial of Nigeria.

On 28 October 1998, Nigeria filed a request for an interpretation of the Court's Judgment on the preliminary objections [YUN 1998, p. 1187]. The request for interpretation formed a separate case, in which the Court delivered its Judgment in March 1999 [YUN 1999, p. 1205].

On 23 February 1999 [YUN 1999, p. 1204], Nigeria requested an extension of the time limit for the deposit of its Counter-Memorial; in March [ibid.], the Court extended to 31 May 1999 the time limit for the filing of Nigeria's Counter-Memorial, which was filed within the time limit. The Counter-Memorial included counter-claims. At the end of each section dealing with a particular sector of the frontier, Nigeria asked the Court to declare that the incidents referred to "engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case". The seventh and final submission set out by Nigeria in its Counter-Memorial read as follows: "as to Nigeria's counter-claims as specified in . . . of this Counter-Memorial, [the Court is asked to] adjudge and declare that Cameroon bears responsibility to Nigeria in respect of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment". In June 1999 [YUN 1999, p. 1204], the Court found that Nigeria's counter-claims were admissible and formed part of the proceedings; decided that Cameroon should submit a Reply and Nigeria a Rejoinder, relating to the claims of both Parties; and fixed the time limits for those pleadings at 4 April 2000 and 4 January 2001, respectively.

On 30 June 1999, Equatorial Guinea filed an Application for permission to intervene in the case, stating that the purpose was to protect its legal rights in the Gulf of Guinea and to inform the Court of Equatorial Guinea's legal rights and interests so that they might remain unaffected as the Court proceeded to address the question of the maritime boundary between Cameroon and Nigeria. Equatorial Guinea clarified that it did not seek to intervene in those aspects of the proceedings that related to the land boundary between Cameroon and Nigeria, or to become a Party to the case. It further stated that, although

it would be open to a request to the Court from the three countries not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundary with those two States, Equatorial Guinea had made no such request and wished to continue to determine its maritime boundary with its neighbours by negotiation.

The Court fixed 16 August 1999 [YUN 1999, p. 1205] as the time limit for the filing of written observations by Cameroon and Nigeria on Equatorial Guinea's Application, which were filed within the prescribed time limits.

By an Order of 21 October 1999, the Court unanimously decided that Equatorial Guinea could intervene in the case, and fixed the time limits for the filing of the written statement and the written observations at 4 April 2001 for the written statement of Equatorial Guinea and 4 July 2001 for the written observations of Cameroon and Nigeria. Equatorial Guinea's written statement was filed within the prescribed time limit.

By an Order of 20 February 2001, the Court, at the request of Cameroon and taking into account the agreement of the Parties, authorized the submission by Cameroon of an additional pleading, relating solely to the counter-claims submitted by Nigeria, and fixed 4 July 2001 as the time limit for its filing. The various pleadings, which were due to be lodged on 4 July 2001, were filed within the prescribed time limit.

Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)

On 2 November 1998 [YUN 1998, p. 1189], Indonesia and Malaysia jointly notified the Court of a Special Agreement between them, signed at Kuala Lumpur on 31 May 1997, which entered into force on 14 May 1998, in which they requested the Court "to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia". By an Order of 10 November 1998 [ibid.], the Court fixed 2 November 1999 and 2 March 2000, respectively, as the time limits for the filing by each of the Parties of a Memorial and a Counter-Memorial. The time limit for filing the Counter-Memorials was extended to 2 July 2000, by an Order of 14 September 1999 [YUN 1999, p. 1206].

The Memorials were filed within the time limit of 2 November 1999, as fixed by the Court's Order of 10 November 1998.

The Counter-Memorials were filed within the time limit of 2 August 2000, as extended by an Order of 11 May 2000 [YUN 2000, p. 1213]. Replies were filed within the time limit of 2 March 2001, as fixed by the President in October 2000 [ibid.].

On 13 March 2001, the Philippines filed an Application for permission to intervene in the case in order "to preserve and safeguard [its Government's] historical and legal rights . . . arising from its claim to dominion and sovereignty over the territory of North Borneo, to the extent that these rights are affected, or may be affected, by a determination of the Court of the question of sovereignty over Pulau Ligitan and Pulau Sipadan"; "to inform the . . . Court of the nature and extent of [those] rights"; and "to appreciate more fully the indispensable role of the . . . Court in comprehensive conflict prevention". The Philippines made it clear that it did not seek to become a party to the case, and further maintained that "[its] Constitution . . . as well as its legislation, ha[d] laid claim to dominion and sovereignty over North Borneo". According to the Philippines, "[t]his . . . claim . . . ha[d] been the subject of diplomatic negotiations, official international correspondence, and peaceful discussions which ha[d] not been concluded. A decision by the Court, or that incidental part of a decision by the Court, which [would] lay down an appreciation of specific treaties, agreements and other evidence bearing on the legal status of North Borneo [would] inevitably and most assuredly affect the outstanding territorial claim of . . . the Philippines to North Borneo, as well as the direct legal right and interest of the Philippines to settle that claim by peaceful means".

In their written observations, which were filed within the time limit fixed by the Court of 2 May 2001, Indonesia and Malaysia objected to the Application for permission to intervene submitted by the Philippines. Indonesia, among other things, stated that the Application should be rejected as untimely and that the Philippines had not demonstrated that it possessed an interest of a legal nature that might be affected by a decision of the Court. Malaysia stated that the Philippines had no interest of a legal nature in the dispute, and that its request had no proper object.

Pursuant to Article 84, paragraph 2, of its Rules, the Court held public sittings on 25, 26, 28 and 29 June 2001 in order to hear the arguments of the Philippines, Indonesia and Malaysia before deciding whether the Application for permission to intervene should be granted. Meanwhile, following the resignation of Mohamed Shahabuddeen, Indonesia chose Thomas Franck to sit as judge ad hoc.

At a public sitting on 23 October 2001, the Court delivered its Judgment on the Application of the Philippines to intervene. By 14 votes to 1, the Court found that the Application of the Phil-

ippines for permission to intervene in the proceedings could not be granted.

Judge Oda appended a dissenting opinion to the Judgment; Judge Koroma, a separate opinion; and Judges Parra-Aranguren and Kooijmans, declarations. Judges ad hoc Weeramantry and Franck appended separate opinions to the Judgment.

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

In 1998 [YUN 1998, p. 1190], Guinea instituted proceedings against the Democratic Republic of the Congo (DRC) by an "Application with a view to diplomatic protection", in which it requested the Court to condemn the DRC for the grave breaches of international law perpetrated upon the person of a Guinean national, Ahmadou Sadio Diallo.

According to Guinea, Mr. Diallo, a businessman who had been a resident of the DRC for 32 years, was "unlawfully imprisoned by the authorities of that State" for two and a half months, "divested from his important investments, companies, bank accounts, movable and immovable properties, then expelled". The expulsion took place on 2 February 1996, as a result of his attempts to recover sums owed to him by the DRC (especially by Gécamines, a State enterprise and mining monopoly) and by oil companies operating in that country (Zaïre Shell, Zaïre Mobil and Zaïre Fina), by virtue of contracts concluded with businesses owned by him, namely Africom-Zaïre and Africontainers-Zaïre.

As a basis of the Court's jurisdiction, Guinea invoked its own declaration of acceptance of the compulsory jurisdiction of the Court of 11 November 1998 and the declaration of the DRC of 8 February 1989.

In November 1999 [YUN 1999, p. 1206], the Court, taking into account the agreement of the Parties, fixed 11 September 2000 as the time limit for the filing of a Memorial by Guinea and 11 September 2001 for the filing of a Counter-Memorial by the DRC.

By an Order of 8 September 2000 [YUN 2000, p. 1213], the President of the Court, at Guinea's request and after the views of the other Party had been ascertained, extended to 23 March 2001 and 4 October 2002 the respective time limits for the Memorial and Counter-Memorial. The Memorial was filed within the extended time limit.

Vienna Convention on Consular Relations (Germany v. United States)

On 2 March 1999 [YUN 1999, p. 1206], Germany instituted proceedings against the United States in a dispute concerning alleged violations of the 1963 Vienna Convention on Consular Relations [YUN 1963, p. 510].

In its Application, Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute and on article I of the Optional Protocol concerning the Compulsory Settlement of Disputes [ibid., p. 512] to the Vienna Convention. Germany stated that in 1982 the authorities of Arizona (United States) detained two German nationals, Karl and Walter LaGrand; that the individuals were tried and sentenced to death without having been informed, as was required under article 36, subparagraph 1 *(b)*, of the Vienna Convention, of their rights under that provision (which required the competent authorities of a State party to advise, without delay, a national of another State party whom such authorities arrested or detained of the national's right to consular assistance). Germany also alleged that the failure to provide the required notification precluded it from protecting its nationals' interests in the United States, as provided for by the 1963 Convention, at both the trial and the appeal levels in United States courts.

The State Attorney admitted during proceedings before the Arizona Mercy Committee on 23 February 1999 that, contrary to a previous contention, the authorities of the State of Arizona had been aware since 1982 that the two detainees were German nationals. Germany further stated that the LaGrands, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the Federal District Court (the federal court of first instance). In addition, it claimed that the Court, applying the municipal law doctrine of "procedural default", decided that, because the individuals in question had not asserted their rights under the Vienna Convention in the previous legal proceedings at the state level, they could not assert them in the federal habeas corpus proceedings; and the intermediate federal appellate court, the last means of legal recourse in the United States available to them, had affirmed that decision.

Germany asked ICJ to adjudge and declare that: the United States, in arresting, detaining, trying, convicting and sentencing the LaGrands, had violated its international legal obligations to Germany, as provided by articles 5 and 36 of the Vienna Convention; Germany was therefore entitled to reparation; the United States was under an international legal obligation not to apply the doctrine of "procedural default", or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under the Vienna Convention; and the United States was under an international obligation to carry out in conform-

ity with the foregoing international legal obligations any future detention of or criminal proceedings against the LaGrands or any other German national in its territory. The foregoing international legal obligations held that: any criminal liability imposed on the LaGrands in violation of international legal obligations was void, and should be recognized as void by the United States legal authorities; the United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999; the United States should restore the status quo ante in the case of Walter LaGrand, which meant re-establishing the situation that existed before the detention of, proceedings against and conviction and sentencing of Walter LaGrand, whose execution had been set for 3 March; and the United States should provide Germany a guarantee of the non-repetition of the illegal acts.

On 2 March 1999 [YUN 1999, p. 1207], Germany also submitted an urgent request for the indication of provisional measures, asking the Court to indicate that "the United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of that Order"; it asked the Court, moreover, to consider its request as a matter of the greatest urgency "in view of the extreme gravity and immediacy of the threat of execution of a German citizen".

By a letter of the same date, the Vice-President of the Court drew the attention of the United States Government "to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects".

At a public sitting on 3 March 1999, the Court rendered its Order on the request for the indication of provisional measures by which it indicated that: the United States should take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision in the proceedings, and should inform the Court of all the measures that it had taken in implementation of the Order; and the United States should transmit the Order to the Governor of the State of Arizona. It decided that, until the Court had given its final decision, it would remain seized of the matters which formed the subject of the Order. Walter LaGrand was executed later that day.

Judge Oda appended a declaration to the Order and President Schwebel a separate opinion.

By an Order of 5 March 1999 [YUN 1999, p. 1207], the Court, taking into account the views of the Parties, fixed 16 September 1999 and 27 March 2000 as the time limits for the filing of the Memorial of Germany and the Counter-Memorial of the United States, respectively. The Memorial was filed within the prescribed time limit.

Following oral proceedings held in November 2000 [YUN 2000, p. 1215], Germany requested the Court, in four submissions, to adjudge and declare that the United States had violated its international legal obligations to Germany (submissions 1 and 2); that the United States had violated its international legal obligations to comply with the Court's Order of 3 March 1999 (submission 3); and that the United States should assure Germany that it would not repeat the unlawful acts (submission 4). The United States asked the Court to adjudge and declare that there was a breach of the United States obligation to Germany under the Vienna Convention; that it had apologized to Germany for the breach and was taking substantial measures to prevent any recurrence; and that all other claims and submissions of Germany were dismissed. The Court held deliberations on its Judgment in 2000.

At a public sitting on 27 June 2001, the Court delivered its Judgment. By 14 votes to 1, the Court found that it had jurisdiction, on the basis of article I of the 1963 Optional Protocol concerning the Compulsory Settlement of Disputes, to entertain the Application filed by Germany on 2 March 1999. The Court found all four of Germany's submissions admissible: the first submission by 13 votes to 2; the second by 14 to 1; the third by 12 to 3; and the fourth by 14 to 1. By 14 votes to 1, the Court found that, by not informing the LaGrands without delay, following their arrest, of their rights under the 1963 Convention, and thereby depriving Germany of the possibility to render assistance to them, the United States breached its obligations to Germany and to the LaGrand brothers under the Convention's article 36, paragraph 1. The Court, by 14 votes to 1, found that, by not permitting the review and reconsideration, in the light of the rights set forth in the 1963 Convention, of the convictions and sentences of the LaGrand brothers after the violations referred to above had been established, the United States breached its obligation to Germany and to the LaGrand brothers under article 36, paragraph 2, of the Convention. Furthermore, by 13 votes to 2, the Court found that, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending ICJ's final decision in the case, the United States breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999. Unanimously, the Court took note of the United States

commitment to ensure implementation of the specific measures adopted in performance of its obligations under article 36, paragraph 1 *(b)*, of the Convention; and found that the commitment must be regarded as meeting Germany's request for a general assurance of non-repetition. By 14 votes to 1, the Court found that should German nationals nonetheless be sentenced to severe penalties, without their rights under article 36, paragraph 1 *(b)*, of the Convention having been respected, the United States, by means of its own choosing, should allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention.

President Guillaume appended a declaration to the Judgment; Vice-President Shi, a separate opinion; Judge Oda, a dissenting opinion; Judges Koroma and Parra-Aranguren, separate opinions; and Judge Buergenthal, a dissenting opinion.

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) and (Yugoslavia v. United States)

FRY instituted proceedings on 29 April 1999 [YUN 1999, p. 1207] against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States for alleged violation of the obligation not to use force. In the cases against Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom, FRY invoked the jurisdiction of the Court based on Article 36, paragraph 2, of the Statute and on article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly in resolution 260 A (III) [YUN 1948-49, p. 959], and, in the cases against France, Germany, Italy and the United States, on article IX of the Convention and Article 38, paragraph 5, of the Rules of Court.

In its Applications, FRY stated that the disputes involved "acts of the [respondent State concerned] by which it has violated the international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State, the obligation not to violate the sovereignty of another State, the obligation to protect the civilian population and civilian objects in wartime, the obligation to protect the environment, the obligation relating to free navigation on international rivers, the obligation regarding fundamental human rights and freedoms, the obligation not to use prohibited weapons, the obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group".

FRY requested the Court to adjudge and declare that the respondent State concerned had acted against it by taking part in the bombing of the territory of FRY, breaching its obligation not to use force against another State; by taking part in the training, arming, financing, equipping and supplying of terrorist groups, i.e., the Kosovo Liberation Army, breaching its obligation not to intervene in the affairs of another State; by taking part in attacks on civilian targets, breaching its obligation to spare the civilian population and civilian objects; by taking part in destroying or damaging monasteries and cultural monuments, breaching its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship that constituted people's cultural or spiritual heritage; by taking part in the use of cluster bombs, breaching its obligation not to use prohibited weapons, i.e., weapons calculated to cause unnecessary suffering; by taking part in the bombing of oil refineries and chemical plants, breaching its obligation not to cause considerable environmental damage; by taking part in the use of weapons containing depleted uranium, breaching its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage; by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, breaching its obligation to respect the rights to life, to work, to information and to health care, as well as other basic human rights; by taking part in destroying bridges on international rivers, breaching its obligation to respect freedom of navigation on international rivers; and by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, breaching its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part. In addition, the respondent State concerned was responsible for the violation of the above international obligations; was obliged to stop immediately the violation of the above obligations vis-à-vis FRY; and was obliged to provide compensation for the damage to FRY and to its citizens and juridical persons.

Also on 29 April 1999 [YUN 1999, p. 1208], FRY submitted, in each of the cases, a request for the indication of provisional measures, asking the Court to indicate that "the [respondent State concerned] shall cease immediately its acts of use of

force and shall refrain from any act of threat or use of force" against FRY. Hearings on the requests for the indication of provisional measures were held between 10 and 12 May 1999.

At a public sitting on 2 June 1999, the Vice-President of the Court, Acting President, read the Orders, by which, in the cases *(Yugoslavia v. Belgium)*, *(Yugoslavia v. Canada)*, *(Yugoslavia v. France)*, *(Yugoslavia v. Germany)*, *(Yugoslavia v. Italy)*, *(Yugoslavia v. Netherlands)*, *(Yugoslavia v. Portugal)* and *(Yugoslavia v. United Kingdom)*, the Court rejected the requests for the indication of provisional measures and reserved the subsequent procedure for further decision. In the cases of *(Yugoslavia v. Spain)* and *(Yugoslavia v. United States of America)*, the Court—having found that it manifestly lacked jurisdiction to entertain FRY's Application; that it could not therefore indicate any provisional measure whatsoever in order to protect the rights invoked therein; and that, within a system of consensual jurisdiction, to maintain on the General List a case upon which it appeared certain that the Court would not be able to adjudicate on the merits would most assuredly not contribute to the sound administration of justice—rejected FRY's requests for the indication of provisional measures and ordered that those cases be removed from the List.

In each of the cases *(Yugoslavia v. Belgium)*, *(Yugoslavia v. Canada)*, *(Yugoslavia v. Netherlands)* and *(Yugoslavia v. Portugal)*, Judge Koroma appended a declaration to the Order of the Court; Judges Oda, Higgins, Parra-Aranguren and Kooijmans appended separate opinions; and Vice-President Weeramantry, Acting President, Judges Shi and Vereshchetin and Judge ad hoc Kreca appended dissenting opinions.

In each of the cases *(Yugoslavia v. France)*, *(Yugoslavia v. Germany)* and *(Yugoslavia v. Italy)*, Vice-President Weeramantry, Acting President, and Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda and Parra-Aranguren appended separate opinions; and Judge ad hoc Kreca appended a dissenting opinion.

In the case *(Yugoslavia v. Spain)*, Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; and Judges Oda, Higgins, Parra-Aranguren and Kooijmans and Judge ad hoc Kreca appended separate opinions.

In the case *(Yugoslavia v. United Kingdom)*, Vice-President Weeramantry, Acting President, and Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda, Higgins, Parra-Aranguren and Kooijmans appended separate opinions; and Judge ad hoc Kreca appended a dissenting opinion.

In the case *(Yugoslavia v. United States of America)*, Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda and Parra-Aranguren appended separate opinions; and Judge ad hoc Kreca appended a dissenting opinion.

By Orders of 30 June 1999 [YUN 1999, p. 1209], the Court, having ascertained the views of the Parties, fixed the time limits for the filing of the written pleadings in each of the eight cases maintained on the List as at 5 January 2000 for the Memorial of FRY and 5 July 2000 for the Counter-Memorial of the respondent State concerned.

On 5 July 2000 [YUN 2000, 1217], within the time limit for filing its Counter-Memorial, each of the respondent States in the eight cases maintained on the Court's List raised preliminary objections of lack of jurisdiction and admissibility. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended; proceedings then had to be organized for the consideration of the preliminary objections in accordance with the Article's provisions.

By Orders of 8 September 2000 [ibid.], the Vice-President of the Court, Acting President, fixed 5 April 2001 as the time for filing, in each of the cases, of a written statement by FRY on the preliminary objections raised by the respondent State concerned. By an order of 21 February 2001, the Court, in each of the cases, taking into account the agreement of the Parties and the circumstances of the case, extended the time limit to 5 April 2002.

Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Burundi), (Democratic Republic of the Congo v. Uganda) and (Democratic Republic of the Congo v. Rwanda)

The DRC instituted proceedings against Burundi, Uganda and Rwanda on 23 June 1999 [YUN 1999, p. 1209] for acts of armed aggression perpetrated in flagrant violation of the Charter of the United Nations and the Charter of the Organization of African Unity.

In its Applications, the DRC contended that "such armed aggression . . . involved inter alia violation of the sovereignty and territorial integrity of the [drc], violations of international humanitarian law and massive human rights violations". The DRC sought the cessation of the aggression against it; reparation for acts of intentional destruction and looting; and restitution of national property and resources appropriated for the benefit of the respective respondent States.

In the cases against Burundi and Rwanda, the DRC invoked as bases for the jurisdiction of the

Court Article 36, paragraph 1, of the Statute, which provided that the jurisdiction of the Court comprised all cases which the parties referred to it and all matters specially provided for in the UN Charter or in treaties and conventions in force; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in resolution 39/46 [YUN 1984, p. 813]; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation [YUN 1971, p. 739]; and Article 38, paragraph 5, of the Rules of Court, which contemplated the situation where a State filed an application against another State that had not accepted the jurisdiction of the Court. In the case against Uganda, the DRC based the jurisdiction on Article 36, paragraph 2, of the Statute.

The DRC requested the Court to adjudge and declare that: the respondent State concerned was guilty of an act of aggression as defined by article 1 of Assembly resolution 3314(XXIX) [YUN 1974, p. 847] and by the jurisprudence of the Court, contrary to Article 2, paragraph 4, of the UN Charter; the respondent State concerned committed repeated violations of the Geneva Conventions for the protection of war victims of 1949 and the two Additional Protocols of 1977 [YUN 1977, p. 706], in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and also was guilty of massive human rights violations in defiance of the most basic customary law; the respondent State concerned, by taking forcible possession of the Inga hydroelectric dam and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of article 56 of Additional Protocol I of 1977, was responsible for very heavy loss of life in the city of Kinshasa (5 million inhabitants) and the surrounding area; and the respondent State concerned had violated the Convention on International Civil Aviation signed in Chicago on 7 December 1944, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft and the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation by shooting down, on 9 October 1998 at Kindu, a Boeing 727, the property of Congo Airlines, thereby killing 40 civilians.

The DRC requested the Court to adjudge and declare that: all armed forces of the respondent State concerned participating in acts of aggression should forthwith vacate its territory; the respondent State concerned should secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons; and the DRC was entitled to compensation from the respondent State concerned in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to the respondent State concerned, in respect of which the DRC reserved the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.

In each of the cases against Burundi and Rwanda, the Court, by an Order of 21 October 1999 [YUN 1999, p. 1210], taking into account the agreement of the Parties, decided that the written proceedings should first address the questions of the jurisdiction of the Court to entertain the Application and of its admissibility, and fixed 21 April 2000 as the time limit for filing Memorials on those questions by Burundi and Rwanda, and 23 October 2000 for filing a Counter-Memorial by the DRC.

The DRC, by letters dated 15 January 2001, notified the Court that it wished to discontinue the proceedings against Burundi and Rwanda and stated that it "reserve[d] the right to invoke subsequently new grounds of jurisdiction of the Court". In each of the two cases, the respondent Party informed the Court that it concurred in the DRC's discontinuance. The President of the Court, in Orders of 30 January 2001, placed the discontinuance by the DRC on record and ordered the removal of the case from the List.

In the case against Uganda, the Court, taking into account the agreement of the Parties in 1999 [ibid.], fixed, by an Order of 21 October, 21 July 2000 as the time limit for the filing of a Memorial by the DRC and 21 April 2001 for the filing of a Counter-Memorial by Uganda. The Memorial of the DRC was filed within the prescribed time limit.

On 19 June 2000 [YUN 2000, p. 1218], the DRC requested the Court to indicate provisional measures requiring, among other things, the withdrawal of Uganda's army from Kisangani and the cessation of military and other activities by Uganda within the territory of the DRC. Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held on 26 and 28 June 2000.

On 1 July 2000 [ibid.], the Court rendered its Order on the DRC's request for provisional measures, which stated that both Parties must, forthwith, prevent and refrain from any action, particularly armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court might render, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve; both Parties must, forthwith, take measures to comply with all their obligations under international law; and both Parties must, forthwith, take measures

to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law. Judges Oda and Koroma appended declarations to the Order.

The DRC chose Joe Verhoeven and Uganda selected James L. Kateka to sit as judges ad hoc.

Uganda filed its Counter-Memorial, which contained counter-claims, within the time limit set by the Court's Order of 21 October 1999 (see p. 1191).

By an Order of 29 November 2001, the Court found that two of the counter-claims submitted by Uganda against the DRC were "admissible as such and [formed] part of the current proceedings", but that the third was not. In view of those conclusions, the Court considered it necessary for the DRC to file a Reply and Uganda a Rejoinder, addressing the claims of both Parties, and fixed 29 May 2002 as the time limit for the filing of the Reply and 29 November 2002 for the Rejoinder. Further, in order to ensure strict equality between the Parties, the Court reserved the right of the DRC to present its views in writing a second time on the Uganda counter-claims, in an additional pleading to be the subject of a subsequent Order. Judge ad hoc Verhoeven appended a declaration to the Order.

Application of the genocide convention (Croatia v. Yugoslavia)

Croatia instituted proceedings against FRY on 2 July 1999 [YUN 1999, p. 1210] for alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly in resolution 260 A (III) [YUN 1948-49, p. 959], said to have been committed between 1991 and 1995.

In its Application, Croatia contended 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 Slovenia, and Dalmatia, [Yugoslavia] is liable [for] the 'ethnic cleansing' of Croatian citizens from these areas . . . and is required to provide reparation for the resulting damage". It further alleged that, "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'". Croatia invoked the jurisdiction of the Court based on Article 36, paragraph 1, of the Statute and on article IX of the Convention.

Croatia requested the Court to adjudge and declare that FRY breached its legal obligations towards Croatia under articles I, II (a, b, c, d), III (a, b, c, d, e), IV and V of the 1948 Convention; and that FRY had 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. Croatia reserved the right to introduce to the Court at a future date a precise evaluation of the damages.

By an Order of 14 September 1999, the Court took account of an agreement of the Parties expressed on 13 September and fixed 14 March 2000 as the time limit for the filing of the Memorial of Croatia and 14 September 2000 for the filing of the Counter-Memorial of FRY.

In 2000 [YUN 2000, p. 1219], at Croatia's request, the President of the Court extended the time limits twice: in March, to 14 September 2000 for the Memorial of Croatia and 14 September 2001 for the Counter-Memorial of FRY, and again in June, to 14 March 2001 for the Memorial and to 16 September 2002 for the Counter-Memorial. The Memorial of Croatia was filed within the time limit thus extended. Croatia chose Budislav Vukas to sit as judge ad hoc.

Maritime delimitation (Nicaragua v. Honduras)

On 8 December 1999 [YUN 1999, p. 1210], Nicaragua instituted proceedings against Honduras in respect of a dispute concerning the delimitation of the maritime zones appertaining to each of those States in the Caribbean Sea. In its Application, Nicaragua stated that it had maintained for decades the position that its maritime Caribbean border with Honduras had not been determined, while the position of Honduras allegedly was that a delimitation line was fixed by the King of Spain in an Arbitral Award of 23 December 1906, which was found valid and binding by ICJ on 18 November 1960 [YUN 1960, p. 536]. According to Nicaragua, the position adopted by Honduras had brought repeated confrontations and mutual capture of vessels of both nations in and around the general border area, and diplomatic negotiations had failed. Nicaragua founded jurisdiction of the Court on declarations under Article 36, paragraph 2, of the Court's Statute, by which both States accepted the compulsory jurisdiction of the Court, and also 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 were parties.

Nicaragua requested the Court to determine the course of the single maritime boundary between areas of territorial sea, continental shelf

and exclusive economic zone appertaining to Nicaragua and Honduras.

By an Order of 21 March 2000 [YUN 2000, p. 1219], the Court, taking into account the agreement of the Parties, fixed 21 March 2001 as the time limit for the filing of a Memorial by Nicaragua and 21 March 2002 for the filing of the Counter-Memorial by Honduras. The Memorial was filed within the prescribed time limit.

Copies of the pleadings and annexed documents were made available to Colombia, at its request.

Arrest warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)

In October 2000 [YUN 2000, p. 1219], the DRC instituted proceedings against Belgium concerning an international arrest warrant issued on 11 April 2000 by a Belgian examining judge against the DRC's Acting Minister for Foreign Affairs, seeking his detention and subsequent extradition to Belgium for alleged crimes constituting grave violations of international humanitarian law. The warrant was transmitted to all States.

In its Application [ibid.], the DRC noted that the warrant characterized the alleged facts as crimes of international law committed by action or omission against persons or property protected by the Geneva Conventions of 12 August 1949 and Additional Protocols I and II to those Conventions [YUN 1977, p. 706], and as crimes against humanity, and cited the allegedly applicable Belgian Law of 16 June 1993 as amended by the Law of 10 February 1999 pertaining to the punishment of grave violations of international humanitarian law. The DRC maintained that certain articles of the Belgian Law and the warrant itself constituted "a violation of the principle whereby a State may not exercise its authority on territory of another State and the principle of sovereign equality among all members of the United Nations", as declared in Article 2, paragraph 1, of the UN Charter, and that they contravened international law, insofar as they claimed to derogate from the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State, "deriving from article 41, paragraph 2, of the Vienna Convention of 18 April 1961 on Diplomatic Relations" [YUN 1961, p. 512]. Accordingly, the DRC asked the Court to declare that Belgium should annul the warrant, and filed a request for the indication of a provisional measure seeking to have the warrant withdrawn forthwith.

Following hearings on the request for an indication of provisional measures in November 2000 [YUN 2000, p. 1220], the DRC asked the Court to order Belgium to comply with international law; to cease and desist from any conduct that might exacerbate the dispute with the DRC; and to discharge the warrant issued against its acting Foreign Minister. Belgium asked the Court to refuse the DRC's request for an indication of provisional measures and to remove the case from its List.

By an Order of 8 December 2000 [ibid.], the Court unanimously rejected Belgium's request to remove the case from the List and found that the circumstances did not require it to exercise its power to indicate provisional measures. Judges Oda and Ranjeva appended declarations to the Order; Judges Koroma and Parra-Aranguren, separate opinions; Judge Rezek and Judge ad hoc Bula-Bula, dissenting opinions; and Judge ad hoc Van den Wijngaert, a declaration.

By an Order of 13 December 2000 [ibid.], the President of the Court, taking account of the agreement of the Parties, fixed 15 March 2001 and 31 May as the time limits for the filing of the Memorial of the DRC and the Counter-Memorial of Belgium, respectively. Subsequently, the Court extended those time limits to 17 April 2001 and 31 July 2001, respectively, and further extended them to 17 May 2001 and 17 September 2001, respectively. The DRC's Memorial was filed within the time limit thus extended.

By an Order of 27 June 2001, the Court rejected a request by Belgium seeking to derogate from the agreed procedure in the case and extended to 28 September 2001 the time limit for the filing of a Counter-Memorial by Belgium, addressing both questions of jurisdiction and admissibility and the merits of the dispute. It further fixed 15 October 2001 as the date for the opening of the hearings. The Counter-Memorial was filed within the prescribed time limit.

At the conclusion of public sittings to hear the oral arguments, held from 15 to 19 October 2001, the DRC requested the Court to adjudge and declare that by issuing and internationally circulating the arrest warrant of 11 April 2000, Belgium violated, in regard to the DRC, the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers and, in doing so, violated the principle of sovereign equality among States; a formal finding by the Court of the unlawfulness of that act constituted an appropriate form of satisfaction; the violations of international law underlying the issue and international circulation of the arrest warrant precluded any State, including Belgium, from executing it; and Belgium should be required to recall and cancel the arrest warrant of 11 April 2000 and to inform the foreign authorities to whom the warrant was circulated that Belgium renounced its request for cooperation in the war-

rant's execution. Belgium requested the Court to adjudge and declare that the Court lacked jurisdiction in the case and/or that the Application by the DRC against Belgium was inadmissible. If the Court concluded that it did have jurisdiction and the DRC's Application was admissible, Belgium requested the Court to reject the DRC's submissions on the merits of the case and to dismiss the Application.

The Court deliberated on a Judgment.

Certain Property (Liechtenstein v. Germany)

On 1 June 2001, Liechtenstein filed an Application instituting proceedings against Germany concerning Germany's decisions to treat certain property of Liechtenstein nationals as German assets, seized for the purposes of reparation or restitution as a consequence of the Second World War, without ensuring any compensation.

In the Application, Liechtenstein alleged that in 1945, during the Second World War, Czechoslovakia—an allied country and a belligerent against Germany—through a series of decrees (the Beneš decrees) seized German and Hungarian property located on its territory. Czechoslovakia applied those decrees not only to German and Hungarian nationals but also to other persons allegedly of German or Hungarian origin or ethnicity. For that purpose, it treated the nationals of Liechtenstein as German nationals. The property of the Liechtenstein nationals seized under the decrees (the "Liechtenstein property") was never returned to its owners, nor had compensation been offered or paid. The application of the Beneš decrees to the Liechtenstein property remained unresolved between Liechtenstein and Czechoslovakia until the dissolution of the latter, and it continued to be an unresolved issue between Liechtenstein and the Czech Republic.

Liechtenstein further referred to the Convention on the Settlement of Matters arising out of the War and the Occupation, signed in Bonn on 26 May 1952 ("the Settlement Convention"), which stated that Germany agreed, among other things, that it would "in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war". The Application alleged that the Settlement Convention was only concerned with German property, i.e., property of the German State or of its nationals, and that under international law, having regard to Liechtenstein's neutrality and the absence of any links between Liechtenstein and the conduct of the war by Germany, any Liechtenstein property that might have been affected by measures of an Allied Power could not be considered as "seized for the purpose of reparation or restitution, or as a result of the state of war". Liechtenstein maintained that subsequent to the conclusion of the Settlement Convention, it was accordingly understood between Germany and itself that the Liechtenstein property did not fall within the scope of the Convention. As a corollary, Germany maintained the position that property falling outside the scope of the Convention was unlawfully seized, and that the German courts were not barred from considering claims affecting such property.

Following a Federal Constitutional Court ruling of Germany, pronounced in 1998, the property was treated as German external assets and could be used for payment of Germany's war-reparation debts. The Application of Liechtenstein claimed that the decision of the Federal Constitutional Court was unappealable, was attributable to Germany as a matter of international law, and was binding upon Germany.

Liechtenstein stated that it protested to Germany that the latter was treating as German assets that which belonged to Liechtenstein nationals. It further stated that Germany rejected the protest and that in subsequent consultations it became clear that Germany adhered to the position that Liechtenstein assets as a whole were "seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of the Settlement Convention, even though the decision of the Federal Constitutional Court only concerned a single item. According to the Application of Liechtenstein, in taking that position, Germany remained faithful to the decision of its highest court in the matter; at the same time, it ignored and undermined the rights of Liechtenstein and its nationals in respect of the Liechtenstein property. Liechtenstein claimed that by its conduct with respect to the Liechtenstein property, in and since 1998, Germany failed to respect the rights of Liechtenstein with respect to that property; and by its failure to make compensation for losses suffered by Liechtenstein and/or its nationals, Germany was in breach of international law. Liechtenstein requested the Court to adjudge and declare that Germany had incurred international legal responsibility and was bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered. Liechtenstein further requested that the nature and amount of such reparation should, in the absence of agreement between the Parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings.

As a basis for the Court's jurisdiction, Liechtenstein invoked article 1 of the European Con-

vention for the Peaceful Settlement of Disputes, signed at Strasbourg, France, on 29 April 1957.

By an Order of 28 June 2001, the Court, taking account of the agreement of the Parties, fixed 28 March 2002 and 27 December 2002, respectively, as the time limits for the filing of a Memorial by Liechtenstein and of a Counter-Memorial by Germany.

Territorial and Maritime Dispute (Nicaragua v. Colombia)

On 6 December 2001, Nicaragua instituted proceedings against Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation".

In its Application, Nicaragua claimed that "the islands and keys of San Andres and Providencia pertain to those groups of islands and keys that in 1821 [date of independence from Spain] became part of the newly formed Federation of Central American States and, after the dissolution of the Federation in 1838, . . . came to be part of the sovereign territory of Nicaragua". It considered in this connection that the Barcenas-Esguerra Treaty of 24 March 1928 "lacks legal validity and consequently cannot provide a basis of Colombian title with respect to the Archipelago of San Andres". Nicaragua added that, in any case, the treaty was "not . . . a treaty of delimitation".

Nicaragua recalled that as early as 1948 its Constitution affirmed that the national territory included the continental platforms on both the Atlantic and Pacific Oceans and, by decrees of 1958, it had made clear that the resources of the continental shelf belonged to it. Moreover, in 1965 it declared a national fishing zone of 200 nautical miles. Nicaragua went on to state that, by claiming sovereignty over the islands of Providencia and San Andres and keys, which, according to it, had a total "land area of 44 square kilometers and an overall coastal length that is under 20 kilometers, Colombia claims dominion over more than 50,000 square kilometers of maritime space that appertain to Nicaragua", representing "more than half" the maritime spaces of Nicaragua in the Caribbean Sea. It contended that the current situation was "seriously imperiling the livelihood of the Nicaraguan people, particularly those of the Caribbean coast that traditionally have had a great dependence on natural resources of the sea", and claimed that the Colombian navy had been intercepting and capturing a number of fishing vessels "in areas as close as 70 miles off the Nicaraguan coast", east of the 82 meridian. Nicaragua maintained that diplomatic negotiations had failed.

Nicaragua requested the Court to adjudge and declare, first, that Nicaragua had sovereignty over the islands of Providencia, San Andres and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (insofar as they were capable of appropriation); and, second, in the light of the determinations concerning title requested above, the Court was asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.

Nicaragua reserved the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the islands of San Andres and Providencia, as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title. It also reserved the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.

As a basis for the Court's jurisdiction, Nicaragua invoked article XXXI of the American Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), signed on 30 April 1948, to which both Colombia and Nicaragua were parties. Nicaragua also referred to the declarations under Article 36 of the Statute of the Court, by which Nicaragua and Colombia accepted the compulsory jurisdiction of the Court, in 1929 and 1937, respectively.

Other questions

Composition of the Court

On 21 June [S/2001/615], the Secretary-General informed the Security Council that Judge Mohammed Bedjaoui (Algeria), a member and former President of the Court, whose term was due to expire on 5 February 2006, intended to resign effective 30 September 2001. The Secretary-General drew the Council's attention to Article 14 of the Statute of the Court regarding fixing a date for the election to fill the vacancy. He noted that the date of the election was to be fixed by the Council and suggested that it might wish to consider the question at an early meeting.

Also in June [A/56/142], the Secretary-General informed the General Assembly of the vacancy.

SECURITY COUNCIL ACTION

On 5 July [meeting 4345], the Security Council adopted **resolution 1361(2001)** without vote. The draft [S/2001/663] was prepared during consultations among Council members.

The Security Council,

Noting with regret the resignation of Judge Mohammed Bedjaoui, taking effect on 30 September 2001,

Noting further that a vacancy in the International Court of Justice for the remainder of the term of office of Judge Mohammed Bedjaoui will thus occur and must be filled in accordance with the terms of the Statute of the Court,

Noting that, in accordance with Article 14 of the Statute, the date of the election to fill the vacancy shall be fixed by the Security Council,

Decides that the election to fill the vacancy shall take place on 12 October 2001 at a meeting of the Security Council and at a meeting of the General Assembly at its fifty-sixth session.

By notes of 17 September [A/56/373-S/2001/882], the Secretary-General submitted a list of three candidates nominated by national groups of States parties to the ICJ Statute to fill the vacancy left by Judge Bedjaoui and their curricula vitae [A/56/374-S/2001/883]. A 19 September memorandum by the Secretary-General [A/56/372-S/2001/881] provided information on the vacancy left by Judge Bedjaoui and ICJ's composition, and described the procedure in the General Assembly and the Security Council for the election of a new Member of the Court. On 6 October [A/56/373/Add.1-S/2001/882/Add.1], one of the candidates withdrew his candidature, and on 9 October [A/56/374/Corr.2-S/2001/883/Corr.2], the Secretary-General issued a corrigendum to the curricula vitae.

On 12 October, the Security Council [S/PV.4389] and the General Assembly [A/56/PV.24] elected, by secret ballot, Nabil Elaraby (Egypt) as a Member of the Court for the remainder of the term of office of Judge Bedjaoui (see p. 1463).

Rules of Court

Practice Directions

As from October 2001, the Court adopted certain Practice Directions for use by the States appearing before it. The Practice Directions, the result of an ongoing review of the Court's working methods to ensure that cases were adjudicated as expeditiously as possible, involved no alteration to the Rules of Court, but were additional thereto.

Amendments

Amendments to Article 79 of the Rules of Court, relating to preliminary objections, and Article 80 of the Rules, relating to counterclaims, entered into force on 1 February 2001. The amendments aimed to shorten the duration of proceedings. The Rules, which were adopted on 14 April 1978 [YUN 1978, p. 944], would continue to apply to all cases submitted to the Court prior to 1 February 2001, and to all phases of those cases.

Trust Fund to Assist States in the Settlement of Disputes

In October [A/56/456], the Secretary-General updated the activities and status of the Trust Fund to Assist States in the Settlement of Disputes through ICJ since the submission of his previous report in 1992 [YUN 1992, p. 986]. The Fund, established in 1989 [YUN 1989, p. 818], provided financial assistance to States for expenses incurred in connection with a dispute submitted to ICJ by way of a Special Agreement or the execution of a judgment resulting from such an Agreement.

In 1997, an award was made to two developing countries that had applied for assistance in 1996 and 1997 in connection with their submission to the Court of a boundary dispute with a neighbouring State. In both cases, the Secretary-General only approved limited financial assistance in order to strike a balance between encouraging recourse to the Court and the need to accommodate future applications.

During the period under review (1992-2001), 18 States had contributed to the Fund. As at 30 June, the total balance of the Fund, excluding awards already paid, amounted to $1,602,734.

JIU report

On 13 March [A/55/834], the Secretary-General transmitted the report of the Joint Inspection Unit (JIU) on its review of management and administration in the ICJ Registry. JIU concluded that, in addition to a shortage of staff and funds, the Court was experiencing institutional and administrative problems in the Registry, which needed attention. The Registry's personnel practices and procedures also needed to be examined.

JIU made a series of recommendations to the Court, among them, including in its 2002-2003 budget three posts for research assistants; reducing the Registrar's term of office to three years, with renewal subject to performance approved by the Court; amending its Rules regarding the appointment and term of office of the Deputy Registrar; increasing staff resources for translation; establishing more consistent, fair and transparent personnel management by aligning its practices and procedures with the staff rules and

regulations of the UN Secretariat; and increasing cooperation and coordination with the International Tribunal for the Former Yugoslavia (see p. 1198) and the Organization for the Prohibition of Chemical Weapons (see p. 495).

ICJ's comments on the JIU report were annexed to a 14 March note of the Secretary-General [A/55/834/Add.1]. The Court accepted the greater part of JIU's analysis concerning the increase in the Court's workload and the inadequacy of the resources available to it, and stated that it would make proposals on those matters to the General Assembly in connection with the 2002-2003 budget. The Court did not see fit to adopt the recommendations related to shortening the terms of office of the Registrar and the Deputy Registrar. With regard to administrative practices, the Court stated that it was unable to accept all of the report's recommendations, but it was involved in a determined, ongoing effort to improve, rationalize and update the practices and procedures in question.

Also annexed to the note were the Secretary-General's comments on issues related to budgetary matters, including the establishment of posts to provide research assistance for the judges, increased staff resources for translation and the establishment of a Senior Administrative/Personnel Officer.

The comments and observations of the Advisory Committee on Administrative and Budgetary Questions on the report were contained in its August report on the 2002-2003 programme budget [A/56/7].

GENERAL ASSEMBLY ACTION

On 14 June [meeting 103], the General Assembly, on the recommendation of the Fifth (Administrative and Budgetary) Committee [A/56/982], adopted **resolution 55/257** without vote [agenda items 116 & 117].

Report of the Joint Inspection Unit on the review of management and administration in the Registry of the International Court of Justice

The General Assembly,

Recalling section V of its resolution 55/238 of 23 December 2000,

Having considered the report of the Joint Inspection Unit entitled "Review of management and administration in the Registry of the International Court of Justice" and the comments of the International Court of Justice and those of the Secretary-General thereon,

1. *Notes* that the problems in the management of the Registry of the International Court of Justice referred to in the report of the Joint Inspection Unit have been, to a large extent, resolved;

2. *Takes note* of recommendations 1 and 7 of the Unit concerning, respectively, research assistants and the post of a senior Administrative/Personnel Officer, and requests the Advisory Committee on Administrative and Budgetary Questions to consider the matter and make such recommendations as it deems appropriate in the context of its first report on the proposed programme budget for the biennium 2002-2003, for decision by the General Assembly at its fifty-sixth session;

3. *Emphasizes* the importance of consistent, fair and transparent management of personnel and the need for the introduction of an effective performance appraisal system for the staff of the Court, referred to in paragraph 85 of the report of the Unit;

4. *Invites* the Court to review the need to amend its own staff rules to enable the introduction and implementation of the performance appraisal system;

5. *Decides* to keep the matter under review at its fifty-sixth session.