### *D. Conclusions*

The Court's Judgment touches upon the wide variety of issues. Its treatment of the issue of reservations to Article IX of the Genocide Convention is controversial, and will be found most helpful by Governments that brutalize populations, and also by Governments that provide means to other Governments to serve such ends. Moreover, the incompatibility of the Court's approach with the generally accepted practices and approaches, together with the serious objections expressed within the Court, casts doubt on the credibility of the Court's findings on Article IX as findings that could express the accepted standards of international law.

ALEXANDER ORAKHELASHVILI*

## IV. CASES BEFORE THE COURT

### 1. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*).

The Republic of Bosnia and Herzegovina instituted proceedings against Yugoslavia on 20 March 1993 alleging violations of the 1949 Genocide Convention and requesting an indication of provisional measures which was made in an order of 8 April 1993.[1] This was reaffirmed in an order of 13 September 1993,[2] following a second request for provisional measures made by Bosnia and Herzegovina on 27 July 1993 and a request made by Yugoslavia on 10 August 1993.[3] By an order of 16 April 1993[4] the following time limits were set for the filing of the written pleadings: Bosnia and Herzegovina, memorial, 15 October 1993; Yugoslavia, counter-memorial, 15 April 1994. By an order of 7 October 1993[5] these were extended to: Bosnia and Herzegovina, memorial, 15 April 1994; Yugoslavia, counter-memorial, 15 April 1995 and, by order of 21 March 1995,[6] the date for the submission of the Yugoslavian counter-memorial was again extended to 30 June 1995. On 26 June 1995, Yugoslavia submitted preliminary objections which were rejected by the Court in its order of 11 July 1996.[7] By an order of 23 July 1996[8] the time limit for filing the Yugoslav counter-memorial was fixed as 23 July 1997. The counter-memorial was filed on 22 July 1997 and contained counter-claims against Bosnia and Herzegovina and, in an order of 17 December 1997,[9] the Court held them to be admissible and that they formed a part of the current proceedings. These counter-claims were subsequently withdrawn at the request of Bosnia and Herzegovina, this being noted by the Court in its order of 10 September 2001.[10] The order of 17 December 1997[11] set the following time limits for the written pleadings on the merits: Bosnia and Herzegovina, reply, 23 January 1998; Yugoslavia, rejoinder, 23

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[1] ICJ Rep (1993) 3.
[2] ibid 325.
[3] See C Gray, Case Note, (1994) 43 ICLQ 705.
[4] ICJ Rep (1993) 29.
[5] ibid 470.
[6] ibid (1995) 80.
[7] ibid 1996. See C Gray, Case Note (1997) 46 ICLQ 688. On 24 Apr 2001 Yugoslavia filed an application for revision of this Judgment which the Court declared inadmissible in its Judgment of 3 Feb 2003. See N Tsagourias, Case Note, above at 759.
[8] ICJ Rep (1996) 797.
[9] ibid (1997) 243.
[10] ibid (2001) 572.
[11] ibid (1997) 243.

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July 1998. By an order of 22 January 1998[12] these were extended to: Bosnia and Herzegovina, reply, 23 April 1998; Yugoslavia, rejoinder, 22 January 1999. By an order of 11 December 1998[13] the time limit for the submission of the Yugoslav rejoinder was further extended to 22 February 1999. Public Hearings opened on 27 February 2006 and were completed on 9 May 2006.[14]

2. Gabčíkovo-Nagymaros Project (*Hungary/Slovakia*).

On 2 July 1993, in pursuance of a Special Agreement of 7 April 1993, Hungary and Slovakia requested the Court to determine certain issues arising out of the implementation and termination of a 1977 Agreement on the construction and operation of the Gabčíkovo-Nagymaros barrage system. In its judgment of 25 September 1997[15] the Court found both States to be in breach of their obligations and called on them to negotiate a settlement in good faith.[16] On 3 September 1998 Slovakia filed a request for an additional judgment, arguing that Hungary was unwilling to implement the judgment[17] and it was subsequently agreed that Hungary would file a written statement of its position regarding this request by 7 December 1998.[18]

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

Guinea instituted proceedings against the Democratic Republic of Congo on 28 December 1998 alleging grave breaches of international law perpetrated upon a national of Guinea. By an order of 25 November 1999[19] the following time limits were set for the submission of written pleadings: Republic of Guinea, memorial, 11 September 2000; Democratic Republic of the Congo, counter-memorial, 11 September 2001. By an order of 8 September 2000[20] these were extended to: Republic of Guinea, memorial, 23 March 2001; Democratic Republic of the Congo, counter-memorial, 4 October 2002. On 3 October 2002 the Democratic Republic of the Congo filed preliminary objections to the admissibility of the Application and in an order of 7 November 2002[21] the Court fixed 7 July 2003 as the time limit for submission of written observations by the Republic of Guinea.

4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide *(Croatia v Serbia and Montenegro*).

Croatia instituted proceedings against Yugoslavia on 2 July 1999, alleging violations of the 1949 Genocide Convention and seeking reparations. In an order of 14 September 1999[22] the following time limits were set for the submission of written pleadings: Croatia, memorial, 14 March 2000; Yugoslavia, counter-memorial, 14 September 2000. In an order of 10 March 2000[23] these were extended to: Croatia, memorial, 14 September 2000, Yugoslavia, counter-memorial, 14 September 2001. By an order of

[12] ibid (1998) 3.
[13] ibid 743.
[14] ICJ Press Communiqué No 2006/18.
[15] ICJ Rep 1997, 7.
[16] See PN Okowa, Case Note (1998) 47 ICLQ 688.
[17] ICJ Press Communiqué No 98/28.
[18] ibid No 98/31.
[19] ICJ Rep (1999) 1042.
[20] ibid (2000) 146.
[21] ibid (2002) 607.
[22] ibid (1999) 1015.
[23] ibid (2000) 3.

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27 June 2000[24] these were further extended to: Croatia, memorial, 14 March 2001; Yugoslavia, counter-memorial, 16 September 2002. On 11 September 2002 Yugoslavia filed preliminary objections to the jurisdiction and admissibility of the Application and in an order of 14 November 2002[25] the Court fixed 29 April 2003 as the time limit the submission of written observations by Croatia.

5. Maritime Delimitation between Nicaragua and Honduras in the Carribean Sea *(Nicaragua v Honduras*).

Nicaragua instituted proceedings against Honduras on 8 December 1999 regarding a dispute concerning the delimitation of maritime zones between them in the Caribbean Sea and requesting that the Court determine the course of a single maritime boundary between their respective areas of territorial sea, continental shelf and exclusive economic zone. In an order of 21 March 2000[26] the following time limits were set for the submission of written pleadings: Nicaragua, memorial, 21 March 2001; Honduras, counter-memorial, 21 March 2002. In an order of 13 June 2002[27] a further round of written pleadings was authorized and the following time limits set: Nicaragua, reply, 13 January 2003; Honduras, rejoinder, 13 August 2003.

6. Territorial and Maritime Dispute (*Nicaragua v Colombia*).

Nicaragua instituted proceedings against Colombia on 6 December 2001 with regard to 'legal issues subsisting' between Nicaragua and Colombia 'concerning title to territory and maritime delimitation' in the western Caribbean'.[28] By an order of 26 February 2002[29] the following time limits were set for the submission of written pleadings: Nicaragua, memorial, 28 April 2003; Colombia, counter-memorial, 28 June 2004. On 27 July 2003 (and thus within 3 months of the submission of the memorial), Colombia filed preliminary objections to the jurisdiction of the Court and in an order of 24 September 2003[30] the Court fixed 26 June 2004 as the time limit for the submission of written observations and submissions by Nicaragua.

7. Certain Criminal Proceedings in France (*Republic of the Congo v France*).

On 9 December 2002 the Republic of the Congo presented an application against France regarding proceedings for crimes against humanity and torture commenced, inter alia, against the Congolese Foreign Minister, and also as regards warrants for the witness hearing of the President of the Republic of the Congo. A request for provisional measures was also made.[31] The applicant sought to base the Court's jurisdiction on the consent of the respondent under Article 38 (5) of the ICJ Statute (*forum prorogatum*) which was given on 11 April 2003.[32] In an order of 17 June 2003[33] the Court rejected the request for provisional measures and in and order of 11 July 2003[34] set the

[24] ibid 108.
[25] ibid (2002) 610.
[26] ibid (2000) 6.
[27] ibid (2002) 216.
[28] ICJ Press Communiqué No 2001/34.
[29] ICJ Rep (2002) 189.
[30] ibid (2003) 158.
[31] ICJ Press Communiqué No 2002/37.
[32] ibid No 2003/14.
[33] ICJ Rep (2003) 102. See D Turns, Case Note (2004) 53 ICLQ 775.
[34] ICJ Rep (2003) 143.

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following time limits for the submission of written pleadings: Republic of Congo, memorial, 11 December 2003; France, counter-memorial, 11 May 2004. In an order of 17 June 2004[35] the Court authorized a further round of written pleadings and set the following time limits: Republic of the Congo, reply 10 December 2004; France, rejoinder, 10 June 2005. These were extended by an order of 8 December 2004[36] to: Republic of the Congo, reply 10 January 2005; France, rejoinder, 10 August 2005 and again by an order of 29 December 2004[37] to: Republic of the Congo, reply 11 July 2005; France, rejoinder, 11 August 2005. A further order of 12 January 2006 has extended the deadlines to: Republic of the Congo, reply 11 July 2006; France, rejoinder, 11 August 2008.[38]

8. Sovereignty over Pedro Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (*Malaysia/Singapore*).

On 24 July 2003, in pursuance of a Special Agreement of 6 February 2003 (in force 9 May 2003), Malaysia and Singapore seised the Court of a dispute concerning sovereignty over Pedro Branca/Pulau Batu Puteh, Middle Rocks and South Ledge. In an order of 1 September 2003[39] the following time limits were set for the submission of written pleadings by both parties: memorials, 25 March 2004; counter-memorials, 25 January 2005. In an order of 1 February 2005[40] 25 November 2005 was set as the time limit for the submission of a reply by both parties.

9. Maritime Delimitation in the Black Sea (*Romania v Ukraine*)

Romania instituted proceedings against Ukraine on 16 September 2004 in a dispute concerning the establishment of a single maritime boundary between them in the Black Sea. In an order of 19 November 2004[41] the following time limits were set for the submission of written pleadings: Romania, memorial, 19 August 2005; Ukraine, counter-memorial, 19 May 2006.

10. Dispute regarding Navigational and Related Rights (*Costa Rica v Nicaragua*)

On 29 September 2005 Costa Rica instituted proceedings against Nicaragua in a dispute concerning navigational and related rights of Costa Rica in the San Juan River. In an order of 2 December 2005 the following time limits were set for the filing of initial proceedings: Costa Rica, memorial, 29 August 2006; Nicaragua, counter-memorial, 29 May 2007.[42]

11. Proceedings instituted by the Commonwealth of Dominica (*Dominica v Switzerland*)

The Commonwealth of Dominica brought a case against Switzerland on 26 April 2006 alleging violations of the Vienna Convention on Diplomatic Relations and other inter-

[35] ibid (2004) 130.
[36] ICJ Press Communiqué No 2004/38.
[37] ibid No 2005/1.
[38] ibid No 2006/2.
[39] ICJ Rep (2003) 146.
[40] ICJ Press Communiqué No 2005/3.
[41] ibid No 2004/34.
[42] ibid No 2005/24.

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national instruments and rules with respect to a diplomatic envoy of Dominica to the United Nations in Geneva.[43] Time limits for the filing of memorials have not yet been set.

12. Proceedings instituted by Argentina (*Argentina v Uruguay*)

On 4 May 2006, Argentina instituted proceedings against Uruguay alleging breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty dated 26 February 1975 between Argentina and Uruguay.[44] Public hearings concerning Argentina's request for provisions measures are scheduled to be heard by the court on 8 and 9 June 2006.[45]

## V. OTHER DEVELOPMENTS

1. On 29 September 2005, the International Court of Justice amended Article 43 of the Rules of Court, dealing with the matter of notifications to be given by the Court to non-parties to a case which are parties to a convention whose construction may be in question in the proceedings. Two new paragraphs were added, in order to cover the case of international organizations parties to such conventions and to establish an appropriate procedural framework for this purpose.[1]

2. On 8 November 2005, five members of the Court were elected for a term of office of nine years beginning on 6 February 2006. Judge Thomas Buergenthal (USA) was re-elected as a member of the Court. Mohamed Bennouna (Morocco), Kenneth Keith (New Zealand), Bernardo Sepúlveda Amor (Mexico) and Leonid Skotnikov (Russian Federation) were elected Members of the Court.[2]

3. On 10 January 2006, the Republic of Djibouti seised the jurisdiction of the Court in dispute with France relating to the alleged violation of France of its international obligations in respect of mutual assistance in criminal matters. The Republic of Djibouti based its action on Article 38, paragraph 5 of the Rules of Court. The Application has been transmitted to the French Government. No further action will be taken in the proceedings until France consents to the jurisdiction of the Court in this case.[3]

4. On 6 February 2006, Judge Rosalyn Higgins (United Kingdom) was elected President of the International Court of Justice. Judge Awn Shawkat Al-Khasawneh (Jordan) was elected Vice-President. Each have been appointed for a term of three years.[4]

[43] ibid No 2006/16.
[1] ibid No 2005/19.
[4] ibid No 2006/5.
[44] ibid No 2006/17.
[2] ibid No 2005/23.
[45] ibid No 2006/19.
[3] ibid No 2006/1.

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