The problematic feature is not that the Court was necessarily wrong in its interpretation of Article 35(2), but that there was no need for it to have involved itself in this issue at all. It could easily have avoided any discussion of Article 35(2) and thus obviated the need for conflict with its own earlier decisions. The language of this ruling by the Court also opens up the question: was Serbia and Montenegro a party to the Genocide Convention? This issue will be vital to the ongoing *Bosnia Genocide* case in which it had already been accepted that Serbia and Montenegro was a party.

G. Conclusion

In the current *Legality of Use of Force* cases the Court stressed its freedom to choose the grounds on which it would base its refusal of jurisdiction. But it did not adequately address the need for consistency in the Court's reasoning. In paragraph 40 it said that it 'cannot decline to entertain a case simply because its judgment may have implications in another case'. The Joint Declaration and Separate Opinions were rightly critical of this as inadequate. The Joint Declaration said that there should be three criteria governing the proper exercise of the judicial function which must guide the Court in selecting between possible options. First, the Court must ensure consistency with its own past case law in order to provide predictability; second, the principle of certitude should lead the Court to choose the ground which is most secure in law; third, as the principal judicial organ of the UN the Court should be mindful of the possible implications and consequences for other pending cases. But the Court was not constrained by these considerations; it contradicted earlier decisions and created serious problems for ongoing cases. The objection is not that the Court's views on Articles 35(1) and (2) were untenable but rather that it chose to abandon its own earlier reasoning which could have produced the same result without the difficulties. If a standing court does not offer consistency where this is easily achievable, then its role at a time when there is a proliferation of tribunals must be uncertain. This is in many ways an unsettling judgment and one which threatens to undermine the authority of the International Court of Justice.

CHRISTINE GRAY*

III. 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

[1] ICJ Rep 1993, 3.
[2] ibid 325.

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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 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 are scheduled to open on 27 February 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

[3] See C Gray Case Note (1994) 43 ICLQ 705.
[4] ICJ Rep 1993, 29.
[5] ICJ Rep 1993 470.
[6] ICJ Rep 1995, 80.
[7] ICJ Rep 1996, 595. 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 (2004) 53 ICLQ 759.
[8] ICJ Rep 1996, 797.
[9] ICJ Rep 1997, 243.
[10] ICJ Rep 2001, 572.
[11] ICJ Rep 1997, 243.
[12] ICJ Rep 1998, 3.
[13] ICJ Rep 1998 743.
[14] ICJ Press Communiqué No 2004/37.
[15] ICJ Rep 1997, 7.
[16] See PN Okowa Case Note (1998) 47 ICLQ 688.
[17] ICJ Press Communiqué No 98/28.
[18] ICJ Press Communiqué No 98/31.
[19] ICJ Rep 1999, 1042.

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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. Armed activities on the territory of the Congo (*Democratic Republic of the Congo v Uganda*).

The Democratic Republic of the Congo (DRC) instituted proceedings against Burundi, Uganda and Rwanda on account of 'acts of armed aggression'. In an order of 21 October 1999[22] the following time limits were set for the submission of written proceedings on the merits of the dispute: DRC, memorial, 21 July 2000; Uganda, counter-memorial, 21 April 2001. On 19 June 2000 the DRC made a request for an award of provisional measures, which was made by the Court in its order of 1 July 2000.[23] The Ugandan counter-memorial had contained three counter-claims against the DRC and, in an order of 29 November 2001,[24] the Court held two of these to be admissible and that they formed a part of the current proceedings, dismissing the third. It then authorized a further round of written pleadings on the merits and set the following time limits: DRC, reply, 29 May 2002; Uganda, rejoinder, 29 November 2002 (extended by an order of 7 November 2002[25] until 7 December 2002). In an order of 29 January 2003[26] the Court authorized the filing of an additional written pleading by the DRC relating solely to the Ugandan counter-claims, to be filed by 28 February 2003. Public Hearings were scheduled to open on 10 November 2003[27] but on 7 November 2004 these were postponed at the request of the parties[28] and were held between 11 and 29 April 2005.[29]

5. 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[30] 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[31] these were extended to: Croatia, memorial, 14 September 2000, Yugoslavia, counter-memorial, 14 September 2001. By an order of 27 June 2000[32] 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[33] the Court fixed 29 April 2003 as the time limit the submission of written observations by Croatia.

[20] ICJ Rep 2000, 146.
[21] ICJ Rep 2002, 607.
[22] ICJ Rep 1999, 1022.
[23] ICJ Rep 2000, 111 and see D Kritsiotis Case Note (2001) 50 ICLQ 662.
[24] ICJ Rep 2001, 660.
[25] ICJ Rep 2002, 604.
[26] ICJ Rep 2003, 3.
[27] ICJ Press Communiqué No 2003/24.
[28] Press Communiqué No 2003/39.
[29] Press Communiqué No 2004/36.
[30] ICJ Rep 1999, 1015.
[31] ICJ Rep 2000, 3.
[32] ICJ Rep 108.
[33] ICJ Rep 2002, 610.

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6. 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[34] 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[35] a further round of written pleadings was authorized and the following time limits set: Nicaragua, reply, 13 January 2003; Honduras, rejoinder, 13 August 2003.

7. Certain Property (*Liechtenstein v Germany*).
Liechtenstein instituted proceedings against Germany on 1 June 2001 in a dispute concerning decisions of Germany to treat certain property of Liechtenstein nationals as German assets seized for the purposes of reparation as a consequence of the Second World War without ensuring any compensation. By an order of 28 June 2001[36] the following time limits were set for the submission of written pleadings: Liechtenstein, memorial, 28 March 2002; Germany, counter-memorial, 27 December 2002. On 27 June 2002 (and thus within three months of the submission of the memorial) Germany filed preliminary objections to the jurisdiction and admissibility of the application and in an order of 12 July 2002[37] the Court fixed 15 November 2002 as the time limit the submission of written observations by Liechtenstein. Public Hearings were held from 14 to 18 June 2004[38] and Judgment was given on 10 February 2005, in which it was decided that the Court lacked jurisdiction to consider the dispute.[39]

8. 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'.[40] By an order of 26 February 2002[41] 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[42] the Court fixed 26 June 2004 as the time limit for the submission of written observations and submissions by Nicaragua.

9. Frontier Dispute (*Benin/Niger*).
On 3 May 2002, in pursuance of a Special Agreement signed on 15 June 2001 (in force 11 April 2002), Benin and Niger seised the Court of a dispute concerning the course of their boundary in the River Niger, the ownership of islands in that river (in particular, Lété island) and the course of their boundary in the River Mekrou. In an order of 27 November 2002[43] the Court acceded to the request of the parties that a

[34] ICJ Rep 2000, 6.
[35] ICJ Rep 2002, 216.
[36] ICJ Rep 2001, 565.
[37] ICJ Rep 2002, 296.
[38] ICJ Press Communiqué No 2004/21.
[39] ICJ Rep No 2005/4.
[40] Press Communiqué No 2001/34.
[41] ICJ Rep 2002, 189.
[42] ICJ Rep 2003, 158.
[43] ICJ Rep 2002, 613.

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special Chamber be formed to deal with the case, comprising President Guillaume, Judges Ranjeva and Kooijmans and Judges ad hoc Bedjaoui (chosen by Niger) and Bennouna (chosen by Benin). In that order the Court also set 27 August 2003 as the time limit for the submission of a memorial by both parties and in an order of 16 September 2003[44] set 28 May 2004 as the time limit for the submission of their counter memorials. In an order of 9 July 2004 the Special Chamber authorized the filing of a replies by both parties, to be submitted by 17 December 2004.[45] By an order of 16 February 2005, and following the resignation of President Guillaume from the Court, Judge Abrahams became a member of the Chamber.[46] Public Hearings were held from 7 to 11 March 2005.[47]

10. Armed Activities on the Territory of the Congo (New Application: 2002) (*Democratic Republic of Congo v Rwanda*).
The Democratic Republic of the Congo (DRC) instituted proceedings against Rwanda on 28 May 2002, alleging violations of human rights and international humanitarian law resulting from acts of armed aggression and also requested an award of provisional measures to prevent irreparable harm flowing from the occupation of parts of its territory by Rwandan forces. In an order of 10 July 2002[48] the Court declined to do so, but also rejected the Rwandan request that the case be removed from the list. At the suggestion of Rwanda, in an order of 18 September 2002[49] the Court decided to first consider questions concerning its jurisdiction and the admissibility of the application and the following time limits were set for the submission of written pleadings: Rwanda, memorial, 20 January 2003; DRC, counter-memorial, 20 May, 2003.

11. 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.[50] 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.[51] In an order of 17 June 2003[52] the Court rejected the request for provisional measures and in and order of 11 July 2003[53] set the 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[54] 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[55] to: Republic of the Congo, reply 10 January 2005; France, rejoinder, 10 August 2005 and were further extended by an order of 29 December 2004[56] to: Republic of the Congo, reply 11 July 2005; France, rejoinder, 11 August 2005.

[44] ICJ Rep 2003, 155.
[45] ICJ Rep 2004, 133.
[46] ICJ Press Communiqué No 2005/6.
[47] ICJ Press Communiqué No 2005/7.
[48] ICJ Rep 2002, 219. See C Brown Case Note (2003) 52 ICLQ 781.
[49] ICJ Rep 2002, 299.
[50] ICJ Press Communiqué No 2002/37.
[51] Press Communiqué No 2003/14.
[52] ICJ Rep 2003, 102. See D Turns Case Note (2004) 53 ICLQ 775.
[53] ICJ Rep 2003, 143.
[54] ICJ Rep 2004, 130.
[55] ICJ Press Communiqué No 2004/38.
[56] Press Communiqué No 2005/1.

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12. 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[57] 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[58] 25 November 2005 was set as the time limit for the submission of a reply by both parties.

13. 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[59] the following time limits were set for the submission of written pleadings: Romania, memorial, 19 August 2005; Ukraine, counter-memorial, 19 May 2006.

IV. OTHER DEVELOPMENTS

1. On 30 July 2004 the Court issued three new practice directions (X–XII). Practice Direction X calls for agents to attend meetings concerning procedural aspects of cases without delay; Practice Direction XI calls on parties to ensure that material presented during oral hearings on provisional measures are strictly relevant to the criteria for their being awarded; Practice Direction XII established procedures with regard to submissions made by international NGOs in connection with advisory proceedings. The Court also amended Practice Direction V, clarifying that the 4-month period in which a party may present observations and submissions on preliminary objections runs from the date on which the preliminary objections were filed.

2. Following the resignation of President Guillaume from the Court on 11 February 2005, on 15 February 2005 UN General Assembly and Security Council elected Mr Ronny Abraham (France) as a member of the Court with immediate effect, his term of office to expire on 5 February 2009.[60]

[57] ICJ Rep 2003, 146.
[58] ICJ Press Communiqué No 2005/3.
[59] Press Communiqué No 2004/34.
[60] Press Communiqué No 2005/5.

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