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VIMUN

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Abstract

International Court of Justice (ICJ)

"Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs. Serbia and Montenegro)"

Honourable judges,

On behalf of the Secretary-General and the entire **VIMUN 2006** staff, we welcome you to the International Court of Justice.

VIMUN 2006 marks the first time in the history of the conference to have the ICJ as one of its committees. As the Chair team, we are especially proud to provide you with this opportunity.

The International Court of Justice at the VIMUN 2006 is a simulation of the International Court of Justice in the trial brought forth by Bosnia-Herzegovina against Serbia and Montenegro.

Each judge of the Court at the VIMUN 2006 is individually chosen through a selection process. Appointed judges show a strong understanding of International Law and are experienced MUN delegates. Because of the case under discussion, they will have a profound knowledge of the conflicts in the Balkans.

The International Court of Justice is a part of the United Nations system. However, it is an entity that is quite different from other UN committees. The Court does not follow the general VIMUN 2006 Rules of Procedere. It is not composed of diplomats representing national interests. Instead it is composed of 15 judges from different countries elected by the General Assembly and the Security Council based on qualifications.

The sources of law used by the judges at the VIMUN 2006 must match those listed in the Statute of the International Court of Justice. Further, the ICJ at the VIMUN stays true to the history of the conflict and the facts of the case that have been introduced to the Court at The Hague. However, due to the differences from the other committees at the VIMUN, the ICJ proceeds according to different rules. These modifications ensure the authenticity of the Court, while taking into account the Model United Nations framework.

The ICJ at the VIMUN will assume that the written part of the procedure has been concluded by the starting of the conference. Thus, our model will only consist of oral proceedings. Also, the President and Vice-president will not represent judges. They will preside over the sessions and direct the work of the Court but will not be involved in the debate or deliberations of opinions.

As a dedicated Chair team, it is our dearest wish that you will set new standards by exemplifying the potential of a committee working towards a decision through joint efforts.

We look forward to seeing you in session.
Best regards,

Carmen Amelia Gayoso
(President)

Emanuel J M Riccabona
(Vice-President)

Sources of International Law used by the ICJ:

The ICJ must base its decisions on the Sources of law provided for in *Article 38 ICJ*:

1. international treaties and conventions in force
2. international custom
3. general principles of law
4. judicial decisions and academic writing.

The three "true" sources of international law are treaty law, customary international law and general principles of law.

Often, *treaties* are simply codifications of existing standards of international behaviour. Many rules of international law are not enshrined in treaties, but are formed through custom.

Rules of customary international law are officially recognized when 1) the conduct is widespread and accepted by a preponderance of nations and 2) states believe that they are legally obligated to follow the custom.

Where there is no explicit treaty or customary law, *general principles of law* can support a decision of the ICJ. Appealing to general principles of law allows the Court to apply basic notions of justice and fairness.

Judicial decisions and academic writings are, under Article 38, only *means* by which to determine the rules of law (e.g. they may point to a general practice of a state). Furthermore, *Article 59* indicates that decisions of the ICJ are only binding on the parties to the dispute, so the common law doctrine of precedence does not apply. However, decisions of the ICJ are much more important than this article implies, since they determine what international custom is. So then, prior decisions of the ICJ are extremely persuasive and should be cited when making decisions.

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

Taken directly from the ICJ Press Release 2004/37[1]:

History of the proceedings

On 20 March 1993, Bosnia and Herzegovina filed with the Registry of the Court an Application instituting proceedings against Serbia and Montenegro (then known as the Federal Republic of Yugoslavia) in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide of

[1] http://www.icj-cij.org/icjwww/ipresscom/ipress2004/ipresscom2004-37_bhy_20041208.htm

9 December 1948. Bosnia and Herzegovina invoked Article IX of that Convention as the basis of the Court's jurisdiction.

In its Application, Bosnia and Herzegovina requested, inter alia, that the Court adjudge and declare that Serbia and Montenegro, through its agents and surrogates, "has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina", that it must immediately cease this alleged practice of "ethnic cleansing" and pay reparations.

On 20 March 1993 Bosnia and Herzegovina also submitted a request for provisional measures. Public hearings were held on 1 and 2 April 1993, and by an Order dated 8 April 1993 the Court indicated that Serbia and Montenegro "should immediately . . . take all measures within its power to prevent commission of the crime of genocide" and that both Serbia and Montenegro and Bosnia and Herzegovina "should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute . . . or render it more difficult of solution".

On 27 July 1993 Bosnia and Herzegovina filed a second request for provisional measures. On 5 August 1993 the President of the Court addressed a message to both Parties, referring to Article 74, paragraph 4, of the Rules of Court, which enables him, pending the meeting of the Court, "to call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects". On 10 August 1993 a similar request for provisional measures was filed by Serbia and Montenegro. Public hearings were held on 25 and 26 August 1993, and by an Order dated 13 September 1993 the Court reaffirmed the measures indicated on 8 February 1993, adding that they should be immediately and effectively implemented.

The Memorial of Bosnia and Herzegovina was filed on 15 April 1994 within the time-limit as extended by an Order of the Court of 7 October 1993.

On 26 June 1995, within the time-limit for the deposit of its Counter-Memorial, as extended by the same Order of the Court, Serbia and Montenegro filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application; the proceedings on the merits were accordingly suspended (Art. 79 of the Rules of Court). After Bosnia and Herzegovina had filed a written statement on the preliminary objections within the time-limit of 14 November 1995 fixed by the Court' s Order of 14 July 1995, public hearings were held between 29 April and 3 May 1996. On 11 July 1996, the Court delivered its Judgment, rejecting the objections of Serbia and Montenegro.

In the Counter-Memorial it filed on 22 July 1997, Serbia and Montenegro submitted counter-claims requesting the Court to adjudge and declare that "Bosnia and Herzegovina [was] responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina" and that it "[had] the obligation to punish the persons held responsible" for

these acts. It also asked the Court to rule that "Bosnia and Herzegovina [was] bound to take necessary measures so that the said acts would not be repeated in future" and "to eliminate all consequences of the violation of the obligations established by the . . . [Genocide] Convention".

By a letter of 28 July 1997 Bosnia and Herzegovina informed the Court that "the Applicant [was] of the opinion that the Counter-Claim submitted by the Respondent . . . [did] not meet the criterion of Article 80, paragraph 1, of the Rules of Court and should therefore not be joined to the original proceedings". After each Party had filed written observations, the Court, by an Order of 17 December 1997, held that Serbia and Montenegro's counter-claims were "admissible as such" and that they formed "part of the current proceedings" in the case; the Court also directed the Parties to submit further written pleadings on the merits of their respective claims and fixed time-limits for the filing of a Reply by Bosnia and Herzegovina and of a Rejoinder by Serbia and Montenegro. Those time-limits having been extended at the request of each of the Parties, the Reply of Bosnia and Herzegovina was eventually filed on 23 April 1998 and the Rejoinder of Serbia and Montenegro on 22 February 1999. In those pleadings, each of the Parties contested the allegations made by the other.

Since then several exchanges of letters have taken place concerning new procedural issues in the case.

By an Order of 10 September 2001 the President of the Court placed on record the withdrawal by Serbia and Montenegro of the counter-claims submitted by that State in its Counter-Memorial. The Order was made after Serbia and Montenegro 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 such withdrawal.

It is further recalled that, on 3 February 2003, the Court rendered its Judgment in the case concerning Application for Revision of the Judgment of 11 July 1996 in the Case 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). In that Judgment the Court found that the request for revision of the Judgment of 11 July 1996 submitted by Serbia and Montenegro was inadmissible.

In a letter dated 12 June 2003, the Registrar informed the Parties of the Court's decision that it could not, in the circumstances of the case, suspend proceedings on the merits, as Serbia and Montenegro had requested in a document entitled "Initiative to the Court to reconsider ex officio jurisdiction over Yugoslavia". In that document, filed with the Registry on 4 May 2001, Serbia and Montenegro had contended that the Court had no jurisdiction ratione personae and that it should accordingly dispose of that issue first.