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VIMUN



VIENNA INTERNATIONAL MODEL UNITED NATIONS
06 - 10 August 2006

Preparation Paper

International Court of Justice (ICJ)

Bosnia and Herzegovina v. Serbia and Montenegro

**Application of the Convention on the Prevention and Punishment of the Crime
of Genocide**

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 that the ICJ will be one of its constituent 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 real-world 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 must show a strong understanding of International Law and should be experienced MUN delegates. Because of the case under discussion, they must 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 procedural rules. It is not composed of diplomats representing national interests. 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 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 start 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 deliberation of opinions.

As a dedicated chair team, it is our dearest wish that you will set new standards of excellence 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)

The President & the Vice-President:

Carmen Amelia Gayoso received her Honours Political Science Bachelor degree from McMaster University in Canada. She is currently at the Diplomatic Academy in Vienna doing her graduate studies that are comprised of Law, International Politics and Economics. She is also an intern for the Forum of Security Cooperation at the Canadian delegation to the OSCE. Carmen had her Model UN debut at the Canadian International MUN in 2004 and headed her University's delegation for the conference in 2005 where she was chosen best delegate of a joint crisis committee on Kosovo. In the VIMUN 2004, she received the best speaker award for the CCPCJ. Also in 2004, she participated in a joint crisis committee at the Oxford International MUN. For the VIMUN 2005, she was Co-Chairperson of the Commission on Human Rights.

Emanuel J. M. Riccabona studies Law and Political Science at the University of Vienna. He participated in his first Model United Nations at the VIMUN 2004, where he represented the United States in the Security Council and was named the best speaker. The same year Emanuel represented the Russian Federation in a joint crisis committee at the Oxford International MUN. In 2005 he participated in the First Committee of the General Assembly on Disarmament and International Security at the Harvard National MUN. At the last VIMUN Emanuel was Chairperson of the Commission on Human Rights.

Usher

Gregor Novak's interest in international affairs was sparked by his work at three model European Union parliaments, once leading the Austrian delegation and twice chairing the environmental and economic committees, respectively. Currently, he is a second year student at the University of Vienna, majoring in law and economics. As Usher of the ICJ, he will support the President and Vice-President in leading a successful committee proceeding. Gregor is looking forward to an intense international debate, a decision we can all accept, and an unforgettable VIMUN 2006!

Introduction to The International Court of Justice

Founded in 1946, the International Court of Justice (ICJ) is the primary judicial organ of the United Nations. It sits at The Hague's Peace Palace. The Court is composed of fifteen judges who are chosen from different countries and regions to ensure that the principal legal systems of the world are represented. The Court is entitled to settle disputes only between states party to its Statute. This includes all members of the United Nations, as the Statute¹ is an integral part of the Charter. Private persons and international organizations may not refer any case to the Court.

Current Composition of the Court

- Ronny Abraham (France)
- Awn Shawkat Al-Khasawneh (Jordan)
- Thomas Buergenthal (United States of America)
- Nabil Elaraby (Egypt)
- Rosalyn Higgins (United Kingdom)
- Shi Jiuyong (China)
- Pieter H. Kooijmans (Netherlands)
- Abdul G. Koroma (Sierra Leone)
- Hisashi Owada (Japan)
- Gonzalo Parra-Aranguren (Venezuela)
- Raymond Ranjeva (Madagascar)
- Francisco Rezek (Brazil)
- Bruno Simma (Germany)
- Peter Tomka (Slovakia)
- Vladlen S. Vereshchetin (Russian Federation)

For the purpose of the VIMUN 2006 the President and Vice-President do not take up the role of judges. This is to ensure that they are able to focus on directing the sessions, to assist the Court with any points of clarification and to supervise the performance and outcome of the Committee.

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.

¹ **The Statute of the International Court of Justice:**
<http://www.icj-cij.org/icjwww/ibasicdocuments/ibasicstatute.htm>

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.

The Case

Bosnia and Herzegovina v. Serbia and Montenegro

Application of the Convention on the Prevention and Punishment of the Crime of Genocide

The conflict in the Balkans has, aside from all the destruction and victims, left over several disputes that, twelve years after the official end of the war, continue to challenge international legal institutions. The dispute about the application of the Convention on the Prevention and Punishment of the Crime of Genocide is the youngest case in front of the ICJ. After more than a decade of legal preparations and two and a half months of oral proceedings the Court was ready to begin its deliberations on 9 May 2006.

20 March 1993	Bosnia and Herzegovina files a case against Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide. The Application invokes Article IX of the Genocide Convention as the basis of the jurisdiction of the Court.
16 April 1993	Order of the Court indicating provisional measures
19 April 1993	Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide—Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)
29 April and 3 May 1996	Preliminary objections
17 December 1997	The Court finds Yugoslavian counter-claims admissible and thus should form a part of the current proceedings
20 April 2001	Federal Republic of Yugoslavia withdraws its counter-claims and asks the Court to reconsider its jurisdiction over Yugoslavia. The document in which the ICJ's jurisdiction is challenged is referred to as "the Initiative"
12 June 2003	Court decides that Respondent's request that the proceedings be suspended until a decision is rendered on the jurisdictional issues raised in "the Initiative." However, should it wish to do so, Serbia and Montenegro would be free to present further arguments on jurisdictional questions during the oral proceedings
27 February 2006	Opening of the public hearings/oral proceedings on the merits

9 May 2006

Conclusion of the public hearings/oral proceedings on the merits. The Court is ready to begin its deliberation.

The evidence heard during the oral proceedings will be the basis of the Court's deliberations. At VIMUN, we will simulate the Court's final deliberations only. Therefore, it is crucial for all judges to carefully study the content of the oral proceedings².

Final submissions of the Parties

On Monday 24 April 2006, Bosnia and Herzegovina presented the following final submissions:

"Bosnia and Herzegovina requests the International Court of Justice to adjudge and declare:

1. That Serbia and Montenegro, through its organs or entities under its control, has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by intentionally destroying in part the non-Serb national, ethnical or religious group within, but not limited to, the territory of Bosnia and Herzegovina, including in particular the Muslim population, by

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group;

2. Subsidiarily:

(i) that Serbia and Montenegro has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by complicity in genocide as defined in paragraph 1, above; and/or

(ii) that Serbia and Montenegro has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by aiding and abetting individuals, groups and entities engaged in acts of genocide, as defined in paragraph 1 above;

3. That Serbia and Montenegro has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide and by inciting to commit genocide, as defined in paragraph 1 above;

4. That Serbia and Montenegro has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide for having failed to prevent genocide;

5. That Serbia and Montenegro has violated and is violating its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide for having failed and for failing to punish acts of genocide or any other act prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide, and for having failed and for failing to transfer individuals accused of genocide or any other act prohibited by the Convention to the International Criminal Tribunal for the former Yugoslavia and to fully co-operate with this Tribunal;

6. That the violations of international law set out in submissions 1 to 5 constitute wrongful acts attributable to Serbia and Montenegro which entail its international responsibility, and, accordingly,

² Oral Proceedings: <http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyframe.htm>

(a) that Serbia and Montenegro shall immediately take effective steps to ensure full compliance with its obligation to punish acts of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide or any other act prohibited by the Convention and to transfer individuals accused of genocide or any other act prohibited by the Convention to the International Criminal Tribunal for the former Yugoslavia and to fully co-operate with this Tribunal;

(b) that Serbia and Montenegro must redress the consequences of its international wrongful acts and, as a result of the international responsibility incurred for the above violations of the Convention on the Prevention and Punishment of the Crime of Genocide, must pay, and Bosnia and Herzegovina is entitled to receive, in its own right and as *parens patriae* for its citizens, full compensation for the damages and losses caused. That, in particular, the compensation shall cover any financially assessable damage which corresponds to:

- (i) damage caused to natural persons by the acts enumerated in Article III of the Convention, including non-material damage suffered by the victims or the surviving heirs or successors and their dependants;
- (ii) material damage caused to properties of natural or legal persons, public or private, by the acts enumerated in Article III of the Convention;
- (iii) material damage suffered by Bosnia and Herzegovina in respect of expenditures reasonably incurred to remedy or mitigate damage flowing from the acts enumerated in Article III of the Convention;

(c) that the nature, form and amount of the compensation shall be determined by the Court, failing agreement thereon between the Parties one year after the Judgment of the Court, and that the Court shall reserve the subsequent procedure for that purpose;

(d) that Serbia and Montenegro shall provide specific guarantees and assurances that it will not repeat the wrongful acts complained of, the form of which guarantees and assurances is to be determined by the Court;

7. That in failing to comply with the Orders for indication of provisional measures rendered by the Court on 8 April 1993 and 13 September 1993 Serbia and Montenegro has been in breach of its international obligations and is under an obligation to Bosnia and Herzegovina to provide for the latter violation symbolic compensation, the amount of which is to be determined by the Court.”

On Tuesday 9 May 2006, Serbia and Montenegro presented the following final submissions:

“In accordance with Article 60, paragraph 2, of the Rules of Court, Serbia and Montenegro asks the Court to adjudge and declare:

- that this Court has no jurisdiction because the Respondent had no access to the Court at the relevant moment; or, in the alternative
- that this Court has no jurisdiction over the Respondent because the Respondent never remained or became bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, and because there is no other ground on which jurisdiction over the Respondent could be based;

In case the Court determines that jurisdiction exists Serbia and Montenegro asks the Court to adjudge and declare:

- That the requests in paragraphs 1 to 6 of the Submissions of Bosnia and Herzegovina relating to alleged violations of the obligations under the Convention on the Prevention and Punishment of the Crime of Genocide be rejected as lacking a basis either in law or in fact.
- In any event, that the acts and/or omissions for which the respondent State is alleged to be responsible are not attributable to the respondent State. Such attribution would necessarily involve breaches of the law applicable in these proceedings.
- Without prejudice to the foregoing, that the relief available to the applicant State in these proceedings, in accordance with the appropriate interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide, is limited to the rendering of a declaratory judgment.

- Further, without prejudice to the foregoing, that any question of legal responsibility for alleged breaches of the Orders for the indication of provisional measures, rendered by the Court on 8 April 1993 and 13 September 1993, does not fall within the competence of the Court to provide appropriate remedies to an applicant State in the context of contentious proceedings, and, accordingly, the request in paragraph 7 of the Submissions of Bosnia and Herzegovina should be rejected.”

Judgment Requested

135. Accordingly, while reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, Bosnia and Herzegovina requests the Court to adjudge and declare as follows:

(a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the People and State of Bosnia and Herzegovina under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;

(b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the People and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles I (3), 55 and 56 of the United Nations Charter

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4) and 33 (1), of the United Nations Charter;

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

- armed attacks against Bosnia and Herzegovina by air and land—airial trespass into Bosnian airspace;
- efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;

(j) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and

treaty obligations under Article 2 (4), of the United Nations Charter, as well as its obligations under general and customary international law;

(k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its people under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

(l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment, supplies, troops, etc.);

(m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24 (1) and 51 of the United Nations Charter and in accordance with the customary doctrine of *ultra vires*;

(p) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina—at its request—including by means of immediately providing it with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);

(q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

- from its systematic practice of so-called "ethnic cleansing" of the citizens and sovereign territory of Bosnia and Herzegovina;
- from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;
- from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;
- from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
- from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
- from the starvation of the civilian population in Bosnia and Herzegovina;
- from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;
- from all use of force—whether direct or indirect, overt or covert—against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;
- from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;
- from all support of any kind—including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support—to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;

(r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro).

Resources

List of useful Internet Links

Biographies of the judges:

http://www.lib.utexas.edu/maps/bosnia/ethnic_majoities_bosnia.jpg

Information on the Composition of the Court:

<http://www.icj-cij.org/icjwww/igeneralinformation/ibook/Bbookframepage.htm>

The Case:

<http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyframe.htm>

The Statute of the International Court of Justice:

<http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm>

The Convention on the Prevention and Punishment of the Crime of Genocide:

http://193.194.138.190/html/menu3/b/p_genoci.htm

Oral Proceedings:

<http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyframe.htm>

Application Instituting Proceedings:

<http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyframe.htm>

Current Composition of the Court (including Biographies):

http://www.lib.utexas.edu/maps/bosnia/ethnic_majoities_bosnia.jpg

Information on the Composition of the Court:

<http://www.icj-cij.org/icjwww/igeneralinformation/ibook/Bbookframepage.htm>

Maps

Ethnic Majorities in Bosnia an Herzegovina:

http://www.lib.utexas.edu/maps/bosnia/ethnic_majoities_bosnia.jpg

Ethnic Majorities in Former Yugoslavia:

<http://www.lib.utexas.edu/maps/europe/yugoslav.jpg>

Additional Books, Chapters and Articles on Former Yugoslavia and Genocide

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Denitch, Bogdan (1994). *Ethnic Nationalism: The Tragic Death of Yugoslavia*. Minneapolis.

Hayden, Robert (2002). "Imagined Communities and Real Victims: Self Determination and Ethnic Cleansing in Yugoslavia" Chapter 11 in *Genocide: An Anthropological Reader*. Hinton, Alexander Laban (ed). Oxford: Blackwell Publishers. Pp231-253.

Kaplan, Robert (1994). *Balkan Ghosts: A Journey Through History*. London.

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Wallensteen, Peter and Sollenberg, Margareta (2001). "Armed Conflict, 1989-2000." *Journal of Peace Research*. Vol. 38. No. 5. pp. 629-644.

Woodward, Susan L. (1995). *Balkan Tragedy: Chaos and Dissolution after the Cold War*. Washington.