International Court of Justice

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

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I.THE INTERNATIONAL COURT OF JUSTICE:

1.Letters From Chairs:

Dear Delegates,
I am honored to welcome you to TBMUN 2022! I believe that not only will you learn a lot and improve your knowledge, but also you will have fun, make great friends during the conference.

International Court of Justice is the judicial organ of the United Nations which focuses on dealing with International Law issues between countries. From my experience, I can tell you honestly that ICJ is a great place to improve yourself, especially if you are interested in law and the ways of dealing with real international problems. With knowledge from study guides and your research, you will be able to express your thoughts in a diplomatic way during the committee. You can contact me with any problem or question during preparation.

Don't forget that this conference is only about you, so be prepared and ready for great debates and resolutions, because we are looking forward to them.

I wish you all the best of luck!

Sincerely,
Kanan YUSIFLI

Honorable Delegates,

My name is Nart Cankan Duman and I'll be the acting registrar for TBMUN'22's ICJ simulation. I am a senior at Ayazağa Işık High School, this is also the place where my MUN journey started all those years back and this conference will be one of the stops of my "farewell tour" so to speak from this incredible community. As a great number of the delegates present are going to be quite experienced I feel that there isn't much reason to dwell on procedural matters in this letter.

You all chose to attend this conference out of interest, at least that's what I hope is the case. Time is invaluable and the fact that you saw us fit for yours is the best compliment we as a team could receive. I hope that the discussions and debates we seek to have in court give you an idea of how engaging law and order can be, and we aspire to give all delegates something to take away from their time at TBMUN.

I live for the day where the bright minds we see in these conferences take the reins from their ancestors and shape the future, and I hope that the delegates present show us their outstanding skill and resilience. I wish you all a fruitful conference and thank you for showing interest. For any and all questions you have regarding the conference and more you can contact me through nartduman@gmail.com

Kind Regards,
Nart Cankan Duman

1. Introduction:

The International Court of Justice, also known as the World Court, was created by the United Nations in 1945 as the principal judicial organ of the organization. The ICJ is currently located at the Peace Palace in The Hague, Netherlands. The primary objective of the ICJ is to settle international legal disputes between states and to act as an advisor to the other organs of the UN. The court was established during a time of increasing interest and faith in international courts. The ICJ is made up of 15 judges, each serving for a 9 year term with five seats being rotated every three years. The judges are elected only by an absolute majority in both the General Assembly and the Security Council. Those chosen may not hold any other position in any capacity outside of the Court during their term. Members are eligible for re-election. The President and Vice-President of the Court are elected every 3 years, with the use of a secret ballot. The role of the president includes breaking tied votes, attending every session of the Court, and residing in The Hague. Furthermore, parties who are of the same interest to a case that does not have a judge of its nationality on the Court may request something called an ad-hoc judge. For example, in a two-party case in which both parties are of separate interest and do not have judges sitting on the Court, the parties may request 2 ad-hoc judges, bringing the total amount to 17.

All 193 member states of the UN are parties of the ICJ Statute. However, special membership for non-member entities does exist.

2. Structure/Simulation:

The International Court of Justice is a unique legal body. Though it is an organ of the United Nations, its procedures are distinct from the other organs. Accordingly, the ICJ at TBMUN functions unlike any other committee. The most significant difference is that the responsibility of the ICJ is to reach a single decision, as opposed to producing a variety of resolutions to the agenda item. The rules of the court and procedures work to create an atmosphere that promotes discussion and compromise, such things are a requirement for Judges to reach a comprehensive and unanimous decision. This procedure is outlined in this

section and the next, it is imperative that delegates familiarize themselves with it before the start of the conference.

3. Role of the Judges:

Delegates partaking in the ICJ represent Judges of the Court. Judges do not represent a country. Instead, their opinions and beliefs are based solely on their own legal experience and moral compass. Judges are chosen from a variety of countries in order to promote objectivity; however, as stated previously, they do not make decisions based on the policies of their countries. This means that it is possible and encouraged for a Judge to make a decision that does not align with the policies of their nation or moral practices. This allows for a more objective decision on the cases that are discussed. It also means that delegates must come to the conference with a well-articulated opinion on the agenda item, however, they must remain open to the opinions of other judges.

Because the Court writes one final decision, it is crucial that all Judges participate in discussion and debate. During the opening speeches, the Judges will have presented their general ideas and opinions on the case. So, it should be noted that for a fruitful debate all judges must come in with adequate knowledge on the topic at hand.

While coming to a decision, it is crucial that delegates comprehend the types and applicability of international law. International law consists of both customary law and codified law, and it is extremely important that both are understood. Judges should also be aware of active treaties and other legal binders linked to the case.

4. Advocates:

Our ICJ simulation will have four advocates, two for each party. These advocates are independent lawyers. There is the Applicant Party which is composed of two advocates, they are the party that brought the case before the Court. There is also the Respondent Party, which is tasked with defending the accused, they are also composed of two members. These two parties are detailed below.

a. The Applicant Party (The Prosecution):

The Applicant party, also called the Prosecution, consists of two advocates that represent a state which has declared legal proceedings against another state, claiming that it failed to meet its obligations under international law. The applicant party has to meet the burden of proof. This is an obligation that only the applicant party has. If the applicant party fails to meet the burden of proof they lose the case. If a judge isn't convinced by any party, then the applicant hasn’t met their burden of proof and that judge will be voting in favor of the respondent party.

b. The Respondent Party (The Defense):

The Respondent Party, also called the Defender, consists of two advocates that represent the state that is being accused of having allegedly failed to meet its obligations under international law. The Respondent party is not obliged to meet a burden of proof. It only has to demonstrate how the applicant party lacks arguments, pieces of evidence, and valid proof and ultimately how they can’t meet their burden of proof.

5. WRITTEN DOCUMENTS:

a. Memorandum

A memorandum is a document prepared by the advocates and the only document related to the case that the judges come in contact with before the conference. Both parties have to prepare one. Everything included in the memorandum is from the point of view of the party that conducted it and should not be perceived as given facts or as evidence.

A memorandum should include the following sections:

i. Introduction: In this section, the case as a whole is introduced, including why the case was brought to court, which main legal document is disputed, the main claims and allegations or the main counterclaims. The applicant party should also briefly mention how the jurisdiction of the court can be proven, but the question regarding the jurisdiction of the court will not be dealt with during the oral proceedings in court.

ii. Historical Background: After the introduction, a more detailed description of the facts and events that led to the dispute and to the application of the case should be provided. It's recommended to either place the events in chronological order or to create a parallel timeline of events in the countries related to the case. The events prior to the case should be comprehended by all judges in order for them to have a clear insight into the case.

iii. Legal grounds: All legal documents that work as the basis of the argumentation of each party should be listed in this section. A description of the document and its importance should also be included. These documents can be any binding legal piece of law, such as international conventions, treaties, resolutions or other legal documents that can back up one's claims. The exact article, paragraph, or clause of importance should be clearly stated.

iv. Prayer of Relief/Judgment Requested: This part should list the decisions that the party would want the court to adjudge and declare in their final verdict. The Prayer of Relief may change during the Conference and the advocates will have to include it in their opening and closing speeches. The points that the advocates will mention in the judgment requested will have to be proven in order for them to win the case. The Judgment Requested of the Party that wins the case will also be partly included in the verdict.

b. Stipulations

Stipulations are facts that both parties have agreed upon. Each party prepares some facts that they think are very important to the case and should be taken for granted. The parties discuss and agree on them prior to the conference. The advocates can object to the stipulations at the beginning of the conference but are strongly advised not to. These can completely alter the

result of the case, so they should be closely selected by the parties and later well studied by the judges. Since stipulations are definite facts throughout the whole conference, they do not have to be proven in court. If a piece of evidence happens to contradict a stipulation, something that normally shouldn't happen, then that piece of evidence would lose its credibility.

c. Evidence

i. Real Evidence: Evidence lists of real pieces of evidence are presented in court twice. On the first day of the conference, both parties can provide to the court up to 10 pieces of evidence. These can include documents in written form such as legal documents, articles or reports, the evidence can be visual sources such as pictures, graphs or charts, they can be audios, videos or even objects. All pieces of evidence should be brought to court. If the advocates believe that the judges should focus on some specific parts, they can underline them. They should keep in mind though that the evidence will be examined as a whole.

   Evidence Lists have to follow a specific format.

   The format should be as follows: (Pieces of Evidence from the Applicant Party are numbered as 1,2,3 etc.) (Pieces of Evidence from the Respondent Party are numbered with capital Latin Letters, A, B, C)

   Acceptable forms of Evidence are:

1. Link to the online form of the document

2. Title of the Document (Specifically: If the evidence is a legal document then the advocates should also include the articles, paragraphs or clauses that the judges should focus on)

3. Source: e.g. the United Nations Archives, the New York Times, the World Health Organization

4. Author: If the document is an article or a text written by a specific person or group of authors then they should be named here. Some background information about their country of origin, their studies, prior and current workplaces, important life events and most importantly their expertise on the matter should be listed. This will help to prove the reliability of the piece of evidence.

5. Publication date: The exact publication date of the last time the document was edited should be listed in order for it to be deemed authentic. If the advocates want to provide the court with a previous version of a specific document they should mention it in this section. Only pieces of evidence that were conducted before the application date of the case can be provided to court since the simulation takes place at the time of the application. Articles after the application can be brought to court only if they refer to events before the application.

ii. Rebuttals:

The Rebuttals list is an evidence list with up to 5 pieces of evidence that are presented on the last day of the conference. These pieces of evidence are the last possibility that the parties have to prove that their claims and allegations can be proven. It is good to have pieces of evidence prepared prior to the conference but it is very likely that they

will have to change. Often the court finds gaps or unproven allegations during the deliberation that the advocates hadn't considered before. The advocates will be able to find out what they haven't provided the court with during questioning.

iii. Testimony Evidence:

The Testimony Evidence is considered to be equally as important as the Real Evidence. Each party can bring up to four witnesses to court for examination. It is advised that one of the witnesses is the ambassador of the country represented by the advocates. The other two witnesses can be ambassadors of other countries, organization representatives, esteemed diplomats, eyewitnesses or any individual that may help the advocates support their claims.

The witnesses will be evaluated with similar criteria to the real evidence. The advocates should thus make sure that the information they provide to the witness is objective and unbiased. The witness will be evaluated on the grounds of reliability during the deliberation. Witness testimonies should generally be backed up by pieces of evidence. If the testimony of a witness contradicts a real piece of evidence, then that will be discussed and taken into consideration during the deliberation. The advocates should provide the witness list to the Presidency in adequate time before the conference in order for the Presidency and the Secretariat to have time to contact the witness and their advisors.

d. Verdict

The verdict is the document in which the final judgment of the court is delivered. It is conducted by the Judges and the Presidency during the final deliberation. This document also follows a very specific format. There are four main sectors. The list of the stipulations, the findings of facts and/or law, which are sentences that start with the word "Whereas" and refer to the facts proven and how they were proven, the declaration and judgment regarding the burden of proof and the orders of the court, which are listed numbered. It is very likely that some parts of the judgment requested by the winning party will be included in the orders of the court. The specific format of the verdict will be provided by the Presidency.

All documents and facts that were not brought to court as evidence and were not stipulated are considered nonexistent and do not hold any value in court.

7. Burden of Proof:

The Burden of Proof is based on the generally accepted principle of “actori incumbit probatio”, which roughly means that the claimant has to prove their claim. This means that the Applicant part has to persuade a simple majority (51%) of the judges. If at the end of the case the Applicant party has met the burden, it wins automatically.

8. Court Procedure:

The Court may address two types of cases: advisory opinions and contentious cases. In this conference, we will be discussing a case in the type of the latter. Firstly the judges and advocates will each be given the opportunity to voice their initial opinion on the case. After each person expresses their views and attempts to justify them with factual information, the committee will move into formal deliberation. However, Judges are able to change their opinion over the course of the deliberation and do not need to feel tied to that initial opinion they expressed. One of the first steps of the deliberations will be to determine if the Court is competent to hear the case, consulting the Statute of the Court amongst other relevant legal instruments to do so.

Unlike other committees, the ICJ does not utilize a set speakers list, it instead uses a semi-permanent moderated caucus. This moderated caucus does not have a set time limit on speaking time. However, in practice the Court will often depart from this, and the chair board may set speaking times if it determines that some Judges do not have sufficient opportunity to talk.

Judges may depart from the permanent moderated caucus using several motions. All the following are procedural and require a majority vote to pass:

• Motion to add a topic or speaking time to a moderated caucus.

• Motion for an unmoderated caucus.

• Motion for a straw poll—This is used to assess the Court's opinion on a given matter to evaluate the Court's current thoughts and alignments.

• Motion for a round-robin—This means that, for a given issue, each judge may speak one-by-one, proceeding in a set order around the room with a set speaking time until all Judges have had the opportunity to speak.

When the Court's decision is final, there will be a vote held on the decision in its entirety. This is the ICJ's equivalent of the voting procedure. Although there is room for both types of opinions in the final decision, it does not mean that both types of opinions have to or will be present in the decision. There is never any pressure to side with the majority, and it is encouraged that all Judges maintain their own views and do so with legitimate reasoning.

II. CASE BEFORE THE COURT

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

1. Overview of the Case:

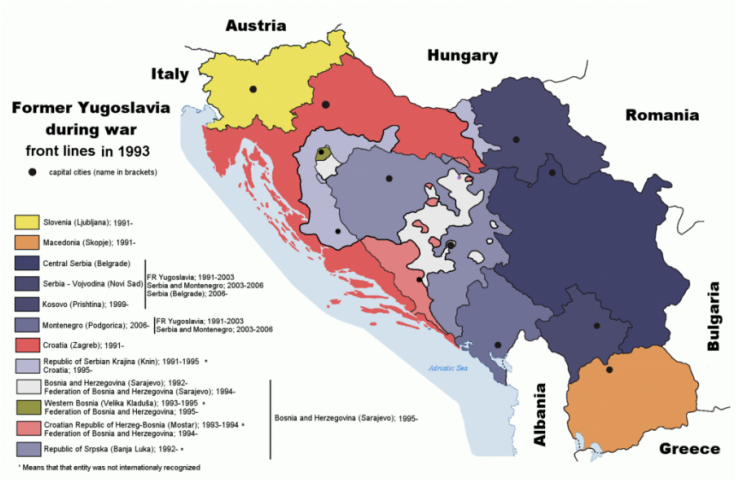
The government of the Yugoslav country of Bosnia and Herzegovina declared independence from Yugoslavia in April 1992. It was alleged that Bosnian Serb troops, with the support of the Serb-dominated Yugoslav army, committed atrocities against Bosniak (Bosnian Muslim) and Croatian civilians during the following several years, killing over 100,000 people by 1995.

They reportedly targeted Bosniak-majority towns in eastern Bosnia, including Zvornik, Foca, and Visegrad, forcibly displacing Bosniak people in a horrific procedure that was ultimately labeled "ethnic cleansing".

The fighting ended after a NATO bombing campaign brought Bosnian Serbs to the negotiation table, which in turn resulted in signing the Dayton Accords in 1995.

2. Historical Background:

The Republic of People of Bosnia and Herzegovina became one of the constituent republics of Socialist Federal Republic of Yugoslavia in 1946, and life in Bosnia and Herzegovina underwent all of the social, economic, and political changes imposed on the rest of Yugoslavia by its new communist government. Many traditional Muslim organizations, such as Quranic primary schools, wealthy philanthropic foundations, and Dervish religious orders, were abolished in Bosnia and Herzegovina. However, a shift in government policy in the 1960s resulted in the recognition of "Muslim" as a word expressing national identity: the phrase "Muslim in the ethnic sense" was used in the 1961 census, and the Bosnian Central Committee declared in 1968 that "the Muslims are a distinct nation." By 1971, Muslims were the majority of the population of Bosnia. The Serb and Croat populations declined during the following 20 years as many Serbs and Croats emigrated.



Bosnia and Herzegovina (Bosnia) was a country with a population of 4 million people in 1991, made up of three ethnic groups: Bosniaks (Bosnian Muslims, 44%), Serbs (31%), and Croats (17%), as well as Yugoslavs (8%).

During the civil war, which lasted from 1992 to 1995, an estimated number of 100,000 people were killed, with Bosniaks accounting for 80 percent of the dead. Bosnian Serb soldiers reportedly slaughtered up to 8,000 Bosniak men and boys in the town of Srebrenica in July 1995. It was Europe's worst mass killing since the Holocaust. Bosnian Muslims, became victims of systematic and widespread abuse, including beatings, torture, and rape, resulting in major bodily and mental trauma, and same horrific treatment was also enforced on detainees in the camps. These actions were assessed and widely acknowledged as ethnic cleansing, which is defined as the attempt to establish ethnically homogenous geographic areas by deporting or forcibly displacing members of specific ethnic groups. Ethnic cleansing may include the destruction of all physical relics of the targeted community, such as monuments, graves, and buildings of worship., which reportedly took place in this part of the world. [1]The long-lasting conflict ended with signing the so-called *Dayton Agreement*: The General Framework Agreement for Peace in Bosnia and Herzegovina. Also known as the Dayton Accords, this peace agreement was signed on November 21, 1995, at Wright-Patterson Air Force Base in Dayton, Ohio, and subsequently formalized on December 14, 1995, in Paris. These agreements officially ended the three-and-a-half-year-long Bosnian War, one of the Yugoslav Wars.

The warring parties agreed to a peace settlement and to form Bosnia and Herzegovina, a single sovereign state consisting of two parts: the mainly Serb-populated Republika Srpska and the mostly Croat-Bosniak-populated Federation of Bosnia and Herzegovina.

With an intention to look into the crimes committed in this region, in May 1993, the United Nations created the International Criminal Tribunal for the Former Yugoslavia (ICTY), and in the years thereafter, the court has brought accusations against people of every race and country represented in the conflict.

3. Claims of the Applicant Party:

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[1] Nations, U., n.d. *United Nations Office on Genocide Prevention and the Responsibility to Protect* https://www.un.org/en/genocideprevention/ethnic-cleansing.shtml

The Government of the Republic of Bosnia and Herzegovina submitted to the Court an Application for the Initiation of Proceedings Against the Federal Republic of Yugoslavia on 20 March 1993.

Bosnia and Herzegovina claimed that during the 1990s Balkan war, Serbia perpetrated genocide in Bosnia and Herzegovina. Bosnia and Herzegovina stated that Serbia had attempted to eradicate the Bosniak (Bosnian Muslims) population. Bosnia had requested Serbia, the successor to the Federal Republic of Yugoslavia of the 1990s, to pay reparations for the largest massacre in Europe since World War II.
Bosnia and Herzegovina dismissed the counter claims of Serbia, insisting that it was not the legal successor of Yugoslavia. The argument of Bosnia and Herzegovina was that this fact was already established by the previous courts and therefore the issue was no longer a subject of further litigation. [2]

4. Claims of the Respondent Party:

Serbia and Montenegro claimed that the International Court of Justice was not competent to hear the case since Serbia was not a Successor State of the Socialist Federal Republic of Yugoslavia.[3] Serbia also claimed that it was not the party to the Genocide Convention and Statute of the Court in the period when the proceedings took place. Serbia had said that state was not responsible for the conduct of Serbian paramilitary groups, that the war was an ethnic struggle, and that there was no intent to kill Bosnia's Muslim population in whole or in part - an essential part in genocide as defined by the 1948 genocide convention.
Serbia did not deny that the majority of the incidents occurred, nor did it reject that some of them amounted to war crimes or crimes against humanity. Rather, Serbia disputed the number of victims in individual circumstances and claimed strongly that it never had the required genocidal intent.

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[2] ICJ (26 February 2007). "The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) [2007] Judgment, ICJ General List No. 91" (PDF). pp. 80–104.
[3] ICJ (26 February 2007). "The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) [2007] Judgment, ICJ General List No. 91" (PDF). pp. 80–104.

III. APPLICABLE LAW

1. Treaties

a. Reservations to the convention on the prevention and punishment of the crime of genocide

i. Article II of the Genocide Convention defines genocide as follows:

"Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

ii. Pursuant to article III of the Genocide Convention, the following acts are deemed punishable

(a) genocide;

(b) conspiracy to commit genocide;

(c) direct and public incitement to commit genocide;

(d) attempt to commit genocide;

(e) complicity in genocide. These acts are referred to as "punishable acts" and identify what kind of involvement in the perpetration of the crime of genocide may result in individual criminal responsibility under the Genocide Convention."

iii. According to Article IV,

"persons committing any of those acts shall be punished whether they are constitutionally responsible rulers, public officials or private individuals. Article V requires the parties to enact the necessary legislation to give effect to the Convention, and, in particular, to provide effective penalties for persons guilty of genocide or other acts enumerated in Article III. "

iiii. Article VI provides that,

"*persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction".*

2. Case Law
   a. Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)

IV. ESTABLISHED AGENDA OF THE COURT:

The court should respond to the following questions;

1. Can ICJ exercise its jurisdiction in this case and/or is ICJ competent to hear this case?
2. Whether Serbia committed genocide and/or failed to prevent genocide in the massacre of over 7,000 Bosnian Muslims at Srebrenica?
3. Did the former Yugoslavia exercise any authority over the Bosnian Serbs who are responsible for the events at Srebrenica?
4. Was there a special intent (*mens rea*) on the part of the perpetrators to destroy the Bosniak group in whole or in part?
5. Were the acts committed by Serbian forces pass the threshold to qualify as genocide or war crimes and crimes against humanity?

V. BIBLIOGRAPHY:

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3. Lampe, J., *Bosnian War | Facts, Summary, Combatants, & War Crimes*. [online] Encyclopedia Britannica https://www.britannica.com/event/Bosnian-War