



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org

Press Release

Unofficial

No. 2008/41

18 November 2008

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

Preliminary objections

The Court finds that it has jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain the case on the merits

THE HAGUE, 18 November 2008. Today the International Court of Justice (ICJ), principal judicial organ of the United Nations, rendered its Judgment on the preliminary objections raised by Serbia on the Court's jurisdiction and on the admissibility of Croatia's Application in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia).

In its Judgment, which is final, binding and without appeal, the Court,

“(1) By ten votes to seven,

Rejects the first preliminary objection submitted by the Republic of Serbia in so far as it relates to its capacity to participate in the proceedings instituted by the Application of the Republic of Croatia;

(2) By twelve votes to five,

Rejects the first preliminary objection submitted by the Republic of Serbia in so far as it relates to the jurisdiction ratione materiae of the Court under Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide to entertain the Application of the Republic of Croatia;

(3) By ten votes to seven,

Finds that subject to paragraph 4 of the present operative clause the Court has jurisdiction to entertain the Application of the Republic of Croatia;

(4) By eleven votes to six,

Finds that the second preliminary objection submitted by the Republic of Serbia does not, in the circumstances of the case, possess an exclusively preliminary character;

(5) By twelve votes to five,

Rejects the third preliminary objection submitted by the Republic of Serbia.”

Reasoning of the Court

— Identification of the respondent Party

The Court observes that it needs first to identify the Respondent in the present proceedings. The proceedings were initially instituted in 1999 against the Federal Republic of Yugoslavia (FRY), later to be known under the name of the Republic of Serbia and Montenegro. The Court recalls that, in 2006, the Republic of Montenegro declared its independence. The Republic of Serbia accepted continuity between the State of Serbia and Montenegro and the Republic of Serbia. Montenegro, on the other hand, is a new State and does not continue the international legal personality of the State union of Serbia and Montenegro. After examining the views of the Parties as well as of the Republic of Montenegro and considering the fundamental principle that no State may be subject to the Court's jurisdiction without its consent, the Court holds that the Republic of Serbia is the sole Respondent in the present case.

— First preliminary objection: capacity of Serbia to participate in the proceedings

The Court then addresses the first aspect of Serbia's first preliminary objection, namely the claim that it lacks the capacity to appear before the Court in the current proceedings. The Court notes that it is undisputed that, at the date it filed its Application, on 2 July 1999, Croatia was a party to the Statute. Serbia, for its part, contends that it was not a Member of the United Nations when the Application was filed and thus not a party to the Statute of the Court on that basis or otherwise. The Court goes on to note that Serbia or its legal predecessors have appeared before it in several proceedings in the last 15 years. The Court recalls that in several previous decisions it acknowledged that the legal status of the FRY had been "unclear" over the period from the disintegration of the former Socialist Federal Republic of Yugoslavia (SFRY) — in 1992 — to the admission of the FRY to the United Nations as a new Member on 1 November 2000. However, after having reviewed its past decisions as to Serbia's capacity to appear before it, the Court recalls that none of these decisions were given in the present proceedings or involved both Croatia and Serbia, and that they thus cannot have the authority of res judicata in the present case. The Court therefore concludes that the question of Serbia's capacity to appear must be examined anew.

The Court then observes that, while its jurisdiction must normally be assessed on the date of the filing of the act instituting proceedings, it has shown flexibility in certain situations in which the conditions governing the Court's jurisdiction were not fully satisfied when proceedings were initiated, but were satisfied at a later stage, before the Court ruled on its jurisdiction. In doing so the Court has followed the jurisprudence of its predecessor, the Permanent Court of International Justice (PCIJ), which, in the Mavrommatis Palestine Concessions case, had upheld its jurisdiction on the grounds that, even if it had no jurisdiction at the time of the filing of the application, it would always have been possible for the applicant to re-submit its application in the same terms after all the conditions for its jurisdiction to be upheld were fulfilled. The Court explains that it is "concern for judicial economy" which justifies in appropriate cases the application of the jurisprudence deriving from the Mavrommatis Judgment, the purpose of which is to "prevent the needless proliferation of proceedings". It finds that there is reason to apply said jurisprudence in the case at hand. The Court thus finds that, as from 1 November 2000, it was open to the FRY. However, in order to ascertain whether Croatia, the Applicant, could then have re-submitted a fresh application in the same terms, the Court considers that it must examine whether at that date the FRY was bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (Genocide Convention), on which Croatia bases the jurisdiction of the Court.

— First preliminary objection: jurisdiction ratione materiae

The Court thus turns to the question of its jurisdiction ratione materiae, the second aspect of Serbia's first preliminary objection to the Court's jurisdiction. The Court recalls that the sole basis for jurisdiction invoked by Croatia is Article IX of the Genocide Convention. Serbia contends that

it was not itself a party to that Convention at the date of filing of the Application, on 2 July 1999, and that it only became a party by accession in June 2001, its notification of accession containing a reservation to Article IX excluding the Court's jurisdiction.

After careful consideration of the arguments of the Parties, the Court notes that, if the FRY was a party to the Genocide Convention, including its Article IX, on 2 July 1999, and continued to be bound by the said Article until at least 1 November 2000 (when it became a party to the Statute of the Court), then the Court would have jurisdiction to entertain the case. The Court takes note, in this respect, of a declaration of 27 April 1992 and an official Note of the same date transmitted by the Permanent Mission of Yugoslavia communicating that declaration to the Secretary-General of the United Nations, stating that the FRY would "continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia".

Taking into account the text of both the declaration and the Note of 27 April 1992, and the consistent conduct of the FRY throughout the years 1992-2001, the Court considers that the declaration and Note had the effect of a notification of succession by the FRY to the SFRY in relation to the Genocide Convention, including Article IX providing for the jurisdiction of the Court. It finds that it had, on the date on which the proceedings were instituted by Croatia, jurisdiction to entertain the case on the basis of Article IX and that that situation continued at least until 1 November 2000, the date on which Serbia and Montenegro became a Member of the United Nations and thus a party to the Statute of the Court.

— Conclusion on the first preliminary objection

The Court having held that Serbia acquired the status of party to the Statute of the Court on 1 November 2000 and that it was bound by the Genocide Convention, including Article IX, at the date of the institution of proceedings and remained so bound at least until 1 November 2000, it rejects Serbia's first preliminary objection.

— Second preliminary objection: jurisdiction of the Court and admissibility ratione temporis

The Court then considers Serbia's second preliminary objection, namely that "claims based on acts and omissions which took place prior to 27 April 1992", that is to say the date on which it came into existence as a State and the date of the declaration examined above, are beyond the jurisdiction of the Court and are inadmissible.

In the view of the Court, the questions of jurisdiction and admissibility raised by Serbia's preliminary objection ratione temporis constitute two inseparable issues. The first is that of the Court's jurisdiction to determine whether breaches of the Genocide Convention were committed in the light of the facts that occurred prior to 27 April 1992. The second issue is that of admissibility of the claim in relation to those facts and concerns the consequences to be drawn with regard to the responsibility of the FRY for those same facts under the general rules of State responsibility. In order to be in a position to make any findings on each of these issues, the Court will need to have more elements before it. It therefore concludes that Serbia's preliminary objection ratione temporis does not possess, in the circumstances of the case, an exclusively preliminary character and that it will thus have to be examined along with the merits.

— Third preliminary objection: claims concerning the submission of certain persons to trial, the provision of information on missing Croatian citizens and the return of cultural property

The Court finally examines Serbia's third preliminary objection, which is that "claims referring to submission to trial of certain persons within the jurisdiction of Serbia, providing

information regarding the whereabouts of missing Croatian citizens and return of cultural property are beyond the jurisdiction of this Court and inadmissible”.

With respect to the submission of persons to trial, the Court notes that Croatia accepts that this submission is now moot in so far as, since the presentation of the Memorial, certain indicted persons have been transferred to the International Criminal Tribunal for the former Yugoslavia (ICTY). Croatia however insists that there continues to be a dispute between Croatia and Serbia with respect to persons who have not been submitted to trial either in Croatia or before the ICTY in respect of acts or omissions which are the subject of the proceedings. Serbia, for its part, asserts that Croatia has not shown that there are currently persons charged with genocide, either by the ICTY or by the courts of Croatia, who are on the territory or within the control of Serbia. Whether that assertion is correct will be a matter for the Court to determine when it examines the claims of Croatia on the merits. The Court thus finds that Serbia’s objection must be rejected.

As to the provision of information on Croatian citizens who have been missing since 1991, as well as to the return of cultural property, the Court notes that the question of whether these might constitute appropriate remedies is dependent upon the findings that the Court may in due course make of breaches of the Convention by Serbia and is not a matter that may be the proper subject of a preliminary objection. Serbia’s third preliminary objection must therefore be rejected in its entirety.

Having established its jurisdiction, the Court will consider the preliminary objection that it has found to be not of an exclusively preliminary character when it reaches the merits of the case. In accordance with the Rules of Court, the Court will subsequently fix time-limits for the further proceedings.

Composition of the Court

The Court was composed as follows: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Parra-Aranguren, Buergenthal, Owada, Simma, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judges ad hoc Vukas, Kreća; Registrar Cuvreur.

Vice-President Al-Khasawneh appends a separate opinion to the Judgment of the Court; Judges Ranjeva, Shi, Koroma and Parra-Aranguren append a joint declaration to the Judgment of the Court; Judges Ranjeva and Owada append dissenting opinions to the Judgment of the Court; Judges Tomka and Abraham append separate opinions to the Judgment of the Court; Judge Bennouna appends a declaration to the Judgment of the Court; Judge Skotnikov appends a dissenting opinion to the Judgment of the Court; Judge ad hoc Vukas appends a separate opinion to the Judgment of the Court; Judge ad hoc Kreća appends a dissenting opinion to the Judgment of the Court.

A summary of the Judgment appears in the document “Summary No. 2008/5”, to which summaries of the declarations and opinions are annexed. In addition, this press release, the summary and the full text of the Judgment can be found on the Court’s website (www.icj-cij.org) under “Press Room” and “Cases”.

Information Department:

Mrs. Laurence Blairon, Secretary of the Court, Head of Department (+31 (0)70 302 2336)
Messrs. Boris Heim and Maxime Schouppe, Information Officers (+31 (0)70 302 2337)
Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)
Ms Barbara Dalsbaek, Administrative Assistant (+31 (0)70 302 2396)