CASE CONCERNING APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (BOSNIA AND HERZEGOVINA *v.* YUGOSLAVIA) (PRELIMINARY OBJECTIONS)

Judgment of 11 July 1996

In a Judgment issued in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), the Court rejected the preliminary objections raised by Yugoslavia. In addition, the Court found that the Application filed by Bosnia and Herzegovina was admissible.

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The full text of the operative paragraph reads as follows:

"THE COURT,

(1) Having taken note of the withdrawal of the fourth preliminary objection raised by the Federal Republic of Yugoslavia,

Rejects

(*a*) by fourteen votes to one,

the first, second and third preliminary objections;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge *ad hoc* Lauterpacht;

AGAINST: Judge *ad hoc* Kreća;

(*b*) by eleven votes to four,

the fifth preliminary objection;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Koroma, Ferrari Bravo, Parra-Aranguren; Judge *ad hoc* Lauterpacht;

AGAINST: Judges Oda, Shi, Vereshchetin; Judge *ad hoc* Kreća;

(*c*) by fourteen votes to one,

the sixth and seventh preliminary objections;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge *ad hoc* Lauterpacht;

AGAINST: Judge *ad hoc* Kreća;

(2) (*a*) by thirteen votes to two,

Finds that, on the basis of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it has jurisdiction to adjudicate upon the dispute;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge *ad hoc* Lauterpacht;

AGAINST: Judge Oda; Judge *ad hoc* Kreća;

(*b*) By fourteen votes to one,

Dismisses the additional bases of jurisdiction invoked by the Republic of Bosnia and Herzegovina;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge *ad hoc* Kreća;

AGAINST: Judge *ad hoc* Lauterpacht;

(3) By thirteen votes to two,

Finds that the Application filed by the Republic of Bosnia and Herzegovina on 20 March 1993 is admissible.

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge *ad hoc* Lauterpacht;

AGAINST: Judge Oda; Judge *ad hoc* Kreća."

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The Court was composed as follows: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judges *ad hoc* Lauterpacht, Kreča; Registrar Valencia-Ospina.

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Judge Oda appended a declaration to the Judgment of the Court; Judges Shi and Vereshchetin appended a joint declaration to the Judgment of the Court; Judge *ad hoc* Lauterpacht appended a declaration to the Judgment of the Court.

Judges Shahabuddeen, Weeramantry and Parra-Aranguren appended separate opinions to the Judgment of the Court.

Judge *ad hoc* Kreča appended a dissenting opinion to the Judgment of the Court.

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Institution of proceedings and history of the case
(paras. 1-15)

The Court begins by recalling that on 20 March 1993 the Republic of Bosnia and Herzegovina (hereinafter called "Bosnia and Herzegovina") instituted proceedings against the Federal Republic of Yugoslavia (hereinafter called "Yugoslavia") in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter called "the Genocide Convention"), adopted by the General Assembly of the United Nations on 9 December 1948, as well as various matters which Bosnia and Herzegovina claims are connected therewith. The Application invoked article IX of the Genocide Convention as the basis of the jurisdiction of the Court.

On 20 March 1993, immediately after the filing of its Application, Bosnia and Herzegovina submitted a request for the indication of provisional measures under Article 41 of the Statute. On 31 March 1993, the Agent of Bosnia and Herzegovina filed in the Registry, invoking it as an additional basis of the jurisdiction of the Court in the case, the text of a letter dated 8 June 1992, addressed to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia by the Presidents of the Republics of Montenegro and Serbia. On 1 April 1993, Yugoslavia submitted written observations on Bosnia and Herzegovina's request for provisional measures, in which, in turn, it recommended the Court to order the application of provisional measures to Bosnia and Herzegovina. By an Order dated 8 April 1993, the Court, after hearing the Parties, indicated certain provisional measures with a view to the protection of rights under the Genocide Convention.

On 27 July 1993, Bosnia and Herzegovina submitted a new request for the indication of provisional measures; and, by a series of subsequent communications, it stated that it was amending or supplementing that request, as well as, in some cases, the Application, including the basis of jurisdiction relied on therein. By letters of 6 August and 10 August 1993, the Agent of Bosnia and Herzegovina indicated that his Government was relying, as additional bases of the jurisdiction of the Court in the case, on, respectively, the Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes on the Protection of Minorities, signed at Saint-Germain-en-Laye on 10 September 1919, and on customary and conventional international laws of war and international humanitarian law. On 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures; and, on 10 August and 23 August 1993, it filed written observations on Bosnia and Herzegovina's new request, as amended or supplemented. By an Order dated 13 September 1993, the Court, after hearing the Parties, reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented.

Within the extended time-limit of 30 June 1995 for the filing of the Counter-Memorial, Yugoslavia raised preliminary objections concerning, respectively, the admissibility of the Application and the jurisdiction of the Court to entertain the case. (In view of its length, the text of the preliminary objections has not been reproduced in this summary.)

By a letter dated 2 February 1996, the Agent of Yugoslavia submitted to the Court, "as a document relevant to the case", the text of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively "the peace agreement"), initialled in Dayton, Ohio, on 21 November 1995 and signed in Paris on 14 December 1995 (hereinafter called the "Dayton-Paris Agreement").

Public hearings on the preliminary objections raised by Yugoslavia were held between 29 April and 3 May 1996.

Jurisdiction ratione personae
(paras. 16-26)

Recalling that Bosnia and Herzegovina has principally relied, as a basis for the jurisdiction of the Court in this case, on article IX of the Genocide Convention, the Court initially considers the preliminary objections raised by Yugoslavia on this point. It takes note of the withdrawal by Yugoslavia of its fourth preliminary objection, which therefore need no longer be dealt with. In its third objection, Yugoslavia, on various grounds, has disputed the contention that the Convention binds the two Parties or that it has entered into force between them; and in its fifth objection, Yugoslavia has objected, for various reasons, to the argument that the dispute submitted by Bosnia and Herzegovina falls within the provisions of article IX of the Convention.

The proceedings instituted before the Court are between two States whose territories are located within the former Socialist Federal Republic of Yugoslavia. At the time of the proclamation of the Federal Republic of Yugoslavia, on 27 April 1992, a formal declaration was adopted on its behalf which expressed the intention of Yugoslavia to remain bound by the international treaties to which the former Yugoslavia was party. The Court observes, furthermore, that it has not been contested that Yugoslavia was party to the Genocide Convention. Thus, Yugoslavia was bound by the provisions of the Convention on the date of the filing of the Application in the present case, namely, on 20 March 1993.

For its part, on 29 December 1992, Bosnia and Herzegovina transmitted to the Secretary-General of the United Nations, as depositary of the Genocide Convention, a notice of succession. Yugoslavia has contested the validity and legal effect of that notice, as, in its view, Bosnia and

Herzegovina was not qualified to become a party to the Convention.

The Court notes that Bosnia and Herzegovina became a Member of the United Nations following the decisions adopted on 22 May 1992 by the Security Council and the General Assembly, bodies competent under the Charter. Article XI of the Genocide Convention opens it to "any Member of the United Nations"; from the time of its admission to the Organization, Bosnia and Herzegovina could thus become a party to the Convention. It is of the view that the circumstances of Bosnia and Herzegovina's accession to independence, which Yugoslavia refers to in its third preliminary objection, are of little consequence.

It is clear from the foregoing that Bosnia and Herzegovina could become a party to the Convention through the mechanism of State succession. The Parties to the dispute differed, however, as to the legal consequences to be drawn from the occurrence of a State succession in the present case.

The Court does not consider it necessary, in order to decide on its jurisdiction in this case, to make a determination on the legal issues concerning State succession in respect to treaties which have been raised by the Parties. Whether Bosnia and Herzegovina automatically became party to the Genocide Convention on the date of its accession to independence on 6 March 1992, or whether it became a party as a result—retroactive or not—of its notice of succession of 29 December 1992, at all events it was a party to it on the date of the filing of its Application on 20 March 1993.

Yugoslavia submitted that, even supposing that Bosnia and Herzegovina had been bound by the Convention in March 1993, it could not, at that time, have entered into force between the Parties, because the two States did not recognize one another and the conditions necessary to found the consensual basis of the Court's jurisdiction were therefore lacking. The Court observes, however, that this situation no longer obtains since the signature and the entry into force, on 14 December 1995, of the Dayton-Paris Agreement, article X of which stipulates that the Parties "recognize each other as sovereign independent States within their international borders". And it takes note that, even if it were to be assumed that the Genocide Convention did not enter into force between the Parties until the signature of the Dayton-Paris Agreement, all the conditions are now fulfilled to found the jurisdiction of the Court *ratione personae*. It adds that, indeed, the jurisdiction of the Court must normally be assessed on the date of the filing of the act instituting proceedings, but that the Court, like its predecessor, the Permanent Court of International Justice, has always had recourse to the principle according to which it should not penalize a defect in a procedural act which the applicant could easily remedy.

In the light of the foregoing, the Court considers that it must reject Yugoslavia's third preliminary objection.

Jurisdiction ratione materiae
(paras. 27-33)

In order to determine whether it has jurisdiction to entertain the case on the basis of article IX of the Genocide Convention, it remains for the Court to verify whether there is a dispute between the Parties that falls within the scope of that provision. Article IX of the Convention is worded as follows:

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

It is jurisdiction *ratione materiae*, as so defined, to which Yugoslavia's fifth objection relates.

The Court notes that there persists between the Parties before it

> "a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74)

and that, by reason of the rejection by Yugoslavia of the complaints formulated against it by Bosnia and Herzegovina, there is a legal dispute.

To found its jurisdiction, the Court must, however, still ensure that the dispute in question does indeed fall within the provisions of article IX of the Genocide Convention.

Yugoslavia disputes this. It contests the existence in this case of an "international dispute" within the meaning of the Convention, basing itself on two propositions: first, that the conflict occurring in certain parts of the Applicant's territory was of a domestic nature, and Yugoslavia was not party to it and did not exercise jurisdiction over that territory at the time in question; and second, that State responsibility, as referred to in the requests of Bosnia and Herzegovina, was excluded from the scope of application of article IX.

With regard to Yugoslavia's first proposition, the Court considers that, irrespective of the nature of the conflict forming the background to the acts referred to in articles II and III of the Convention, the obligations of prevention and punishment which are incumbent upon the States parties to the Convention remain identical. It further notes that it cannot, at this stage in the proceedings, settle the question whether Yugoslavia took part—directly or indirectly—in the conflict at issue, which clearly belongs to the merits. Lastly, as to the territorial problems linked to the application of the Convention, the Court is of the view that it follows from the object and purpose of the Convention that the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*. The Court notes that the obligation each State thus has to prevent and to punish the crime of genocide is not territorially limited by the Convention.

Concerning the second proposition advanced by Yugoslavia, regarding the type of State responsibility envisaged in article IX of the Convention, the Court observes that the reference in article IX to "the responsibility of a State for genocide or for any of the other acts enumerated in article III" does not exclude any form of State responsibility. Nor is the responsibility of a State for acts of its organs excluded by article IV of the Convention, which contemplates the commission of an act of genocide by "rulers" or "public officials". In the light of the foregoing, the Court considers that it must reject the fifth preliminary objection of Yugoslavia.

Jurisdiction ratione temporis
(para. 34)

In this regard, the Court confines itself to the observation that the Genocide Convention—and in particular article IX—does not contain any clause the object or effect of which is to limit in such manner the scope of its jurisdiction *ratione temporis*, and observes that neither did the Parties themselves make any reservation to that end, either to the Convention or on the occasion of the signature of the Dayton-Paris Agreement. The Court thus finds that it has jurisdiction in this case to give effect to the Genocide Convention with regard to the relevant facts which have occurred since the beginning of the conflict which took place in Bosnia and Herzegovina. As a result, the Court considers that it must reject Yugoslavia's sixth and seventh preliminary objections.

Additional basis of jurisdiction invoked by Bosnia and Herzegovina
(paras. 35-41)

The Court finds further that it is unable to uphold as a basis for its jurisdiction in the present case a letter dated 8 June 1992 addressed to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia by Mr. Momir Bulatović, President of the Republic of Montenegro, and Mr. Slobodan Milosević, President of the Republic of Serbia; the Treaty between the Allied and Associated Powers (the United States of America, the British Empire, France, Italy and Japan) and the Kingdom of the Serbs, Croats and Slovenes, which was signed at Saint-Germain-en-Laye on 10 September 1919 and entered into force on 16 July 1920; or any other of the additional bases of jurisdiction invoked by Bosnia and Herzegovina. Nor does the Court find that Yugoslavia has given in this case a "voluntary and indisputable" consent which would confer upon the Court a jurisdiction exceeding that which it has already acknowledged to have been conferred upon it by article IX of the Genocide Convention. Its only jurisdiction to entertain the case is on the basis of article IX of the Genocide Convention.

Admissibility of the Application
(paras. 42-45)

According to the first preliminary objection of Yugoslavia, the Application is said to be inadmissible on the ground that it refers to events that took place within the framework of a civil war, and there is consequently no international dispute upon which the Court could make a finding.

This objection is very close to the fifth objection which the Court has already considered. In responding to the latter objection, the Court has in fact also answered this. Having noted that there does indeed exist between the Parties a dispute falling within the provisions of article IX of the Genocide Convention—that is to say, an international dispute—the Court cannot find that the Application is inadmissible on the sole ground that in order to decide the dispute it would be impelled to take account of events that may have occurred in a context of civil war. It follows that the first objection of Yugoslavia must be rejected.

According to the second objection of Yugoslavia, the Application is inadmissible because, as Mr. Alija Izetbegović was not serving as President of the Republic—but only as President of the Presidency—at the time at which he granted the authorization to initiate proceedings, that authorization was granted in violation of certain rules of domestic law of fundamental significance. Yugoslavia likewise contended that Mr. Izetbegović was not even acting legally at that time as President of the Presidency.

The Court observes that, according to international law, there is no doubt that every Head of State is presumed to be able to act on behalf of the State in its international relations and that at the time of the filing of the Application Mr. Izetbegović was recognized, in particular by the United Nations, as the Head of State of Bosnia and Herzegovina. It therefore also rejected the second preliminary objection of Yugoslavia.

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The Court emphasizes, finally, that it does not consider that Yugoslavia has, in presenting its objections, abused its rights to do so under Article 36, paragraph 6, of the Statute of the Court and Article 79 of the Rules of Court, and concludes that having established its jurisdiction under article IX of the Genocide Convention, and having concluded that the Application is admissible, the Court may now proceed to consider the merits of the case on that basis.

Declaration of Judge Oda

Judge Oda, although conscious of some disquiet at being dissociated from the great majority of the Court, stated that as a matter of legal conscience he felt bound to present his position that the Court should have dismissed the Application. Judge Oda cast a negative vote for the reason that the Court lacks jurisdiction *ratione materiae*. In his view, Bosnia and Herzegovina, in its Application, did not give any indication of opposing views regarding the *application or interpretation* of the Genocide Convention which may have existed at the time of filing of the Application, which alone could enable the Court to find that there is a dispute with Yugoslavia under that Convention.

Judge Oda states that the Genocide Convention is unique in having been adopted by the General Assembly in 1948 at a time when—owing to the success of the Nuremberg Trial—the idea prevailed that an international criminal tribunal should be established for the punishment of criminal acts directed against human rights, including genocide, and that the Convention is essentially directed *not* to the rights and obligations of States *but* to the protection of rights of individuals and groups of persons which have become recognized as universal. He states further that the failure of any contracting party "to prevent and to punish" such a crime may only be rectified and remedied through (i) resort to a competent organ of the United Nations (article VIII) or (ii) resort to an international penal tribunal (article VI), but *not* by invoking the responsibility of States in inter-State relations before the International Court of Justice.

Referring to the *travaux préparatoires* of the Convention, he pointed to the very uncertain character of article IX of the Genocide Convention. In his view, Bosnia and Herzegovina, in order to seise the Court of the present case, would certainly have had to show that Yugoslavia could indeed have been responsible for the failure of the fulfilment of the Convention in relation to itself, but, more particularly, Bosnia and Herzegovina would have had to show that Yugoslavia had breached the rights of *Bosnia and*

Herzegovina as a contracting party (which by definition is a State) that should have been protected under the Convention. This, however, has not been shown in the Application and in fact the Convention is not intended to protect the rights of Bosnia and Herzegovina as a State.

After all, Bosnia and Herzegovina does not, in the view of Judge Oda, seem to have alleged that it has a dispute with Yugoslavia relating to the interpretation or application of the Genocide Convention, although only such a dispute—and not the commission of genocide or genocidal acts which certainly are categorized as a crime under international law—can constitute a basis of the Court's jurisdiction under the Convention.

Judge Oda is inclined to doubt whether the International Court of Justice is the appropriate forum for the airing of the questions relating to genocide or genocidal acts which Bosnia and Herzegovina has raised in the current proceedings and whether international law, the Court, or the welfare of the unfortunate individuals concerned will actually benefit from the consideration of cases of this nature by the Court.

He adds that the Court should maintain a very strict position in connection with questions of its jurisdiction, as the consensus of the sovereign States in dispute essentially constitutes the basis of that jurisdiction. If the basic conditions were to be relaxed, he would expect to see a flood of cases pouring into this judicial institution, the task of which is mainly the settlement of international disputes.

Joint declaration of Judge Shi and Judge Vereshchetin

In their joint declaration, Judge Shi and Judge Vereshchetin state that, since article IX of the Genocide Convention affords an arguable legal basis for the Court's jurisdiction to the extent that the subject-matter of the dispute relates to "the interpretation, application or fulfilment" of the Convention, they voted in favour of the Judgment, except for paragraph 1 (*c*) of its *dispositif*. Nevertheless, they express their concern over some substantial elements of the case. In particular, they are disquieted by the statement of the Court, in paragraph 32 of the Judgment, that article IX of the Genocide Convention "does not exclude any form of State responsibility".

In their view, the Convention on Genocide was essentially and primarily designed as an instrument directed towards the punishment of persons committing genocide or genocidal acts and the prevention of the commission of such crimes by individuals, and retains that status. The determination of the international community to bring *individual perpetrators* of genocidal acts to justice, irrespective of their ethnicity or the position they occupy, points to the most appropriate course of action. Therefore, in their view, it might be argued that the International Court of Justice is not the proper venue for the adjudication of the complaints which the Applicant has raised in the current proceedings.

Declaration of Judge ad hoc *Lauterpacht*

Judge *ad hoc* Lauterpacht appended a declaration explaining that, so as to avoid any appearance of inconsistency with his remarks on *forum prorogatum* in his separate opinion of September 1993, he did not vote in favour of paragraph 2 (*b*) of the operative part of the Judgment in so far as it excluded any jurisdiction of the Court beyond that which it has under article IX of the Genocide Convention.

Separate opinion of Judge Shahabuddeen

In his separate opinion, Judge Shahabuddeen expressed the view that the special characteristics of the Genocide Convention pointed to the desideratum of avoiding a succession time-gap. This justified the Convention being construed as implying the expression of a unilateral undertaking by each party to the Convention to treat successor States as continuing as from independence any status which the predecessor State had as a party to the Convention. The necessary consensual bond is completed when the successor State decides to avail itself of the undertaking by regarding itself as a party to the Convention.

Separate opinion of Judge Weeramantry

Judge Weeramantry, in his separate opinion, states that the Genocide Convention is a multilateral humanitarian convention to which there is automatic succession upon the break-up of a State which is party to it.

In his view, this principle follows from many considerations, and is part of contemporary international law. Among these circumstances are that the Convention is not centred on individual State interests, and transcends concepts of State sovereignty. The rights it recognizes impose no burden on the State, and the obligations it imposes exist independently of conventional obligations. Moreover, it embodies rules of customary international law, and is a contribution to global stability. A further circumstance is the undesirability of a hiatus in succession to the Genocide Convention, associated with the special importance of human rights guarantees against genocide during periods of transition. The beneficiaries of the Genocide Convention are not third parties in the sense which attracts the *res inter alios acta* principle. The rights conferred by the Convention are non-derogable.

For all these reasons, the conclusion is compelling that automatic succession applies to the Convention.

In his opinion, Judge Weeramantry also expresses the view that the principle of continuity to the Genocide Convention is of particular importance in contemporary international law, owing to the break-up of States in many parts of the world. It is precisely in such unsettled times that the people of such States need the protection of the Convention.

Separate opinion of Judge Parra-Aranguren

Notwithstanding his approval of the operative parts of the decision, the separate opinion of Judge Parra-Aranguren insisted on two points: (1) the admission made by Yugoslavia on 10 August 1993 that Bosnia and Herzegovina was a party to the Genocide Convention when requesting the Court for indication of provisional measures, being therefore applicable its article IX on jurisdiction; and (2) the declaration made by Bosnia and Herzegovina expressing its wish to succeed to the Convention with effect from 6 March 1992, the date on which it became independent. According to Judge Parra-Aranguren, the Court should have remarked on and developed the point that this declaration is in conformity with the humanitarian nature of the Genocide Convention, the non-performance of which may adversely affect the people of Bosnia and Herzegovina, an observation that the Court had already made in its advisory opinion of 21 June 1971 on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-*

West Africa) notwithstanding Security Council Resolution 276 (1970) (I.C.J. Reports 1971, p. 55, para. 122) and that is in conformity with Article 60, paragraph 5, of the 1969 Vienna Convention on the Law of Treaties.

Dissenting opinion of Judge ad hoc *Kreća*

Judge *ad hoc* Kreća finds that the relevant conditions for the entertainment of the case by the Court, those relating to both jurisdiction and admissibility, have not been met.

There exists the dilemma, not resolved by the Court, as to whether Bosnia and Herzegovina at the time when the Application, as well as the Memorial, were submitted, and Bosnia and Herzegovina today, after entry into force of the Dayton Agreement, are in fact one and the same State. This question is of irrefutable relevance in the circumstances of the present case, since it opens the way for *persona standi in indicio* of Bosnia and Herzegovina. Also, he is of the opinion that the proclamation of Bosnia and Herzegovina as a sovereign and independent State constitutes a substantial breach, both formally and substantively, of the cogent norm on equal rights and self-determination of peoples. Accordingly, one can speak only of succession *de facto* and not of succession *de jure* in relation to the transfer of the rights and obligations of the predecessor State.

Judge *ad hoc* Kreća disagrees with the Court that the "obligation each State thus has to prevent and punish the crime of genocide is not territorially limited by the Convention" (para. 31 of the Judgment). He is of the opinion that it is necessary to draw a clear distinction between the legal nature of the norm prohibiting genocide and the implementation or enforcement of that norm. The fact that the norm prohibiting genocide is a norm of *jus cogens* cannot be understood as implying that the obligation of States to prevent and punish genocide is not territorially limited. More particularly, that norm, like the other norms of international law, is applicable by States not in an imaginary space but in a territorialized international community, which means that territorial jurisdiction, as a general rule, suggests the territorial character of the obligations of those States in both prescriptive and enforcement terms. If this were not the case, the norms of territorial integrity and sovereignty, also having the character of *jus cogens*, would be violated.

He is of the opinion that, under the Genocide Convention, a State cannot be responsible for genocide. The meaning of article IV of the Convention, which stipulates criminal responsibility for genocide or the other acts enumerated in article III of the Convention, excludes, *inter alia*, the exclusion of the criminal responsibility of States and rejects the application of the act of State doctrine in this matter.

Judge *ad hoc* Kreća finds that "automatic succession" is *lex ferenda*, a matter of progressive development of international law, rather than of codification. Notification of succession, in his opinion, is not appropriate per se for expressing consent to be bound by treaty, since, as a unilateral act, it seeks to conclude a collateral agreement in simplified form with the other parties, within the framework of general multilateral conventions, like the Genocide Convention.