



INTERNATIONAL COURT OF JUSTICE

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**Case concerning the Application of the Convention on the Prevention
and Punishment of the Crime of Genocide
(Bosnia and Herzegovina v. Yugoslavia)**

The Court finds Yugoslavian counter-claims admissible

THE HAGUE, 17 December 1997. The International Court of Justice (ICJ) held today that counter-claims submitted by Yugoslavia are "admissible as such" and that they "form part of the current proceedings" in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia).

In its counter-claims (submitted on 22 July 1997 in its Counter-Memorial), Yugoslavia requested the ICJ to adjudge that "Bosnia and Herzegovina is responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina" and that it "has the obligation to punish the persons held responsible" for these acts. It also asked the Court to rule that "Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated" and "to eliminate all consequences of the violation" of the Genocide Convention.

This is the first time that the Court has ruled on the admissibility of counter-claims at a preliminary stage. In the past the Court adjudicated twice on counter-claims (Asylum, Judgment, 1950 and Rights of Nationals of the United States of America in Morocco, Judgment, 1952) but it did so simultaneously with its final decision on the merits of the case.

Noting that its decision in no way prejudices whether the Yugoslavian counter-claims are well founded, the Court required the Parties to further present their views on their respective claims. Bosnia and Herzegovina is to submit a Reply by 23 January 1998 and Yugoslavia a Rejoinder by 23 July 1998.

Pursuant to the Rules of the Court (Article 80), a counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court.

On 28 July 1997, Bosnia and Herzegovina challenged the Yugoslavian counter-claims, contending that they did not meet the criterion of Article 80. The Court consequently asked both Parties to submit written observations on the issue. Having received these observations the Court found that it was sufficiently informed and that it was not necessary to hear the Parties otherwise.

In its Order, the Court specified that a counter-claim is "independent of the principal claim in so far as it constitutes a separate 'claim'" and that its thrust is "to widen the original subject-matter of the dispute by pursuing objectives other than the mere dismissal of the claim of the Applicant".

The Court found by 13 votes to 1 that Yugoslavian counter-claims are "admissible as such and form part of the current proceedings" because they are "directly connected with the subject-matter of Bosnia and Herzegovina's claims", that they "rest on facts of the same nature" and that they constitute "separate claims seeking relief beyond the dismissal of the claims of Bosnia and Herzegovina".

Judge ad hoc Kreća appended a declaration to the Order. Judge Koroma and Judge ad hoc Lauterpacht appended separate opinions. Vice-President Weeramantry appended a dissenting opinion.

The operative paragraph of the Court's Order, summaries of the declaration and opinions of Judges, the terms of the counter-claims of Yugoslavia and the claims of Bosnia and Herzegovina as stated in its Memorial, may be found in an Annex to this press release (available on the Website of the Court and by post on request).

History of the dispute

On 20 March 1993, Bosnia and Herzegovina filed an Application instituting proceedings against Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948. As the basis of the jurisdiction of the Court, Bosnia and Herzegovina invoked Article IX of that Convention.

In its Application, Bosnia and Herzegovina, among other claims, requested the Court to adjudge and declare that Yugoslavia, through its agents and surrogates, "has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina", that it has to cease immediately this practice of so-called "ethnic cleansing" and pay reparations.

On 20 March 1993 Bosnia and Herzegovina also submitted a request for provisional measures (an interim injunction). Hearings were held on 1 and 2 April 1993, and by an Order dated 8 April 1993 the Court indicated that Yugoslavia "should immediately . . . take all measures within its power to prevent commission of the crime of genocide" and that both Yugoslavia and Bosnia and Herzegovina "should not take any action . . . which may aggravate or extend the existing dispute". The Court limited its provisional measures to requests falling within the jurisdiction conferred on it by the Genocide Convention.

On 27 July 1993 Bosnia and Herzegovina filed a second request for provisional measures, followed on 10 August 1993 by a request for provisional measures of Yugoslavia. Hearings were held on 25 and 26 August 1993 and by an Order dated 13 September 1993 the Court reaffirmed the measures indicated earlier, adding that they should be immediately and effectively implemented.

A preliminary objection to the jurisdiction of the Court was then raised by Yugoslavia. Hearings took place between 29 April and 3 May 1996 and on 11 July 1996 the Court delivered a Judgment dismissing the objection and holding that it had jurisdiction to adjudge the dispute.

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