



ICJ

PACMUN 2016

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Chair: Molly McCammon





PACIFIC MODEL UNITED NATIONS

INTERNATIONAL COURT OF JUSTICE

Greetings Justices,

My name is Shawdi Mehrvarzan and I am honored and excited to act as President of the Pacific Model United Nations 2016 International Court of Justice. The rest of the Dais—Vice President Andrew Stahl and Chair Molly Mccammon—and I have worked hard to provide topics that prompt both fruitful debate and a high-level of analytical thinking with regards to global issues. Whether this is your first or hundredth ICJ simulation, we truly hope that your time in committee will teach you something new.

Below is the background guide for this conference's primary topic: the Former Republic of Yugoslavia (Serbia and Montenegro) v. Belgium. This case specifically is complex in both argument and context; therefore, we advise that Justices undertake additional research in order to fully evaluate this multi-faceted issue. In addition, you will notice that there is only one topic—FRY v. Belgium—in the ICJ agenda this year, as we would like for Justices to research, ponder over, and discuss each case to its fullest.

Hence, like every other committee, your success in the ICJ relies on your level of preparation before the conference. The Dais is interested in seeing each Justice's preliminary views prior to the conference; as a result, we request a submission of 5-7 questions for the Advocates submitted to the Dais by 11:59 pm on 11 November. It is also advised that Justices completely read and understand the Rules of Procedure prior to the first session, as they vary from the flow of regular committee.

If you have any questions (no question is a stupid one!), please feel free to contact us at icj@pacificmun.com and we will be happy to answer. We look forward to witnessing substantive and thoughtful debate throughout PACMUN 2016!

Until then,

Shawdi Mehrvarzan

President | International Court of Justice

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COMMITTEE INTRO

The International Court of Justice is a completely unique body within the scope of Model United Nations. Rather than a council of delegates representing the interests of their member states, justices and advocates together to arbitrate international law. The ICJ is perhaps the most dynamic committee in Model United Nations, relying entirely upon delegates' grasp of international law. However, it is also one of the most rewarding, as it's entirely driven by the delegates' perceptions and interpretations rather than political agenda. In the ICJ, delegates have the power to reshape international law and change the course of history. In the seven decades of its existence, the ICJ has prosecuted war criminals, redrawn international borders, and had a tremendous impact on the global community as a whole.

OVERVIEW

The International Court of Justice was established in 1945 to settle international legal disputes, as well as offer advisory opinions for international organizations and agencies. The ICJ is the only major UN body whose headquarters is not in New York City; the Court is located at The Hague, in the Netherlands. States that have not signed the UN Charter may also appear before the Court. To do this they must meet certain qualifications that have been outlined by the General Assembly under the recommendation of the Security Council, accept the provisions within the “Statute of the ICJ” and agree to comply with the decisions of the ICJ, and make annual contributions to the cost of the Court.¹

The structure and authority are further outlined in the “Statute of the ICJ.” The “Statute of the ICJ” grants the ICJ the ability to resolve legal disputes submitted by member states and to give advisory opinions on legal questions referred to the Court by other international organizations and agencies, such as the GA or the SC.² The Court consists of fifteen justices elected by the General Assembly and the Security Council to a nine-year term in office. Justices must have high moral character, be competent in International Law, and have the qualifications to be appointed to the highest judiciary in their country. These nominations are then submitted to the General Assembly and Security Council for the vote. **The elected justices do not represent their governments but are instead independent magistrates.** Even with this safeguard, no two justices may be selected from the same country.

RULES OF PROCEDURE

I. INTRODUCTION

- A. The International Court of Justice is the judicial branch of the United Nations and is located at The Hague (Netherlands). The Court has two primary functions: to pass judgement *in accordance with international law* on disputes involving member states, and to offer advisory opinions on legal questions submitted to it at the request of UN principal bodies.
 - 1. The judgement of the Court comes in the form of an Opinion.
- B. The Court is comprised of fifteen Justices, two Advocates (one per side), a President, and a Vice President.

¹ International Court of Justice, overview. <http://www.icj-cij.org>.

² Statute of the International Court of Justice, 1945.

- C. The quorum of the Court is that which has been dictated in the Pacific Model United Nations 2016 Long Form Rules of Procedure: $\frac{1}{3}$ of the delegates in the committee (5 Justices).
- D. The following Rules of Procedure shall be considered adopted prior to session commencement and therefore shall not be challenged.

II. ROLES

A. PRESIDENT

- 1. For the purposes of PACMUN 2016, the Director will act as the President of the ICJ.
- 2. The President presides over committee debate. He/she will cast a vote when tied.

B. VICE PRESIDENT

- 1. The Vice President takes over the duties of the President should he/she be absent.

C. REGISTRAR

- 1. For the purposes of PACMUN 2016, the Registrar, monitoring the flow of debate, will be the President, with a member of Secretariat formally swearing in Justices and the Dais at the beginning of committee.

D. ADVOCATES

- 1. Advocates shall be appointed by the States that are parties to the dispute. For purposes of simulation in PACMUN 2016, the ***Advocates will be played by the Vice President and Chair of the Dais.***
 - a. The Parties are to be known as the Applicants and the Respondents.
- 2. Advocates are obliged to defend the stance of their States through argumentation, presentation of evidence, and examination of witnesses. In addition, they are obliged to abide by the full Rules of Procedure and final decisions of the Court.

3. Advocates do not have the right to vote in substantive or procedural voting. However, they may raise motions such as “motion to reduce/extend the speaker’s time.”

E. JUSTICES

1. The Justices shall be appointed prior to the commencement of the trial as delegates of PACMUN 2016 and shall remain in duty until the closing of proceedings.
2. Each Justice is entitled to one vote in procedural and substantive votes. However, if they are “present” as opposed to “present and voting,” they may abstain from voting on verdicts.
3. The Justices will be recognized by the President before they can speak.
4. Justices are responsible for interpreting international law, dependent on the specific case. They will use this interpretation to reach a final judgement and write Opinions.
5. The Justices’ decisions and actions must be unbiased, and *independent from the agendas of their respective nations*. They are in committee to interpret international law based on the facts of the case, their research, and personal experience. Failure to comply will result in an official warning by the President.

III. PHASES OF TRIAL

A. OATHS

1. The Registrar shall step forth in order to take his own Oath, the Oaths of the Justices, those of other Dais officials, and those of the advocates.
2. The Oaths of the Justices shall state, “I Justice (name) solemnly declare that I will perform my duties as a judge honorably, impartially, and conscientiously, and that I will faithfully observe all the provisions of the Statute and of the Rules of the Court.
3. The Oaths of the Dais shall state, “I solemnly declare that I will perform the duties incumbent upon me as an official of the International Court of Justice in all loyalty, discretion, and good conscience, and that I will faithfully observe all the provisions of the Statute and of the Rules of the Court.”

4. The Oaths of the Advocates shall state, "I advocate (name) solemnly declare that I will perform my duties as an advocate honorably, impartially, and conscientiously, and that I will faithfully observe all the provisions of the Statute and of the Rules of the Court."

B. OPENING STATEMENTS

1. Opening statements are brief speeches based on the Memorials submitted by the Applicant and Respondent. The parties intend to lay out their arguments and deliver main points.
2. The Applicant speaks first, then the Respondent. The time allocated for the opening statements of each party shall be twenty-five minutes.
3. During the opening statements or any discussion with the Advocates, Justices may interrupt delegates (at the President's discretion) and ask questions regarding the Advocates' *arguments* and *use of evidence*, this being the primary focus of the Court's analysis.

C. USE OF EVIDENCE

1. Evidence can be submitted for display at any point in the trial except for during/after closing statements. The quality and relevance of the evidence may be factors that influence the final verdict of the Justices.
2. The President may rightfully declare any piece of evidence irrelevant or out of order.
3. The President may at any time rule a Justice's question or Advocate's answer out of order. This decision cannot be appealed.

D. JUDGES' DELIBERATION

1. After any phase of discussion with the Advocates, Justices may motion to deliberate in the form of an Unmoderated Caucus. At this time, Advocates may be forced to leave the room at the Justices' discretion.
2. Open debate between Justices may be done in the form of a Moderated Caucus. However, the Justices shall never be required to stand up while making their speeches.

E. TESTIMONY OF THE WITNESS

1. Prior to the commencement of the trial, both the Applicant and Respondent parties must each specify a witness.
2. These witnesses will be asked, by the Registrar, to take the following Oath: "I solemnly declare upon my honor and conscience that I will speak the truth, the whole truth and nothing but the truth".
3. There shall be no pre-determined time limitation for the testimony of witnesses.
4. The testimony of witnesses shall consist of two main parts: a direct examination and cross examination.
 - a. During direct examination, Advocates will question their own witnesses. However, they may not ask leading questions.
 - b. During cross examination, Advocates question the other side's witness. Leading questions are permitted; however, the Advocate questioning the witness may only ask questions relevant to the direct examination.
5. The Applicant begins with a direct examination, followed by a cross-examination by the Respondent. This cycle continues with the Respondent's direct examination and the Applicant's cross-examination.
 - a. Afterwards, the witnesses will be questioned by the Justices. However, the Justices' questions are not limited by the witness's statements during the direct examination.

F. CLOSING STATEMENTS

1. Closing statements shall be given by the parties to the case. They will be a maximum of ten minutes long and will deliver a summary of the case as well as a prayer of relief.
2. No new evidence may be presented at this time by the Advocates.

G. OPINIONS

1. Types of Opinions
 - a. Majority Opinion

- i. Supported by a majority of the Justices. This Opinion is the ruling that takes precedence and dictates international course of action.
- b. Concurring Opinion
 - i. Opinion with the same verdict as the Majority Opinion, but with different reasoning.
- c. Dissenting Opinion
 - i. Opinion whose verdict supports the side opposite of the Majority Opinion.

2. General Format

- a. The date which the judgement was determined
- b. Names and states of the judges authorizing the verdict
- c. Names of the parties/states involved
- d. Summary of the case's facts as recognized by the Court
- e. Decision of the Court, legal basis for the decision
- f. Suggestive clauses for the guilty party to adhere to
- g. The signature of the President

IV. ADVISORY OPINIONS

- A. Authorized UN bodies such as the General Assembly or Security Council may request the Court to conclude a legal opinion on a situation or case at any time, often without seeking the consent of any other body.
- B. Upon the submission of request by the authorized body, the President may allocate an appropriate time for discussion of the advisory opinion.
- C. Advisory opinions of the Court are not binding and require simple majority in substantive voting to be written.

V. DELEGATE PREPARATION

- A. Although there will be no position papers due before the conference, each Justice in the ICJ will be required to prepare a set of 5-7 preliminary questions to ask the Advocates throughout the decision-making process. These should be questions formulated upon reviewing the case regarding the *arguments of the case* and *interpretation of international law*. It is crucial that each Justice obtain a thorough understanding of the

case and ask any questions they deem necessary so as to compose a thorough judgement when in committee.

1. These questions will be due to icj@pacificmun.com at *11:59 pm on Friday 11 November 2016*.

Other than referring to the PACMUN ICJ 2016 Background Guide, delegates should refer to the ICJ Website (www.icj-cij.org) as well as the Statute of the ICJ (<http://www.icj-cij.org/documents/?p1=4&p2=2>) in order to better understand the International Court of Justice and other relevant sources of international law.

TOPIC:

F.R.Y. V. BELGIUM

TOPIC INTRO

The case Former Republic of Yugoslavia (FRY) v. Belgium calls into question the idea of a 'humanitarian war,' with the applicants claiming the Belgian intervention in favor of the Kosovar liberation movement as an illegal act. Belgium maintains that their intervention was simply to defend a repressed minority from potential genocide, as had occurred elsewhere in the Balkans. The Court and Justices now must deliberate whether or not Belgium was within its rights or simply acting out a neo-imperialist agenda (in direct contravention of international law) by supporting the Kosovar independence movement. Before doing so, however, the Court must also discuss the degree of jurisdiction they possess over the case relative to the ICJ Statute and the UN status of both the FRY and Belgium. The Application and Preliminary Objectives of the FRY and Belgium (respectively) are provided below, while the memorials (or formal main arguments) of the two sides will be presented orally in session.

BACKGROUND INFORMATION

On 29 April 1999 Yugoslavia filed an Application instituting proceedings against Belgium "for violation of the obligation not to use force", accusing Belgium of bombing Yugoslav territory "together with other Member States of NATO". On the same day, it submitted a request for the indication of provisional measures (essentially similar to a restraining or "interim" order), asking the Court to order Belgium to "cease immediately its acts of use of force" and to "refrain from any act of threat or use of force" against the FRY. Yugoslavia then invoked Article 36, Section 2 of the ICJ's Statute, which cements the jurisdiction of the Court with regards to legal disputes, question of international law, or a breach of an international obligation. In a supplement to its Application submitted to the Court on 12 May 1999, Yugoslavia invoked, as an additional ground of jurisdiction, Article 4 of the Convention of Conciliation, Judicial Settlement and Arbitration between Belgium and the Kingdom of Yugoslavia, signed at Belgrade on 25 March 1930.

THE ARGUMENTS OF THE CASE

1. By an Application dated 26 April 1999 filed with the Registry of the Court on 29 April 1999, the Federal Republic of Yugoslavia (FRY) instituted proceedings against the Kingdom of Belgium (Belgium) alleging the violation of various obligations arising from the use of force by the North Atlantic Treaty Organization (NATO) in the FRY. The Application charges that "Belgium, together with the Governments of other Member States of NATO, took part in the acts of use of force against the Federal Republic of Yugoslavia by taking part in bombing targets in the Federal Republic of

Yugoslavia". It further charges that "Belgium is taking part in the training, arming, financing, equipping and supplying the so-called 'Kosovo Liberation Army'. The legal grounds for the jurisdiction of the Court invoked by the FRY in its Application were **Article 36(2) of the Court's Statute and Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (the "Genocide Convention")**).

2. At the same time as the filing of its Application instituting proceedings against Belgium, the FRY filed **separate Applications instituting proceedings on the basis of the same factual and legal allegations against the United States, the United Kingdom, France, Germany, Italy, the Netherlands, Canada, Portugal and Spain.**

3. Contemporaneously with its Application instituting proceedings against Belgium, the FRY also filed a **Request for the Indication of Provisional Measures dated 28 April 1999 by which it requested the Court to order Belgium to "cease immediately its acts of use of force and [to] refrain from any act of threat or use of force against the Federal Republic of Yugoslavia"**. Corresponding requests for the indication of provisional measures were submitted by the FRY in the parallel proceedings against the other nine Respondents.

4. The Court held hearings on the FRY'S requests for the indication of provisional measures on 10-12 May 1999. In the course of those hearings, by a letter of 12 May 1999, the FRY sought to supplement its **Application instituting proceedings against Belgium by invoking Article 4 of the Convention of Conciliation, Judicial Settlement and Arbitration of 1930 ("the 1930 Convention")** between Belgium and the Kingdom of Yugoslavia as an additional basis of the Court's jurisdiction.

5. The underlying issues of substance in this case involve **allegations** by the FRY against Belgium that, **by "taking part in" action by NATO in the FRY, Belgium has violated various obligations of international law**. Under the heading "Facts upon which the claim is based", the FRY alleges that **"Belgium, together with the other Governments of other Member States of NATO, took part in the acts of use of force against the Federal Republic of Yugoslavia by taking part in bombing targets in the Federal Republic of Yugoslavia . . . [and] is taking part in the training, arming, financing, equipping and supplying the so-called 'Kosovo Liberation Army'."**

6. The Declaration of the FRY in support of Article 36(2) of the Statute was dated 25 April 1992 and was deposited with the Secretary-General of the United Nations on 26 April 1999. The Belgian Declaration under Article 36(2) of the Statute is dated 17 June 1958. However, the ICJ's jurisdiction is brought into question with the transition of the SFRY (Social Federal Republic of Yugoslavia) to the FRY (Federal Republic of Yugoslavia) in 1992. UN Security Council Resolution 777 suggested that due to this transition, the FRY be dismissed from participation in the General Assembly and encouraged to apply for membership to the United Nations, which they did not successfully do until 1 November 2000. **Thus, Belgium argues that the FRY lacks the jurisdiction to submit an application, let alone request the implementation of provisional measures.**

7. Meanwhile, in a list of Written Observations submitted on 18 December 2002, the FRY ascertains that it **"did not continue the personality and treaty membership"** of the former Soviet Yugoslavia, and **"thus specifically, it was not bound by the Genocide Convention"** until it formally began support of that Convention (with a reservation to Article IX) in March 2001, regardless of prior use of the Convention in their application.

IMPORTANT LEGAL PRINCIPLES

ARTICLE 36(2) OF THE ICJ STATUTE

The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;*
- b. any question of international law;*
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;*
- d. the nature or extent of the reparation to be made for the breach of an international obligation.*

THE GENOCIDE CONVENTION OF 9TH DECEMBER, 1948

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, 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.*

Article III

The following acts shall be 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.*

Article IV

Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3.

Article VI

Persons charged with genocide or any of the other acts enumerated in Article 3 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.

Article VII

Genocide and the other acts enumerated in Article 3 shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3.

Article IX

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 any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article 11 of the following:

- (a) Signatures, ratifications and accessions received in accordance with Article 11;*
- (b) Notifications received in accordance with Article 12;*
- (c) The date upon which the present Convention comes into force in accordance with Article 13;*
- (d) Denunciations received in accordance with Article 14;*

- (e) *The abrogation of the Convention in accordance with Article 15;*
- (f) *Notifications received in accordance with Article 16.*

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article 11 of the following:

- (a) *Signatures, ratifications and accessions received in accordance with Article 11;*
- (b) *Notifications received in accordance with Article 12;*
- (c) *The date upon which the present Convention comes into force in accordance with Article 13;*
- (d) *Denunciations received in accordance with Article 14;*
- (e) *The abrogation of the Convention in accordance with Article 15;*
- (f) *Notifications received in accordance with Article 16.*

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in Article 11.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Article IX of the 1930 Bilateral Convention For Judicial Settlement, Arbitration, and Conciliation

“All disputes with regard to which the parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.”

APPLICATION OF THE ADVOCATE FROM THE F.R.Y.

On the basis of Article 40 of the Statute of the International Court of Justice I have the honor of submitting to you the following “Application of the FR of Yugoslavia against the Kingdom of Belgium”.

SUBJECT OF THE DISPUTE

The subject-matter of the dispute are acts of The Kingdom of Belgium by which it has violated its international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State, and the obligation not to violate the sovereignty of another State.

LEGAL GROUNDS FOR JURISDICTION OF THE COURT

The Government of the Federal Republic of Yugoslavia invokes Article 36, para 2 of the Statute of the International Court of Justice as well as Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide.

Under Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, henceforth known as the Genocide Convention, "disputes between the contracting parties relating to the interpretation, application or fulfillment 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 parties to the dispute."

Belgium has used the claim of genocide to justify violating their promise not to intervene in any other sovereign nation-state's territory, thus Article IX of the Convention is in support of the FR of Yugoslavia bringing this dispute to the International Court of Justice.

Secondly, according to Article 36, Paragraph 2 of the Statute of the International Court of Justice, states may submit to the Court any question of international law. In this case the relevant question would be to what extent Belgium is able to aid the Kosovo Liberation Army, a militant group that is in opposition to the sovereign government of Yugoslavia.

CLAIM

- By taking part in the bombing of the territory of the Federal Republic of Yugoslavia, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;
- By taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called "Kosovo Liberation Army", The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;
- by taking part in attacks on civilian targets, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

- By taking part in destroying or damaging monasteries, monuments of culture, The Kingdom of Belgium has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people.

Respectfully,

Advocate from the Former Republic of Yugoslavia, Serbia

PRELIMINARY OBJECTIONS OF THE ADVOCATE FROM THE KINGDOM OF BELGIUM

Given the preliminary nature of these proceedings, Belgium does not join argument with the FRY on the substance of its allegations. As already noted, were the Court to decide that it has jurisdiction to hear this case and that the application is admissible, Belgium would contest the allegations fully. While not taking issue with the FRY's allegations, it may nevertheless assist the Court's appreciation of the matter for Belgium to set out briefly some salient contextual elements relevant to the case.

Prior to the dissolution of the SFRY, under its 1974 Constitution, Kosovo was defined as an autonomous province within Serbia, one of the six republics comprising the SFRY. This status was in recognition of the fact that some 90 per cent of the population of Kosovo was ethnic Albanian in origin.

The situation in Kosovo became a matter of urgent international concern from at least 31 March 1998, the point at which the Security Council, acting under Chapter VII of the Charter, adopted Resolution 1160 (1998) condemning inter alia "the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo". By this resolution, the Council imposed an arms embargo against the FRY and took various other steps designed to facilitate "a solution of the Kosovo problem."

Reporting on 2 July 1998, the Secretary-General noted that "the situation in Kosovo has deteriorated significantly".

"an estimated 600 to 700 civilians have been killed in the fighting in Kosovo since March. The conflict has resulted in the estimated cumulative displacement of over 230,000 persons."

In the face of these Reports, the President of the Security Council issued a Statement on 24 August 1998 in which the Council expressed its grave concern "about the recent intense fighting in Kosovo which has had a devastating impact on the civilian population and has greatly increased the numbers of refugees and displaced

persons." This was followed, on 23 September 1998, by the adoption of Resolution 1199 (1998) in which the Council again noted its grave concern. One of the worst examples of the atrocities committed within this period was the massacre of 45 Kosovo Albanian civilians in the village of Racak on 15 January 1999. In response to the events in Racak, the President of the Security Council issued a Statement on 19 January 1999 *inter alia* in the following terms:

"The Security Council strongly condemns the massacre of Kosovo Albanians in the village of Racak in Southern Kosovo..."

In order to stop the atrocities committed upon innocent civilians, NATO mobilized. Thus, for example, in a letter dated 30 January 1999 from the NATO Secretary-General to the President of the FRY, NATO identified various steps required of the FRY to address the situation in Kosovo and continued:

"If these steps are not taken, NATO is ready to take whatever measures are necessary in the light of both parties' compliance with international commitments and requirements, including in particular assessment by the Contact Group of the response to its demands, to avert a humanitarian catastrophe."

In the light of the continued failure by the FRY to take steps to address the situation in Kosovo, NATO commenced military action in the FRY on 24 March 1999. In accordance with Resolution 1244 (1999), the international security presence in Kosovo was established pursuant to a Military-technical agreement concluded between the NATO military authorities and the FRY. The force, known as KFOR, is to "operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission." KFOR numbered 50,000 troops drawn from 39 states; the Belgian contingent in KFOR amounts to around 800 personnel.

It is with this information that Belgium reasserts that not only is Serbia's application to the Court outside its jurisdiction, but that Belgium was acting counter to international law in the case at hand.

Respectfully,

The Advocate from the Kingdom of Belgium

WORKS CONSULTED

Bilateral Convention for Judicial Settlement, Arbitration and Conciliation, 1930

<http://digital.library.northwestern.edu/league/le00304c.pdf>

Declarations Regarding the Jurisdiction of the ICJ

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20I/I-4.en.pdf>

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

<http://www.hrweb.org/legal/genocide.html>

Case Docket (Homepage): FRY v. Belgium

<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=d6&case=105&code=ybe&p3=0>

Statute of the ICJ

<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

UN Security Council Resolution 777, 1992.

<http://unscr.com/en/resolutions/doc/777>