BratMUN 2019 Study Guide

International Court of Justice

FOREWORD FROM THE CHAIRS

Dear delegates,

We're extremely glad to welcome you to BratMUN 2019! This year's conference will be different. We have a few new committees, including the International Court of Justice. The agenda that will be discussed is one of the most important topics ever being discussed, the one that gave the international law its current shape - the Srebrenica massacre. This act, being the first of its kind in modern era spread waves of apprehension amongst the international law experts. The main goal of yours is to come up with a verdict, finalizing the dispute as well as to create a law precedent, which could be applied universally in such matters. We wish the debate to be fruitful and funny, as the procedure in the court is vastly different from the procedure under which you operate in a classic model United Nations committee. Managing the meetings of this committee will be two chairpersons, Matej Sedlár and Natalie Viktoria Bichler.

Hello, delegates, my name is Matej Sedlár and I would like to tell you a bit about myself. I discovered the interesting world of MUN's in January 2018, when I attended KatMUN 2018 as my first conference. Suddenly, my love for a great debate grew, and my MUN career went on from that moment. After 7 MUN's, a few awards as well as two chairing sessions, I'll be standing right in front of you, trying to provide a unique experience and opportunity for major personal growth of all of us. For me, the MUN´s were always about the people I've met; therefore I'd be even happier if you guys created a collective, that would hold together, aside from the committee sessions, and simply had fun throughout the whole conference. I'd like to wish you good luck in the next few days, hopefully, spent with research and writing, as well as with the long and tedious study of principles of international law.

Hello, dear delegates, my name is Natalie Viktoria Bichler and I am chairing the first ICJ committee BratMUN has ever had. I'm in my senior year of the International Baccalaureate program at Gymnázium Jura Hronca in Bratislava. I have attended many MUNs as a delegate, such as BratMUN 2017, KoppelMUN 2018 in Amersfoort, FWWMUN 2018 in New York, MostarMUN 2019 in Mostar and more. This will be my third time chairing at a MUN conference. I was also part of the staff of BratMUN 2018 and am the head of chairs as well as part of the organisation team of BratMUN 2019. I am the head of the MUN club at my school, having founded it with my classmates and regularly held it for the students and fellow MUNers at my school. This conference, I will be chairing the ICJ committee on the topic of "The Bosnian Case". I am very excited to be chairing this committee as I am aspiring to study International and European Law next year. I wish you all the best of luck and can't wait to see you all soon!

ABOUT THE COMMITTEE

The International Court of Justice sometimes called the World Court is a judicial organ of the United Nations. Its primary functions are to settle any international disputes brought to the Court by any of the UN member states. The Court resolves a vast majority of the state-to-state disputes nowadays, as it is the only legitimate and worldwide-recognized organization of Its kind.

History of the ICJ

The efforts towards a permanent establishment of an international jurisdiction did not lead to a consensus until 1922, when the Permanent Court of International Justice was created by Article 14 of the Covenant of the League of Nations, which was responsible for adjudicating any international dispute submitted to it, as well as for providing an advisory opinion on any legal dispute. The PCIJ was to be permanently placed at the Peace Palace in The Hague. It represented a huge innovation to the legal system, as well as to international law, the fulfilment of which was yet to be established.

Unlike any other previous international tribunal, the PCIJ was a permanent body with its own rules of procedure, which had a permanent registry accessible by all of the countries. Its services were also widely available to all of the countries willing to solve their external conflicts diplomatically.

Despite its close connection to the League of Nations, it was not a subject of its influence, nor a subsidiary organ. This is one of the main differences between the ICJ and its predecessor. Article 92 of the Charter of the United Nations calls the ICJ the “principal judicial organ of the United Nations”.

Picture no.1 — Peace Palace, Hague

Powers and intentions of the Court

Structure

The ICJ is comprised of 15 judges. The judges are voted into the panel by the UN General Assembly and the Security Council for nine-year terms. The candidates must first be nominated in the Permanent Court of Arbitration by the national groups. No two judges may be nationals of the same state. The membership of the Court shall represent all of the principal legal systems in the World. Judges of the ICJ are not able to hold any other post or act as counsel. The members of the court are, however, allowed to be involved in outside arbitration and hold professional posts as long as there is no conflict of interest.

A judge can be dismissed by a unanimous vote of the other members of the Court.

Upon the rehearsal of most of the cases, the Court sits with all of the judges present, however, the Court is allowed to form smaller chambers. Judgments of chambers may have less authority than full Court judgments or lack the proper interpretation of universal international law by a variety of cultural and legal perspectives. On the other hand, the use of chambers might enhance more international dispute resolutions.

Competences

Among all established courts, the International Court of Justice (ICJ) has been vested with the mandate under the United Nations (UN) Charter to deal with the legal problems of the international community as a whole. It presents a key part of the mechanism for maintaining international peace and security.

The ICJ also has an important role in the system of the UN, due to its competence to give an advisory opinion on any questions regarding the legal matter. Such an action has been declared in Article 96 of the Charter of the UN, where the UN General Assembly or the Security Council shall request such an opinion from the Court, whenever the dispute regards any legal problematics. The Court itself has become a source of International law, consisting of World´s experts in the field of law and diplomacy.

As stated in Article 93 of the Charter of the UN, all UN members are automatically parties to the court. Non-UN countries may also become parties under the Court's statute. All of the countries recognised as parties under the statute of the Court are eligible to participate in cases before the court. There are three types of ICJ cases: contentious issues, incidental jurisdiction, and advisory opinions.

In contentious issues, the ICJ produces a binding verdict, which, when the parties refuse to comply, shall be enforced by the UN Security Council. However, this action has been introduced only 6 times and considering the fact that five countries of completely different interests within the Security Council hold a veto power makes this step practically impossible when resolving a worldwide issue.

The same procedure applies to the incidental jurisdiction, however, this action regards the actions taken until the Court produces its final judgement. These actions, despite being temporary are still legally binding and their application may be enforced.

Advisory opinions of the court were introduced to help the UN subsidiary organizations and Its various bodies to help with deciding complex legal issues. An

advisory opinion derives its authority from being an official pronouncement of the principal judicial organ of the UN.

Picture no.2 — The seal of the ICJ

PROCEDURE OF BRATMUN'S ICJ FOR 2019

The procedure of the International Court of Justice varies from case to case, as the Court is able to create specific rules and conduct procedural actions on its own. Concerning BratMUN 2019, the procedure of the International Court of Justice has been modified to make it more enjoyable and understandable for all of the delegates wishing to participate. Aside from this fact, the main principles and essential foundation of the Court's actions have remained.

Delegates assigned to the ICJ will receive the detailed rules of procedure at least a week prior to the date of the conference.

Roles of the representatives

In the ICJ, not all of the delegates are equal. Based on their preference and experience, they are assigned to concrete positions to imitate the ICJ correctly. Each of the positions has different pros and cons, each of them is different in terms of its work and role in the committee.

Positions

Advocates — the country representatives, the applicant, in this case, Bosnia tries to prove his claims of international law violations being conducted against his/her country. The respondent, in this case Serbia and Montenegro, being the one accused of those particular violations tries to provide the evidence to negate the claims of the applicant. Both delegates shall cooperate with a particular panel. The advocates together with their cooperative panel are also requested to create a memorandum, based upon the stances and claims concerning the issue, from their country´s viewpoint, which will be presented at the beginning of the session.

The Office of the Prosecutors — The goal is to support and help the applicant. Together with the applicant, they are responsible for researching and presenting material or testimonial evidence to prove the criminality of the respondent. Prosecutors will deliver opening and closing statements, as well as debate to convince the judges of the respondent's guiltiness. They are also subject to a burden of proof.

Defense Council — attempt to provide substantial evidence to prove the innocence of the respondent. They will ensure that the respondent is given a fair and impartial trial. They will also deliver opening and closing statements, as well as debate to defend the respondent.

Witnesses — Will testify and answer questions during the direct and cross-examinations. Prosecutors and defense attorneys will have to prepare examination questions in advance that the witnesses will answer. Advocates, as well as attorneys, shall instruct all of the witnesses on their side before the session

starts. It is mandatory to prepare at least two witnesses for each side, those can be the faculty advisors or other delegates from outside of the ICJ.

Judges — Impartial, objective and knowledgeable international law specialists who will hear the case, ask questions to both parties, and deliberate to make a decision. The judges will write a majority opinion, as well as decide upon a punishment if the respondent is pleaded guilty by the majority of Judges. The judges shall also moderate the debate and instruct the advocates and attorneys, when needed. Procedural changes can be made by the judges, however, the Presidency may overrule them still.

List of procedural actions

List of all of the actions that shall be taken. The session will be largely moderated by the Presidency, which will introduce these segments in this exact order. None of them shall be dismissed.

Memorandum — At least 7 days prior to the conference, both of the parties (Applicant and the Office of prosecutors, Respondent and the Defense council) are required to submit a memorandum consisting of the views of the party. Facts and citations, supporting the claims of the party shall be included in the memorandum, as it is an important document to reveal your position to the opponent as well as to all of the judges. The memorandum shall be based upon legal principles of international law, stating the claims of a party clearly and by facts. The maximum length will be specified later, with the detailed guideline you will receive. It is very important to have a united position as a party, so do not dismiss the opportunity to communicate when writing the memorandum. All of the contact information will be distributed within the parties.

Stipulations — The opposing parties will discuss to agree on the disputes, the Court shall resolve. After cooperating together, the disputes shall be delivered to all of the judges in a written form.

Opening statements — Both of the parties will get a large amount of time to prepare and present their opening statements, explaining the issue in-depth, without accusing the opponent or showcasing any notable evidence. The judges shall listen carefully and are free to ask both parties any questions regarding their statements.

Case presentation — Both of the parties will try their best in presenting the evidence. First of all, the witnesses shall be introduced to the committee for each of the sides, in the order negotiated by the parties. Each of the witnesses will be a subject of both direct and cross-examination. During the direct examination, the witness will be examined by the side, which summoned the witness. The judges shall testify the witness, before the cross-examination by the opposing party is allowed, however, the Presidency might as well order the witness to be examined. The questions to the witnesses must not disobey the legal procedure, nor regard the statements of the Court stated beforehand. Witnesses may also choose to be or not to be cross-examined. Before the witnesses are summoned, they should also take the oath in front of the special rapporteur.

After the witnesses are presented, each of the parties presents its material or testimonial evidence. All of the evidence must be sealed inside a plastic bag and marked accordingly to the order, in which the evidence will be presented. If a party wants to present their evidence, it shall ask the judges to do so. After the presentation, the opposing party can object and state their doubts concerning the evidence presented.

The judges discuss the weight of the evidence, which, after the presentation of the evidence by both parties ends, shall be announced to all of the representatives.

Rebuttance of the evidence — After the presentation has ended, according to the concerns presented by both parties, the parties will have time to find additional information to rebut the evidence presented by the opposing party. The judges may also rebut a piece of evidence, if the information or documentation supporting the evidence is incorrect or falsified.

Discussion of the Judges — Afterwards, the judges are allowed to ask secondary questions concerning the evidence that they choose to analyse. They enter the room one by one, asking the representatives that have presented the evidence about additional information and the opposing party about facts to support their claims. If not needed, this step may be skipped by procedural voting.

Closing Arguments — Both of the parties shall tie the legal factors together with the evidence and draw out the optimal solution, for which their party stands. This can only be requested by the advocates, bot the councils cooperating with them. The applicant shall go first, followed by the respondent. After the respondent has proposed their arguments, the applicant may choose to react. Note that this is the final time, when the applicant and respondent, together with the Office of the prosecutors and Defense council will have an opportunity to present their facts and beliefs. After this procedural action happens, both parties are requested to leave the room for the judges to proceed to the next step.

Deliberation - The judges will write down the issues they have with the case and discuss them in a formal debate. When argumenting, the testified evidence shall be a subject of use. During the deliberation, the judges may freely change their opinion. After the issues are discussed, if the judges whose opinions are alike, will form blocks and write the verdict. The biggest block shall be the main contributor to the

verdict. All of the judges have the opportunity to state their unwarped and rational opinion to each and every clause of the verdict, through the following statements:

Majority opinion — the opinion of the majority of the committee.

Separate, but concurring opinion — The reasons for the decision differ, but the judge shares the opinion.

Dissenting opinion — The opinion of the judge concerning the clause differs from the majority.

Separate, but dissenting opinion — The opinion and the decision of the judge differ from the majority and the other judges opposing the decision of the majority.

Judgement — After the verdict is written, all of the representatives are to be granted access to the courtroom again. The court shall entertain a security procedure, expelling all of the staff and press from the room. Exceptions may be made by the judges. All of the doors in the room shall be locked, windows closed with the curtains drawn down. All of the electronic devices, including the wireless transmitters, shall be turned off. After the security procedure, the President of the court will read the judgement out loud and the session of the court may be adjourned.

INTRODUCTION TO THE TOPIC

Picture no.3 - Srebrenica massacre

The Bosnian genocide case was a case of the ICJ of Bosnia and Herzegovina vs. Serbia and Montenegro. This case, filed by Dr. Francis Boyle who was an advisor to the former president Alija Izetbegović, blamed Serbia to have allegedly attempted to exterminate the Bosniak (Bosnian Muslim) population of Bosnia and Herzegovina. The case ended on the 9th of May in 2006 after being heard in the International Court of Justice in The Hague, Netherlands.

Main Legal Aspects

Advocates, the Office of Prosecutors, the Defense Council and judges should familiarize themselves with the main legal aspects presented in the Study guide and try to apply them to the present case. The legal aspects presented below are not exhaustive. Advocates, the Office of Prosecutors, the Defense Council and judges are encouraged to explore whether other legal aspects might be applicable.

International Law

The United Nations defines international law as “the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries.” International law is established in four primary ways: treaties, judicial decisions, some Security Council actions and custom.

The most familiar of these ways is treaties. Most international law is established by States agreeing that a certain principle, norm or procedure is indeed international law. Treaties are formal, legally-binding documents that establish these agreements by States. They are drafted and signed by States, which have a legal obligation to obey the terms of a treaty they have signed. While the majority of treaties in the world are bilateral (between two States), the most commonly referenced treaties in Model UN are multilateral treaties that include many States.

International courts can also establish international law. Courts are given the power to create binding decisions by treaties signed by States. All opinions by the International Court of Justice (ICJ) in contentious cases brought by two States before the court are legally-binding and constitute international law but do not create precedents for future cases. Advisory opinions, on the other hand, are not binding. The ICJ derives its authority from a particularly important treaty: the United Nations Charter. Other treaties have established other courts that make legally-binding decisions as well, such as the International Criminal Court, and the International Tribunal for the Law of the Sea.

Some Security Council actions establish legally-binding obligations under international law. Any action taken by the Security Council under Article VII related to securing international peace (such as through peacekeeping or sanctions) is legally binding on all Member States. Additionally, the Security Council can establish ad hoc tribunals that can make legal decisions. Two former examples are the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Yugoslavia (ICTY).

Finally, customary international law can be binding upon the States. The Statute of the International Court of Justice defines customary international law as "evidence of a general practice accepted as law." Customary international law is defined by the general practice of States and by acceptance as law by States. In practice, customary international law is complicated. States can (and do) regularly redefine customary international law simply by changing their practices.

There are many other UN documents that appear to be legally binding but are not. Declarations, Agreements, and Ministerial Statements are not legally binding documents. They do not carry the weight of international law.

Sources of international law are identified in Article 38 of the Statute of the International Court of Justice. Article 38 distinguishes three primary sources of international law, namely: (1) treaties between states, (2) customary international law, (3) general principles of law, and two secondary sources, namely (4) judicial decisions and (5) writings of the most highly qualified publicists.

Srebrenica Massacre

Srebrenica massacre, slaying of more than 7,000 Bosniak (Bosnian Muslim) boys and men, perpetrated by Bosnian Serb forces in Srebrenica, a town in eastern Bosnia and Herzegovina, in July 1995. In addition to the killings, more than 20,000 civilians were expelled from the area—a process known as ethnic cleansing. The massacre, which was the worst episode of mass murder within Europe since World War II, helped galvanize the West to press for a cease-fire that ended three years of warfare on Bosnia's territory. However, it left deep emotional scars on survivors and created enduring obstacles to political reconciliation among Bosnia's ethnic groups.

KEY ACTORS

Bosnia and Herzegovina

The applicant of the case that has concluded Serbia and Montenegro failed to prevent the genocide from happening and us now trying to prove that international law violations have been breached.

Serbia and Montenegro

The respondents of the case claim that they had nothing to do with the Srebrenica massacre and cannot, therefore, be blamed that they had indeed committed any breach of international laws against Bosnia and Herzegovina.

BRIEF HISTORY

Historical Background

On 20 March 1993, the Republic of Bosnia and Herzegovina instituted proceedings against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, as well as various matters which Bosnia and Herzegovina claimed were connected therewith. The Application invoked Article IX of the Genocide Convention as the basis for the jurisdiction of the Court. Subsequently, Bosnia and Herzegovina also invoked certain additional bases of jurisdiction.

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 and, on 1 April 1993, Yugoslavia submitted written observations on Bosnia and Herzegovina's request for provisional measures, in which it, in turn, 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, on 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures. 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. Then, within the extended time-limit of 30 June 1995 for the filing of its Counter-Memorial, Yugoslavia, referring to Article 79, paragraph 1, of the Rules of Court, raised preliminary objections concerning both the admissibility of the Application and the jurisdiction of the Court to entertain the case.

In its Judgment of 11 July 1996, the Court rejected the preliminary objections raised by Yugoslavia and found that it had jurisdiction to deal with the dispute on the basis of Article IX of the Genocide Convention, dismissing the additional bases of jurisdiction invoked by Bosnia and Herzegovina. Among other things, it found that the Convention bound the two Parties and that there was a legal dispute between them falling within the provisions of Article IX.

By an Order dated 23 July 1996, the President of the Court fixed 23 July 1997 as the time-limit for the filing by Yugoslavia of its Counter-Memorial on the merits. The Counter-Memorial was filed within the prescribed time-limit and contained counter-claims, by which Yugoslavia requested the Court, among other things, to adjudge and declare that Bosnia and Herzegovina was responsible for acts of

genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the Genocide Convention. The admissibility of the counter-claims under Article 80, paragraph 1, of the Rules of Court having been called into question by Bosnia and Herzegovina, the Court ruled on the matter, declaring, in its Order of 17 December 1997, that the counter-claims were admissible as such and formed part of the proceedings in the case. The Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia were subsequently filed within the time-limits laid down by the Court and its President. During 1999 and 2000, various exchanges of letters took place concerning new procedural difficulties which had emerged in the case. In April 2001, Yugoslavia informed the Court that it wished to withdraw its counter-claims. As Bosnia and Herzegovina had raised no objection, the President of the Court, by an Order of 10 September 2001, placed on record the withdrawal by Yugoslavia of the counter-claims it had submitted in its Counter-Memorial. On 4 May 2001, Yugoslavia submitted to the Court a document entitled "Initiative to the Court to reconsider *ex officio* jurisdiction over Yugoslavia", in which it first asserted that the Court had no jurisdiction *ratione personae* over Serbia and Montenegro and secondly requested the Court to "suspend proceedings regarding the merits of the case until a decision on this Initiative", i.e., on the jurisdictional issue, had been rendered. On 1 July 2001, it also filed an Application for revision of the Judgment of 11 July 1996; this was found to be inadmissible by the Court in its Judgment of 3 February 2003 (see No. 1.98 below). In a letter dated 12 June 2003, the Registrar informed the Parties to the case that the Court had decided that it could not accede to the Applicant's request to suspend the proceedings on the merits.

Following public hearings held between 27 February 2006 and 9 May 2006, the Court rendered its Judgment on the merits on 26 February 2007. It began by examining the new jurisdictional issues raised by the Respondent arising out of its admission as a new Member of the United Nations in 2001. The Court affirmed that it had jurisdiction on the basis of Article IX of the Genocide Convention, stating in particular that its 1996 Judgment, whereby it found it had jurisdiction under the

Genocide Convention, benefited from the "fundamental" principle of *res judicata*, which guaranteed "the stability of legal relations", and that it was in the interest of each Party "that an issue which has already been adjudicated in favour of that party be not argued again". The Court then made extensive findings of fact as to whether alleged atrocities had occurred and, if so, whether they could be characterized as genocide.

After determining that massive killings and other atrocities were perpetrated during the conflict throughout the territory of Bosnia and Herzegovina, the Court found that these acts were not accompanied by the specific intent that defines the crime of genocide, namely the intent to destroy, in whole or in part, the protected group. The Court did, however, find that the killings in Srebrenica in July 1995 were committed with the specific intent to destroy in part the group of Bosnian Muslims in that area and that what happened there was indeed genocide. The Court found that there was corroborating evidence which indicated that the decision to kill the adult male population of the Muslim community in Srebrenica had been taken by some members of the VRS (Army of the Republika Srpska) Main Staff. The evidence before the Court, however, did not prove that the acts of the VRS could be attributed to the Respondent under the rules of international law of State responsibility. Nonetheless, the Court found that the Republic of Serbia had violated its obligation contained in Article 1 of the Genocide Convention to prevent the Srebrenica genocide. The Court observed that this obligation required States that are aware, or should normally have been aware, of the serious danger that acts of genocide would be committed, to employ all means reasonably available to them to prevent genocide, within the limits permitted by international law.

The Court further held that the Respondent had violated its obligation to punish the perpetrators of genocide, including by failing to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY) with respect to the handing over for trial of General Ratko Mladi´c. This failure constituted a violation of the Respondent's duties under Article VI of the Genocide Convention.

In respect of Bosnia and Herzegovina's request for reparation, the Court found that, since it had not been shown that the genocide at Srebrenica would in fact have been averted if Serbia had attempted to prevent it, financial compensation for the failure to prevent the genocide at Srebrenica was not the appropriate form of reparation. The Court considered that the most appropriate form of satisfaction would be a declaration in the operative clause of the Judgment that Serbia had failed to comply with the obligation to prevent the crime of genocide. As for the obligation to punish acts of genocide, the Court found that a declaration in the operative clause that Serbia had violated its obligations under the Convention and that it must transfer individuals accused of genocide to the ICTY and must co-operate fully with the Tribunal would constitute appropriate satisfaction.

Current Situation

The ICJ held that the Srebrenica massacre was a genocide. It stated the following:

The Court found—although not unanimously—that Serbia was neither directly responsible for the Srebrenica genocide, nor that it was complicit in it, but it did rule that Serbia had committed a breach of the Genocide Convention by failing to prevent the genocide from occurring and for not cooperating with the International Criminal Tribunal for the former Yugoslavia (ICTY) in punishing the perpetrators of the genocide, in particular General Ratko Mladić, and for violating its obligation to comply with the provisional measures ordered by the Court. The then Vice-President of the Court, Awn Shawkat Al-Khasawneh, dissented on the grounds that "Serbia's involvement, as a principal actor or accomplice, in the genocide that took place in Srebrenica is supported by massive and compelling evidence."

The Court found:

(1) by ten votes to five,

Rejects the objections contained in the final submissions made by the Respondent [Serbia] to the effect that the Court has no jurisdiction; ...

(2) by thirteen votes to two,

Finds that Serbia has not committed genocide, through its organs or persons whose acts engage its responsibility under customary international law, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;

(3) by thirteen votes to two,

Finds that Serbia has not conspired to commit genocide, nor incited the commission of genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;

(4) by eleven votes to four,

Finds that Serbia has not been complicit in genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;

(5) by twelve votes to three,

Finds that Serbia has violated the obligation to prevent genocide, under the Convention on the Prevention and Punishment of the Crime of Genocide, in respect of the genocide that occurred in Srebrenica in July 1995;

(6) by fourteen votes to one,

Finds that Serbia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed to transfer Ratko Mladić, indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus having failed fully to co-operate with that Tribunal;

(7) by thirteen votes to two,

Finds that Serbia has violated its obligation to comply with the provisional measures ordered by the Court on April 8 and September 13, 1993 in this case, inasmuch as it failed to take all measures within its power to prevent genocide in Srebrenica in July 1995;

(8) by fourteen votes to one,

Decides that Serbia shall immediately take effective steps to ensure full compliance with its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide to punish acts of genocide as defined by Article II of the Convention, or any of the other acts proscribed by Article III of the Convention, and to transfer individuals accused of genocide or any of those other acts for trial by the International Criminal Tribunal for the former Yugoslavia, and to co-operate fully with that Tribunal;

(9) by thirteen votes to two,

Finds that, as regards the breaches by Serbia of the obligations referred to in subparagraphs (5) and (7) above, the Court's findings in those paragraphs constitute appropriate satisfaction, and that the case is not one in which an order for payment of compensation, or, in respect of the violation referred to in subparagraph (5), a direction to provide assurances and guarantees of non-repetition, would be appropriate.

— ICJ press release

Resolution, acts, laws

Serbia was alleged to have attempted to exterminate the Bosniak (Bosnian Muslim) population of Bosnia and Herzegovina. The claim was filed by Dr. Francis Boyle, an adviser to Alija Izetbegović during the Bosnian War. The case was heard in the International Court of Justice (ICJ) in The Hague, Netherlands, and ended on 9 May 2006.

Following is a schedule of the trial:

- First round of argument
    - February 27, 2006 through March 7, 2006, Bosnia and Herzegovina
    - March 8, 2006 through March 16, 2006, Serbia and Montenegro
- Hearing of experts, witnesses and witness-experts
    - March 17, 2006 through March 21, 2006, Bosnia and Herzegovina
    - March 22, 2006 through March 28, 2006, Serbia and Montenegro
- Second round
    - April 18, 2006 through April 24, 2006, Bosnia and Herzegovina
    - May 2, 2006 through May 9, 2006, Serbia and Montenegro

PRIMARY SOURCES

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BBC News, Srebrenica massacre explained under 2 min, https://www.youtube.com/watch?v=ymf5p3LbCAE

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Kobno Srjebrenicko Ljeto, 1995, https://www.youtube.com/watch?v=N2uQJsqiw-E

Radio Sarajevo, Put smrti, 1995, https://www.youtube.com/watch?v=tqoss5pJCUg

TRT World, Timeline of the Srebrenica Genocide, https://www.youtube.com/watch?v=DfNKKM7DT8U

QUESTIONS TO CONSIDER

Have the respondents violated any international laws? If yes, then which?

Is the evidence valid?

Have the past judgements of this case been fair?

How could we come to a just and fair resolution?

How to improve past resolutions?

CLOSING REMARKS

This study guide provides a brief overview of the topic. You should go through the recommended reading section, conduct further research into your country's policy and start brainstorming possible answers to the questions to consider and solutions to the discussed issue. The chairpersons are aware that this is not an easy task, however, your performance in the committee will reflect your preparation and research. This will also ensure that all of us have the best time possible at BratMUN 2019.

In addition, you are expected to send a position paper approximately in the length of an A4 paper no later than the 25.10.2019 to the email address bratmun.icj@gmail.com

The position paper should contain four sections: Background of Topic, Past International Actions, your Role and Pacts or Laws applicable to the Case, Questions to Ask, Possible Solutions. It should be accompanied with your name, surname, your position or role in the committee, the topic, and the name of the committee.

We are looking forward to seeing you and cooperating with you at the conference and wish you the best of luck with your preparation.
In case of any questions about the topic, position paper, Rules of Procedure or anything else, do not hesitate to contact us to the following email addresses:

Natalie Viktoria Bichler: natalie.v.bichler@gmail.com
Matej Sedlár: sedlarmatej@gmail.com

Best regards,
Natalie Viktoria Bichler and Matej Sedlár
Chairpersons of the BratMUN International Court of Justice