

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION OF THE CONVENTION
ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE

(CROATIA v. SERBIA)

ORDER OF 4 FEBRUARY 2010

2010

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION DE LA CONVENTION
POUR LA PRÉVENTION ET LA RÉPRESSION
DU CRIME DE GÉNOCIDE

(CROATIE c. SERBIE)

ORDONNANCE DU 4 FÉVRIER 2010

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YEAR 2010

4 February 2010

APPLICATION OF THE CONVENTION
ON THE PREVENTION AND PUNISHMENT
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(CROATIA v. SERBIA)

ORDER

Present: President OWADA; Vice-President TOMKA; Judges SHI, KOROMA, BUERGENTHAL, SIMMA, ABRAHAM, KEITH, SEPÚLVEDA-AMOR, BENNOUNA, SKOTNIKOV, YUSUF, GREENWOOD; Registrar COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45 and 80 of the Rules of Court,

Having regard to the Application filed in the Registry of the Court on 2 July 1999, whereby the Republic of Croatia instituted proceedings against the Federal Republic of Yugoslavia “for violations of the Convention on the Prevention and Punishment of the Crime of Genocide”,

Having regard to the Order dated 14 September 1999, whereby the Court fixed 14 March 2000 and 14 September 2000 respectively as the time-limits for the filing of the Memorial of the Republic of Croatia and the Counter-Memorial of the Federal Republic of Yugoslavia,

Having regard to the Order dated 10 March 2000, whereby the Presi-

dent of the Court, at the request of Croatia, extended until 14 September 2000 and 14 September 2001 respectively the time-limits for the filing of the Memorial and the Counter-Memorial, and to the Order dated 27 June 2000, whereby the Court, at the request of Croatia, extended those time-limits until 14 March 2001 and 16 September 2002 respectively,

Having regard to the Memorial of Croatia, filed within the time-limit as extended,

Having regard to the preliminary objections to the jurisdiction of the Court and the admissibility of the Application which were submitted by the Federal Republic of Yugoslavia within the time-limit fixed for the filing of the Counter-Memorial, as extended,

Having regard to the Judgment dated 18 November 2008, in which the Court found *inter alia* that, subject to its findings in respect of the second preliminary objection submitted by the Respondent, it has jurisdiction, on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, to entertain the Application of Croatia,

Having regard to the Order dated 20 January 2009, whereby the Court fixed 22 March 2010 as the time-limit for the filing of the Counter-Memorial of Serbia,

Having regard to the Counter-Memorial of Serbia, filed on 4 January 2010;

Whereas the Counter-Memorial contains counter-claims in the form of the following submissions:

“On the basis of the facts and legal arguments presented in this Counter-Memorial, the Republic of Serbia respectfully requests the International Court of Justice to adjudge and declare:

.

4. That the Republic of Croatia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by committing, during and after the operation *Storm* in August 1995, the following acts with intent to destroy as such the part of the Serb national and ethnical group living in the Krajina Region (UN Protected Areas North and South) in Croatia:

- killing members of the group;
- causing serious and bodily or mental harm to members of the group; and
- deliberately inflicting on the group conditions of life calculated to bring about its partial physical destruction.

5. Alternatively, that the Republic of Croatia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide against the part of the Serb national and ethnical group living in

the Krajina Region (UN Protected Areas North and South) in Croatia.

6. As a subsidiary finding, that the Republic of Croatia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed and by still failing to punish acts of genocide that have been committed against the part of the Serb national and ethnical group living in the Krajina Region (UN Protected Areas North and South) in Croatia.

7. That the violations of international law set out in paragraphs 4, 5 and 6 above constitute wrongful acts attributable to the Republic of Croatia which entail its international responsibility, and, accordingly,

- (1) that the Republic of Croatia shall immediately take effective steps to ensure full compliance with its obligation to punish acts of genocide as defined by Article II of the Convention, or any other acts proscribed by Article III of the Convention committed on its territory before, during and after operation *Storm*; and
- (2) that the Republic of Croatia shall redress the consequences of its international wrongful acts, that is, in particular:
 - (a) pay full compensation to the members of the Serb national and ethnic group from the Republic of Croatia for all damages and losses caused by the acts of genocide;
 - (b) establish all necessary legal conditions and secure environment for the safe and free return of the members of the Serb national and ethnical group to their homes in the Republic of Croatia, and to ensure conditions of their peaceful and normal life including full respect for their national and human rights;
 - (c) amend its Law on Public Holidays, Remembrance Days and Non-Working Days, by way of removing the 'Day of Victory and Homeland Gratitude' and the 'Day of Croatian Defenders', celebrated on the 5th of August, as a day of the triumph in the genocidal operation *Storm*, from its list of public holidays";

Whereas, at a meeting held by the President of the Court with the representatives of the Parties on 3 February 2010, H.E. Ms Andreja Metelko-Zgombić, Co-Agent of Croatia, indicated that her Government did not intend to raise objections to the admissibility of the counter-claims formulated in Serbia's Counter-Memorial, but wished to be able to respond to the substance of these in a Reply; whereas Mr. Saša Obradović, Co-Agent of Serbia, stated that, in that case, his Government wished to file a Rejoinder; whereas, at the same meeting, the Co-Agent of Croatia indicated that her Government requested a time-limit of fourteen months in

which to prepare its Reply in order to respond to the Counter-Memorial, including the counter-claims formulated therein; whereas the Co-Agent of Serbia considered, for his part, that a time-limit of nine months would be sufficient to allow each of the Parties to prepare its written pleadings; and whereas the Co-Agent of Croatia added that, on the question of time-limits, her Government left the matter to the Court to decide;

Whereas in these proceedings, and taking account of the absence of objections by Croatia to the admissibility of the above-mentioned counter-claims, the Court does not consider that it is required to rule definitively at this stage on the question of whether the said claims fulfil the conditions set forth in Article 80, paragraph 1, of the Rules of Court;

Whereas, moreover, the Court considers the filing of a Reply by Croatia and a Rejoinder by Serbia to be necessary; whereas it is also appropriate, in order to ensure strict equality between the Parties, to reserve the right for Croatia to express its views for a second time in writing within a reasonable time-limit on Serbia's counter-claims, in an additional pleading whose submission may be dealt with in a subsequent Order;

Whereas, in order to protect the rights which third States entitled to appear before the Court derive from the Statute, the Court instructs the Registrar to transmit to them a copy of the present Order,

Directs the submission of a Reply by the Republic of Croatia and a Rejoinder by the Republic of Serbia, concerning the claims presented by the Parties;

Fixes the following time-limits for the filing of the written pleadings:

20 December 2010 for the Reply of the Republic of Croatia;

4 November 2011 for the Rejoinder of the Republic of Serbia; and

Reserves the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourth day of February, two thousand and ten, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Croatia and the Government of the Republic of Serbia, respectively.

(Signed) Hisashi OWADA,
President.

(Signed) Philippe COUVREUR,
Registrar.

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