

## HAGUE INTERNATIONAL TRIBUNALS

# *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro): An Introduction*

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The long awaited judgment of the International Court of Justice (ICJ) in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* was handed down on 26 February 2007.<sup>1</sup> It has attracted the attention of the international legal community as well as political circles.<sup>2</sup> In addition, the world media – not to mention the local media – have taken note of the judgment, with leading newspapers carrying the story on their front pages rather than buried deep within, as sadly tends to be the case with international legal issues.<sup>3</sup>

What marks the judgment out as being of especial importance? The underlying facts and the emotions that they arouse certainly play a part. Yet the Court has dealt with many contentious disputes of significance to the international community in which passions have run high.<sup>4</sup> The intense diplomatic negotiations undertaken at the time and the numerous and varied responses of the United Nations may also make the case stand out, although the Court has previously dealt with cases whose underlying facts concerned other organs of the United Nations.<sup>5</sup> The controversy that the judgment has attracted is also of note. However, in this respect, the Court was in something of a no-win situation. Regardless of the precise conclusion the Court reached, it was always going to be controversial. Politicians of different persuasions were always going to utilize it to their benefit, whether this meant supporting

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\* Of the Board of Editors. The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.

1. *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, General List No. 91, available at [www.icj-cij.org](http://www.icj-cij.org).
2. See, for example, 'EU Presidency Statement on the International Court of Justice's Judgment', 26 February 2007, available at [http://www.eu2007.de/en/News/CFSP\\_Statements/February/0226Serbien.html](http://www.eu2007.de/en/News/CFSP_Statements/February/0226Serbien.html).
3. Of late, there have been notable exceptions, for example M. Simons and T. Weiner, 'World Court Rules US Should Review 51 Death Sentences', *New York Times*, 1 April 2004 (on *Avena and Other Mexican Nationals (Mexico v. United States of America)*, [2004] ICJ Rep. 12); G. Crouch and G. Myre, 'World Court Rules against Israel', *International Herald Tribune*, 10 July 2004 (on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, [2004] ICJ Rep. 136).
4. E.g. *Legal Consequences of the Construction of a Wall*, *supra* note 3; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, [2005] ICJ Rep. 168.
5. E.g. *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, [1980] ICJ Rep. 3.

it or attacking it. This too is nothing new.<sup>6</sup> The manifold legal issues that were put before the Court, and in large part answered by it, may make the judgment stand out. Again, however, many cases of the Court contain interesting legal issues and important judicial pronouncements;<sup>7</sup> indeed, that is often the reason for their submission to the Court. What is most striking is that all arise in the same case; it is, then, the very particular factual–legal–political matrix that marks the case out as special.

It is also the expectations. The exceptional length of the case – in duration, volume of pleadings, and scope of subject matter – and the incidental proceedings to which the case gave rise increased, if not the importance of the final judgment, at least the expectations put on the Court. The death of Slobodan Milošević only heightened these expectations, with all eyes turning to the Court for an authoritative account of the conflict in Bosnia and Herzegovina. The fact that the Court would be looking at this period only through the lens of the Genocide Convention, which for jurisdictional reasons it was required to do, did not diminish these expectations.

For international lawyers and those concerned with matters of international law the judgment contains many interesting issues. As anyone with even a passing interest is by now aware, the case was the first occasion on which one state's allegation that another state had violated its obligations under the Genocide Convention reached the merits stage of proceedings before the Court. What only becomes apparent after more detailed study of the judgment is that the case touches on issues to be found in nearly every chapter of the traditional international law textbook's table of contents, from sources and treaty interpretation through to state responsibility and settlement of international disputes. It also affects more recent debates, for example the relationship between the various international courts and tribunals and the fragmentation of international law. Just as the judgment is important to these various aspects of international law, so it is to the internal procedural workings and evidentiary rules of the Court.<sup>8</sup>

Of course, importance does not mean total acceptance or unqualified agreement. The judgment can be, has been, and no doubt will continue to be subjected to detailed critique, from outside the Court as well as within. This, too, is important. Any judgment, even those stemming from as eminent an institution as the International Court of Justice, should be analysed, criticized, or affirmed, with due regard for the body in question. This not only shows the seriousness with which the judgment, and by implication the Court, is viewed, but continues the dialogue between the various international legal participants, crucial for the development of international law. It is thus only fitting that the *Leiden Journal* contributes to this dialogue through publication of a number of reflections on the judgment.

6. Take, e.g., the judgment in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, [1986] ICJ Rep. 14.

7. Recent such cases include *Legality of the Threat or Use of Nuclear Weapons*, [1996] ICJ Rep. 226; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002] ICJ Rep. 3.

8. For discussion of some of the procedural aspects raised in the case see A. Riddell, 'Report on the Oral Proceedings in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*: Selected Procedural Aspects', (2007) 20 LJIL 405.