

## INDEX

### Abbreviations used in the index

ASI (Agreement on [SFRY] Succession Issues (2001))  
 CHC (Croatian Helsinki Committee for Human Rights)  
 CIL (customary international law)  
 FRY (Federal Republic of Yugoslavia)  
 GC (1948)/GC (Genocide Convention (1948))  
 ICC (International Criminal Court/ICC Statute)  
 ICJ (International Court of Justice)/(ICJ Statute)  
 ICTR (International Criminal Tribunal for Rwanda/ICTR Statute)  
 ICTY (International Criminal Tribunal for the Former Yugoslavia/ICTY Statute)  
 IHL (international humanitarian law)  
 ILC(SR) (ILC [Draft] Articles on State Responsibility for Internationally Wrongful Acts)  
 JNA (Yugoslav People's Army)  
 OHCHR (Office of the High Commissioner for Human Rights)  
 PCIJ (Permanent Court of International Justice)  
 ROC (Rules of Court/Regulations of Court)  
 RSK (Republika Srpska Krajina)  
 SANU (Serbian Academy of Sciences and Arts)  
 SAO (Serb Autonomous Region)  
 SAO SBWS (SAO Slavonia, Baranja and Western Srem)  
 SFRY (Socialist Federal Republic of Yugoslavia)  
 VCLT (Vienna Convention on the Law of Treaties (1969))  
 VCSST (Vienna Convention on Succession of States in Respect of Treaties (1978))

### admissibility (ICJ), jurisdiction distinguished

*Application of the Genocide Convention (Croatia v. Serbia)* 173-4, 209-12, 467-8  
*East Timor* 82  
*Legality of the Use of Force* 209  
*Oil Platforms* 81

### affidavit, treatment with caution 347

***Application of the Genocide Convention (Croatia v. Serbia)***: see *Application of the Genocide Convention (Croatia v. Serbia)* (background); *Application of the Genocide Convention (Croatia v. Serbia)* (Merits); *Application of the Genocide Convention (Croatia v. Serbia)* (Merits) (Croatia's claim) (actus reus of genocide); *Application of the Genocide Convention (Croatia v. Serbia)* (Merits) (jurisdiction and admissibility) (general); *Application of the Genocide Convention (Croatia v. Serbia)* (Merits) (jurisdiction and admissibility), Serbia's counterclaim; *Application of the Genocide Convention (Croatia v. Serbia)* (Merits) (separate opinions); *Application of the Genocide Convention (Croatia v. Serbia)* (Merits) (Serbia's counterclaim for breaches of GC II(a), II(b) and II(c)); *Application of the Genocide Convention (Croatia v. Serbia)* (Preliminary Objections)

***Application of the Genocide Convention (Croatia v. Serbia)* (background)**: see also Serbia (2006-) (Republic of), as successor to/continuator of State Union of Serbia and Montenegro  
 Croatia/Serb relations: see Croatia/Serbia relations (1991-5)  
 procedural history in date order

- Application of the Genocide Convention (Croatia v. Serbia) (background): (cont.)***  
 initiation of proceedings (2 July 1999) 36-8, 276  
 appointment of ad hoc judges 37, 277  
 FRY raises preliminary objections (11 September 2002) 37, 277  
   Croatia files observations and submissions on 277  
 Bosnia and Herzegovina requests copies of pleadings and annexed documents/  
   agreement to (8 November/11 December 2002) 37  
 suspension of proceedings on the merits (ROC 79(5)) (14 November 2002) 37  
 FRY notifies the Court of change of name of State to Serbia and Montenegro  
   (5 February 2003) 37, 277, 302-3  
 Montenegro withdraws from the FRY leaving Serbia as the sole respondent (21 May  
   2006) 277-8  
 arrangements for parties' submission of new documents (11 April 2007-6 May 2008)  
   38  
 Court's request for arguments on Serbia's standing (UNC 35) (6 May 2008) 38  
 public hearings (Preliminary Objections) (26-30 May 2008) 39, 278  
 Court's decision (Preliminary Objections) (18 November 2008) (Court's summary)  
   278  
   postponement of decision on second preliminary objection to the merits stage 278  
 arrangements for parties' submission of new documents (30 July-22 May 2012)  
   278-9  
 public hearings (3 March-1 April 2014) 288-9  
 procedural matters  
   identification of respondent party 43-5  
     Serbia as sole respondent 45, 278  
   organization of oral proceedings/examination of witnesses and witness-experts 279-  
     88  
   protection of the integrity of the proceedings 284  
   protective measures 283-8  
 SFRY, break-up and emergence of new States 301-3  
   Croatia: *see* Croatia/Serbia relations (1991-5)  
   FRY, status (ICJ jurisprudence) 302  
   FRY/Serbia and Montenegro/Serbia, constitutional developments (1992-2008) 42-5
- Application of the Genocide Convention (Croatia v. Serbia) (Merits)***  
 operative clause 429  
 parties' claims (Croatia)  
   i. Application 289-90  
   ii. Memorial 290-1  
   iii. Reply 291-3  
   iv. additional pleading 293  
   v. oral proceedings  
     Croatia's claim 296-8  
     Serbia's counterclaim 296-8  
 parties' claims (Serbia)  
   i. Counter-Memorial 293-5  
   ii. Rejoinder 295-6  
   iii. oral proceedings (Croatia's claim/Serbia's counterclaim) 298-300
- Application of the Genocide Convention (Croatia v. Serbia) (Merits) (Croatia's claim) (actus reus of genocide)***  
 overview 348-9  
 allegation of causing serious bodily or mental harm to members of the group (GC II(b))  
   (Dalmatia)

- Court's conclusions 390
- Knin (Court's evaluation of the evidence)
  - conclusion 380
  - Martić* 379
- Knin (parties' arguments) 379
- allegation of causing serious bodily or mental harm to members of the group (GC II(b)) (Eastern Slavonia)
  - Bapska (Court's evaluation of the evidence)
    - conclusion (commission of acts of rape and sexual violence) 373
    - witness statements 373
  - Bapska (parties' arguments) 373
  - Berak (Court's evaluation of the evidence)
    - Berak Deputy Defence Commander's report 374
    - conclusion 374-5
    - witness statements 374
  - Berak (parties' arguments) 374-5
  - Dalj (Court's evaluation of the evidence)
    - conclusion 376
    - Stanišić and Simatović* 376
    - witness statements 376
  - Dalj (parties' arguments) 376
  - Lovas (Court's evaluation of the evidence)
    - Belgrade War Crimes Prosecutor's indictment 375
    - conclusion 375-6
    - Serbian TV documentary 375
    - witness statements 375
  - Lovas (parties' arguments) 375
  - Tovarnik (Court's evaluation of the evidence)
    - conclusion 374
    - witness statements 374
  - Tovarnik (parties' arguments) 373-4
  - Vukovar (capture of) (Court's evaluation of the evidence) 371
    - conclusion (commission of acts of ill-treatment, torture and rape) 371
  - Vukovar (capture of) (parties' arguments) 371
  - Vukovar (invasion of Vukovar hospital and the transfers to Ovčara and Velepromet camps) (Court's evaluation of the evidence)
    - events at Ovčara (*Mrkšić*/conclusion) 371-2
    - events at Velepromet (*Mrkšić*) (commission of acts of ill-treatment and rape) 372-3
  - Vukovar (invasion of Vukovar hospital and the transfers to Ovčara and Velepromet camps) (parties' arguments) 371
  - Vukovar (shelling of) (Court's evaluation of the evidence)
    - Mrkšić* 370-1
  - Vukovar (shelling of) (parties' arguments) 370
- allegation of causing serious bodily or mental harm to members of the group (GC II(b)) (missing persons)
  - absence of evidence to demonstrate psychological suffering sufficient to constitute serious mental harm under GC II(b) 380
  - Court's encouragement to parties to cooperate in good faith with all means available to elucidate the fate of the missing persons 380-1
- allegation of causing serious bodily or mental harm to members of the group (GC II(b)) (Western Slavonia)

***Application of the Genocide Convention (Croatia v. Serbia) (Merits) (Croatia's claim) (actus reus of genocide) (cont.)***

- Dulovac (Court's evaluation of the evidence)
  - conclusion 379
  - witness statements 379
- Dulovac (parties' arguments) 378-9
- Kusonje (Court's evaluation of the evidence)
  - unsigned police statements 377
- Kusonje (parties' arguments) 377
- Voćin (Court's evaluation of the evidence)
  - conclusions 378
  - Helsinki Watch Report 378
  - The Anatomy of Deceit* 378
  - witness statements 377-8
- Voćin (parties' arguments) 377
- allegations of the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction (GC II(c)) 381-8
  - deprivation of food
    - failure to establish that restriction on food supplies came within GC II(c) 382
    - Strugar* 382
  - deprivation of medical care
    - failure to establish as coming within GC II(c) 383
    - Strugar* 383
  - destruction and looting of the cultural heritage
    - Babić* 387
    - decision not to include the destruction of historical, cultural and religious heritage within GC II (*travaux préparatoires*) 387
    - Martić* 387
  - as evidence of intent to destroy the group physically 388
  - forced labour
    - dependence of classification as genocide on circumstances of forced labour/failure to demonstrate 388
    - Stanišić and Simatović* 388
  - forced wearing of insignia of ethnicity
    - as evidence of intent to physically destroy/first step towards 386
    - insufficiency to come within GC II(c) 387
  - looting of property
    - failure to demonstrate that looting met requirements of GC II(c) 387
    - Stanišić and Simatović* 387
  - rape (Court's evaluation of the evidence) 381-2
    - rape causing serious bodily harm and rape amounting to genocide distinguished 382
  - restrictions on movement
    - failure to demonstrate that restrictions met requirements of GC II(c) 385-6
    - Stanišić and Simatović* 385-6
  - systematic expulsion from homes and forced displacement
    - dependence of classification as genocide on circumstances of expulsion/failure to demonstrate 385
    - Martić* findings 383-5
- allegations of the killing of members of protected group (GC II(a)) (Banovina/Banija)
  - Hrvatska Dubica (Court's evaluation of the evidence)
    - conclusion 362

- Martić* 362
- Stanišić and Simatović* 362
- witness evidence 362
- Hrvatska Dubica (parties' arguments) 361
- Joševica (Court's evaluation of the evidence)
  - Court's conclusion 361
  - Helsinki Watch Report 361
  - witness statements (5 November 1991 killings) 360-1
  - witness statements (16 December 1991 killings) 361
- Joševica (parties' arguments) 360
- allegations of the killing of members of protected group (GC II(a)) (Dalmatia)
  - Bruška (Court's evaluation of the evidence)
    - killing in June 1992, absence of admissible evidence 368
    - killings of 21 December 1991 (Martić/Stanišić and Simatović findings) 368
  - Bruška (parties' arguments) 367
  - Dubrovnik (Court's evaluation of the evidence)
    - conclusion 369
    - Jokić/Strugar* 369
    - police letters 368-9
    - witness statements 368
  - Dubrovnik (parties' arguments) 368
  - Skabrnja (Court's evaluation of the evidence)
    - Court's conclusion 367
    - Martić* 367
    - Stanišić and Simatović* findings 367
    - witness evidence 366-7
  - Skabrnja (parties' arguments) 366
- allegations of the killing of members of protected group (GC II(a)) (Eastern Slavonia)
  - Bogdanovici (Court's evaluation of the evidence)
    - conclusion 344-5, 359
    - Stanišić and Simatović* findings 358-9
    - witness evidence 344
  - Bogdanovici (parties' arguments) 354
  - Dalj (Court's evaluation of the evidence)
    - conclusion 358-9
    - exhumation reports 358
    - witness evidence (1 August 1991 killings) 358
    - witness evidence (autumn 1991 killings) 358
  - Dalj (parties' arguments) 357-8
  - Lovas (Court's evaluation of the evidence)
    - Belgrade War Crimes Prosecutor's indictment 356
    - conclusions 357
    - Mrkić* findings 356
    - Serb TV documentary 357
    - Serbia's admission of events/challenge to characterization 357
    - statement of the Federal Security Chief's statement to the Belgrade Military Court 356-7
    - witness evidence 356-7
  - Lovas (parties' arguments) 355-6
  - Vukovar and its surrounding area (Court's evaluation of the evidence)
    - conclusion 353
    - Mrkić* findings 352-3

***Application of the Genocide Convention (Croatia v. Serbia) (Merits) (Croatia's claim) (actus reus of genocide) (cont.)***

- witness evidence 353
  - Vukovar and its surrounding area (parties' arguments) 350-1
  - allegations of the killing of members of protected group (GC II(a)) (Kordun)
    - Lipovača (Court's evaluation of the evidence)
      - conclusions 363
      - Martić* 363
      - Stanišić and Simatović* 363
    - Lipovača (parties' arguments) 362-3
  - allegations of the killing of members of protected group (GC II(a)) (Lika)
    - Poljanak (Court's evaluation of the evidence)
      - conclusion 365
      - Martić* 365
      - Stanišić and Simatović* 365
    - Poljanak (parties' arguments) 364-5
    - Saborsko (Court's evaluation of the evidence)
      - Martić* 364
      - Stanišić and Simatović* 364
    - Saborsko (parties' arguments) 363-4
  - allegations of the killing of members of protected group (GC II(a)) (Western Slavonia)
    - Voćin (Court's evaluation of the evidence)
      - Helsinki Watch Report 359-60
      - witness statements attached to Croatia's written pleadings 359
    - Voćin (parties' arguments) 359
  - allegations of measures to prevent births (GC II(d))
    - Court's evaluation of the evidence (failure to show that rapes and other acts of sexual violence were perpetrated in order to prevent births) 389-90
    - Croatia's claims 389
    - Court's conclusion 390
- Application of the Genocide Convention (Croatia v. Serbia) (Merits) (Croatia's claim) (genocidal intent (dolus specialis))***
- overview
    - Croatia's 17 factors as evidence of genocidal intent 392-3, 401
    - Court's conclusion 401
  - issue i: Croats in areas under consideration as a protected group 390-1
    - Court's conclusion 391
    - geographic location 391
    - prominence of group 391
    - quantitative element (census figures) 391
  - issue ii: pattern of conduct from which the only reasonable inference to be drawn is an intent to destroy part of the group 391-8
    - Croatia's claims 392-3
    - existence of a pattern of conduct (Court's findings)
      - consistency of Court's findings with those of the ICTY 394
      - Martić* 394
      - Mrkšić* 393-4
    - existence of a pattern of conduct (parties' positions) 393
    - key factors 393
    - "only reasonable inference" (Court's findings) (context)
      - counter-evidence (evacuation of Croats) 398
      - ICTY conclusions (punishment as enemies rather than destruction) 398

- Martić/Babić* findings on the political objectives of the SAO Krajina/RSK 396-7
- Mrkić* findings 397
- SANU Memorandum, relevance 395
- “only reasonable inference” (Court’s findings) (opportunity)
  - Arkan’s activities 400-1
  - counter-evidence (evacuation of many Croatian prisoners to Croatia/Serbia) 400
  - counter-evidence (proportion of victims to targeted part of the group) 400
  - ICTY findings (policy aimed at establishing an ethnically homogeneous Serb State) 399-400
  - parties’ arguments 399
- Application of the Genocide Convention (Croatia v. Serbia) (Merits) (jurisdiction and admissibility), Croatia’s claim***
  - Court’s analysis
    - absence of [ICJ] jurisdiction, effect on liability 312
    - GC IX as sole source of jurisdiction 310-14
    - limitation of GC IX jurisdiction to disputes relating to the interpretation, application or fulfilment of the Convention 311-14
  - issues for determination
    - i. did the alleged acts take place/were they in breach of the Convention? 322-3
    - ii. were they attributable to SFRY when they occurred? 322-3
    - iii. did the FRY succeed to any SFRY responsibility? 322, 323-5
      - applicable law (general international law) 324
      - consent to jurisdiction requirement, relevance in case of defunct State 324-5, 468-73
  - parties’ positions
    - Croatia 309-10
    - Serbia 308-9
  - Serbia’s objection to admissibility 325-6
  - Serbia’s objection to jurisdiction
    - linkage of GC IX temporal scope to temporal scope of other provisions 315
    - retroactivity of the Convention, Court’s analysis 314-15
      - linkage of GC IX temporal scope to temporal scope of other provisions 315
      - obligation to prevent and obligation to punish distinguished 316
    - Serbia’s alleged responsibility as an “insurrectional or other movement” which establishes a new State in part of the territory (ILC(SR) 10(2)), Court’s analysis
      - ILC(SR) 10(2) as customary international law 319
      - limitation of responsibility to acts in breach of an existing obligation 319
    - Serbia’s alleged responsibility as an “insurrectional or other movement” which establishes a new State in part of the territory (ILC(SR) 10(2)), parties’ arguments 318-19
    - Serbia’s alleged responsibility as successor to the FRY/SFRY, Court’s analysis
      - admissibility of Croatia’s alleged new claim 320-1
    - Serbia’s alleged responsibility as successor to the FRY/SFRY, parties’ arguments
      - Croatia 319-20
      - Serbia 320-1
  - Application of the Genocide Convention (Croatia v. Serbia) (Merits) (jurisdiction and admissibility) (general)***
    - summary of Court’s decisions at the Preliminary Objections stage 306-8
    - open issue (jurisdiction/admissibility *ratione temporis*) 308
    - settled issues 306-7

***Application of the Genocide Convention (Croatia v. Serbia) (Merits) (jurisdiction and admissibility), Serbia's counterclaim***

“direct connection with the subject-matter of the claim of the other party” requirement (ROC 80(1)) 326-7

***Application of the Genocide Convention (Croatia v. Serbia) (Merits) (procedural matters)***

applicable law

jurisdiction (GC) 327

predisposition to accept previous findings in cases dealing with similar issues 327-8  
 rulings on the interpretation, application or fulfilment of the Convention (GC plus other relevant rules of international law) 327

burden of proof

*actori incumbit probatio* principle 341-2

obligation to prove a negative 342

parties' arguments 341

evidence

documentation/disclosure obligation (ICJ 49/ROC 62(1)) (redacted documents) 89, 285-8

evaluation by the Court 343-4

affidavit (treatment with caution) 347, 618

evidence requiring corroboration 348

parties' arguments 343-4

probative value of decision by ICTY prosecutor not to include genocide in the indictment 344

reports from official or independent bodies 110-12, 345-8

standard of proof

“fully conclusive” 342-3

as laid down in *Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* 342-3

***Application of the Genocide Convention (Croatia v. Serbia) (Merits) (separate opinions)***

Bhandari J (separate opinion) 690-725

Court's missed opportunities 693

evidence in relation to similar allegations considered by the ICTY/ICTR, importance 697-713

intent (*mens rea/dolus specialis*) 690-722

17 factors cited by Croatia 693, 719-20

Croatia's failure to demonstrate 691-2

*Hategekimana* 710-11

*Nizeyimana* 707-10

other motivation distinguished 721-2

*Popović* 705-7, 721-2

“in part”, criteria

“substantiality criterion” vs “quantitative test” 696-7

“substantial part” of the protected group 713-20

Cançado Trindade J (dissenting) 475-663

*actus reus* of genocide 627-38

automatic succession to the Genocide Convention as a human rights treaty 487-99

avoidance of a gap/continuous application 487-99, 658

continuity of State administration and officials 489-90

extinction of predecessor State, effect 489-90



- FRY's 27 April 1992 binding declaration/6 March notification of succession with reservation, effect 494-6
- parties' arguments 487-8
- Serbia's conduct as evidence of 490-4
- special nature of human rights treaties (*Reservations to the Genocide Convention*) 490-2
- UN practice 496-9
- concluding observations 649-58
- mens rea/dolus specialis* of genocide 638-42
- pattern of disappeared or missing persons
  - enforced disappearances as a continuing grave violation of HRL and IHL 583-91
  - parties' arguments 577-9
  - parties' obligation to establish the fate of missing persons 581-3
  - parties' responses to questions from the Bench 579-81
- regrettable delays
  - justitia longa, vita brevis* 485-7
  - procedural delay 482-5
- reparations, desirability 642-7
- standard of proof in international human rights tribunals 515-32
- State responsibility and the Convention, inclusion in GC IX
  - customary international law as basis 514-15
  - travaux préparatoires* 511-14
- summary of opinion 658-63
- widespread and systematic pattern of destruction
  - fact-finding 532-41
  - ICTY jurisprudence 542-8
  - killings, torture and beatings, systematic expulsion from homes and mass exodus and destruction of group culture 548-65
  - rape and other sexual violence crimes committed in distinct municipalities 565-77
- widespread and systematic pattern of destruction not amounting to war 591-625
- Donoghue J (declaration) (Court's evaluation of witness evidence on *actus reus*) 672-6
- Gaja J (separate opinion) (standard of proof) 676-81
- Keith J (separate opinion) 452-67
- Croatia's claim (*dolus specialis*), failure to establish (evaluation of the evidence) 452-60
  - 17 factors cited by Croatia 452-3, 460
  - Arkan's activities 456
  - attack on Vukovar 456
  - JNA/Serb paramilitary relationships 456
  - nature and scale of attacks on Croatian citizens 456
  - official Serbian statements 455
  - SANU Memorandum, relevance 454-5
  - singling out of ethnic Croats for attack 457
- Serbia's counterclaim (*dolus specialis*), failure to establish 460-7
- Brioni Transcript 460-6
- Kreća, Judge ad hoc (separate opinion) 729-838
- genocide, definition/requirements, failure of acts under consideration to qualify as 807-10
- history of SFRY (1943-92) 731-45
- ICTY jurisprudence, ICJ use of 786-807
- incitement to genocide (GC III(c)) 810-12

- Application of the Genocide Convention (Croatia v. Serbia) (Merits) (separate opinions) (cont.)***
- jurisdiction *ratione temporis*, flaws in court's attitude towards 745-68
  - Preliminary Objection 3 (submission of certain persons to trial, provision of information on missing persons and return of cultural property) 266-70
  - succession to responsibility of predecessor government, whether a rule of general/customary international law 768-86
  - Ustasha ideology
    - as Croatian State policy 818-38
    - as genocidal 812-16
    - as policy of the Independent State of Croatia 816-18
  - Owada J (separate opinion) (jurisdiction *ratione temporis*) (ROC 79(7) [79(9)])
    - joinder of preliminary objections with merits/exclusively preliminary character (ROC 79(4) [79(9)] and comparable rules) 442-6
    - State responsibility for conduct of an "insurrectional or other movement" which establishes a new State in part of the territory (ILC(SR) 10(2)) 450-2
      - GC IX, retroactivity 447-8
  - Sebutinde J (separate opinion) 681-90
    - admissibility *ratione temporis* (acts prior to 27 April 1992) 682-6
    - gap, avoidance of/continuous application of GC 689-90
    - ICTY jurisprudence, ICJ use of
      - evidence in relation to similar allegations 689-90
      - probative value of decision by ICTY prosecutor not to include genocide in the indictment 682, 686-9
      - non-retroactivity of GC IX 682-6
  - Skotnikov J (separate opinion) 467-75
    - jurisdiction and admissibility
      - consent to jurisdiction requirement 468-73
      - distinguished 469
      - merits (jurisdiction (ICJ/ICC division)) 473-5
  - Tomka P (separate opinion) 429-42
    - admissibility (*Monetary Gold* principle) 440-2
    - jurisdiction *ratione temporis* 429-40
      - absence of new elements post-Preliminary Objections decision 430
      - change of Court's focus from applicability of GC obligations to the FRY before 27 April 1992 to succession of the FRY to SFRY responsibility 430-2
      - "essential subject-matter of the dispute" requirement 437-8
      - GC IX jurisdiction (succession issues) 431-9
  - Vukas, Judge ad hoc (dissenting) 725-9
    - admissibility *ratione temporis* (acts prior to 27 April 1992) 725-6
    - "substantial part" of the protected group 727-8
  - Xue, J (declaration) 663-72
    - new claim/claim introduced during proceedings (ICJ 40(1) and ROC 38(2), 49(1) and 79) 665, 668
    - non-retroactivity of Genocide Convention 664, 669-70
    - risk of a gap in GC protection 671-2
    - State responsibility
      - extinction of predecessor State, effect 672
      - limitation to international obligation binding on the State concerned at the time for the State (ILC(SR) 13) 664, 669-70
    - treaty status of Serbia/relevance of 27 April 1992 667-8

***Application of the Genocide Convention (Croatia v. Serbia) (Merits) (Serbia's counterclaim for breaches of GC II(a), II(b) and II(c))***

- introduction
  - Serbian submissions 402-3
  - points of agreement
    - commission of acts by Croatian armed forces/police attracting responsibility of Croatia if unlawful 404
    - Serbs in Croatia as “national [or] ethnic” “group” 403
    - Serbs in the Krajina region as a “substantial part of a national or ethnic group” 403
  - points of disagreement (Croatia’s denial that the acts took place/were intended to destroy the Croatian Serbs ethnic group) 404
  - principal submissions for Court’s initial examination (alleged acts of genocide attributable to Croatia during and after Operation Storm) 403-4
- alleged acts of genocide attributable to Croatia during and after Operation Storm (*actus reus* of genocide) 404-20
  - Serbia’s claims 404-5
  - absence of ICTY prosecutions for Operation-Storm-related genocide, effect 407
  - causing serious bodily or mental harm to members of the group (GC II(b)) 418-19
    - Court’s conclusion 419
    - Gotovina* 418-19
  - Court’s conclusion 20, 418-19
  - Court’s conclusion (perpetration by Croatian armed forces/police of acts constituting *actus reus* of genocide) 420
- destruction and looting of Serb property during and after Operation Storm (GC II(c))
  - Court’s conclusion 420
  - parties’ arguments 420
- effective proof of
  - Court’s conclusion 412
  - killing of civilians as a result of the allegedly indiscriminate shelling of Krajina towns/*Gotovina* findings (GC II(a)) 408-12
  - “killing”, need for intent 412
- evidence presented by Serbia
  - CHC Report on Operation Storm/Veritas list of victims 405-6
  - Court’s conclusions on evidential weight 405-6
  - Gotovina* findings/non-binding effect 406-7
  - Human Rights Watch reports 406
  - UNHCR Report 406
  - witness statements (no Croatian cross-examination) 406
- forced displacement of the Krajina Serb population (GC II(c)) 412-14
  - Court’s conclusion (absence of evidence of intent to cause the physical destruction of the group) 414
  - parties’ arguments 412-13
  - as possible contribution to the proof of genocidal intent 413
- killing of Serbs fleeing in columns from the towns under attack (GC II(a))
  - Court’s conclusion 415, 416
  - Court’s evaluation of the evidence 415-16
  - parties’ arguments 414
- killing of Serbs having remained in the areas of the Krajina protected by the UN (GA II(a))
  - Gotovina* 416-18
  - parties’ arguments 415-16

- Application of the Genocide Convention (Croatia v. Serbia) (Merits) (Serbia's counterclaim for breaches of GC II(a), II(b) and II(c)) (cont.)***
- UNHCR Report 415
  - witness statements 415
  - alleged acts of genocide attributable to Croatia during and after Operation Storm (genocidal intent (*dolus specialis*)) (Court's evaluation of the evidence) 421-6
  - Brioni Transcript
    - Court's conclusion 422-3
    - extracts 421-2, 424
    - Gotovina* findings 424
    - parties' arguments (Croatia) 422
    - parties' arguments (Serbia) 421
  - Court's conclusion 428
  - missing persons, Court's encouragement to parties to cooperate in good faith with all means available to elucidate the fate of 428
  - pattern of conduct from which the only reasonable inference to be drawn is an intent to destroy part of the group
    - Court's evaluation of the evidence/conclusion 426
    - ethnic cleansing and genocide distinguished/as evidence of 425
    - "only reasonable inference" requirement 425
    - parties' arguments 424-5
  - Serbia's alternative/subsidiary submissions
    - alleged breach of GC VI 427
    - alleged breaches of GC II(a), II(b), GC II(c), GC II(d) and GC II(e) 426-8
    - request for cessation of internationally wrongful acts 427-8
- Application of the Genocide Convention (Croatia v. Serbia) (Preliminary Objections)***
- Court's decision/operative clauses
    - Preliminary Objection 1 (jurisdiction)
      - issue i. capacity 92: *see also* standing (ICJ 34(1) and ICJ 35/PCIJ 34/ROC 73(1)(ii))
      - issue ii. jurisdiction *ratione materiae* (GC IX) 92
    - Preliminary Objection 2 (jurisdiction and admissibility *ratione temporis*) 92-3
    - Preliminary Objection 3 (submission of certain persons to trial, provision of information on missing persons and return of cultural property) 93
  - parties' arguments (overview)
    - provision of information on missing persons 47-8
    - return of cultural property 48
    - Serbia's standing (UNC 35) 46
    - submission to trial of persons suspected of having committed acts of genocide 47
  - parties' positions (Croatia)
    - Application (invoking GC IX as basis of jurisdiction) 39
    - Memorial 39-41
    - oral proceedings 42
  - parties' positions (Serbia)
    - oral proceedings 42
    - preliminary objections 41
      - Croatia's observations and submissions on 41-2
  - Preliminary Objection 1 (jurisdiction): issue i. capacity/standing (ICJ 34(1)/ICJ 35) (access to the Court) (treaty succession)
    - summary of points for consideration 52-3
    - compliance of Croatia with ICJ 35 53, 60
    - compliance of Croatia and Serbia with ICJ 34 (status as States) 53

- compliance of Serbia with ICJ 35(1) 59-68
- Court's review of the jurisprudence 55-68
- date of filing of Application as date of establishment of jurisdiction 61-2
- determination of
  - Court's obligation to examine *ex proprio motu* 56-8
  - as issue relating to jurisdiction *ratione personae* vs issue preliminary to the examination of jurisdiction, relevance 55
  - order of determination 55-6, 58-9
- GC as "treaty in force" (ICJ 35(2)) 53-5, 58-9
- Mavrommatis* principle (substance over form/flexibility) 62-8
- relevance of Court's previous decisions on the status of the FRY/binding force/*res judicata* (ICJ 59) 50-2, 58, 60, 67
- seizure of the Court by party without standing/*compétence de la compétence* 65-8
- Serbia's status (ICJ 35) 54-68
  - Croatia's arguments 54-5
  - Serbia's arguments 53-4
- status of the FRY with regard to the UN 48-50
- Preliminary Objection 1 (jurisdiction): issue ii. jurisdiction *ratione materiae* (GC IX)
  - (treaty succession) (Serbia's status) 68-80
  - accession/ratification and succession distinguished (VCSST 2(g)) 75
  - chronology of events (1948-99) 70-2
  - Court's conclusion 80
  - date of filing of Application as date of establishment of jurisdiction 69-70
  - existence of reservation 68-70, 72, 78-80
  - notification of succession, effect/requirements (GC XI) 76-80
  - parties' arguments 68-9
  - relevance of Court's previous decisions on the status of the FRY/binding force/*res judicata* (ICJ 59) 73
  - separation of parts of a State (VCSST 34) 70-80
- Preliminary Objection 2 (jurisdiction and admissibility *ratione temporis*) (establishment of the FRY) 81-5
  - Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* distinguished
    - absence of *res judicata* effect (ICJ 59) 83
    - extension of current objection to include admissibility 83-4
    - limitation of case to facts occurring after the establishment of the FRY 83
  - Court's conclusion 85
  - "exclusively preliminary character", need for (ROC 79(7)) 81-2, 85, 86, 91, 92
  - parties' arguments 82-3
  - relevance of Court's previous decisions on the status of the FRY/binding force/*res judicata* (ICJ 59) 83
  - Serbia's alleged responsibility as an "insurrectional or other movement" which establishes a new State in part of the territory (ILC(SR) 10(2)) 84-5
- Preliminary Objection 3 (submission of certain persons to trial, provision of information on missing persons and return of cultural property) 86-91
  - overview
    - joinder of preliminary objection to merits, circumstances justifying 86
    - as mixed admissibility/jurisdiction challenge 86
  - issue i. submission of persons to trial
    - Court's conclusion 88
    - as matter of interpretation of GC IX/subject to court's jurisdiction 88
    - parties' positions (Croatia) 86-8

***Application of the Genocide Convention (Croatia v. Serbia) (Preliminary Objections)***  
 (cont.)

- parties' positions (Serbia) 88
- issue ii. provision of information on missing Croatian citizens
  - Court's decision 89-90
  - dependence of remedies on decisions on the substance 89
  - mootness of claim 89
  - parties' positions (Croatia) 88-9
  - parties' positions (Serbia) 89
- issue iii. return of cultural property
  - Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)*, relevance 90
  - Court's conclusion 91
  - dependence of remedies on decisions on the substance 91
  - parties' arguments (Georgia) 90, 91
  - parties' arguments (Serbia) 90
  - relevance of Court's previous decisions on the status of the FRY/binding force/*res judicata* (ICJ 59) 90

***Application of the Genocide Convention (Croatia v. Serbia) (Preliminary Objections)***  
 (separate opinions)

- Abraham J (separate opinion) 149-69
  - accession/ratification and succession distinguished 168-9
  - Mavrommatis* principle 169
  - standing (ICJ 35) (access to the Court), applicability to both applicants and respondents 149-69
- Al-Khasawneh VP (separate opinion) (*Mavrommatis* principle) 93-6
  - existence of GC IX reservation 95-6
- Bennouna J (declaration) 169-72
  - existence of GC IX reservation 171-2
  - Mavrommatis* principle 171-2
- Kreča, Judge ad hoc (dissenting) 182-270
  - accession/ratification and succession distinguished (VCSST 2(g)) 237-48
  - admission of FRY/Serbia to UN as a new State 252-4
  - "exclusively preliminary character", need for (ROC 79(7)) 270, 276
  - existence of GC IX reservation 252-62
  - jurisdiction *ratione materiae* (GC IX) (treaty succession) (Serbia's status) 228-62
    - conduct of FRY 52
    - declaration of 27 April 1992 228-52
    - UNSG/Secretariat action and 254-62
  - Mavrommatis* principle 213-20
  - Preliminary Objection 2 (admissibility *ratione temporis*) (acts prior to 27 April 1992) 262-5
  - relevance of Court's previous decisions on the status of the FRY 183-7
  - seisin, definition and effects 222-4
  - seizure of the Court by party without standing/*compétence de la compétence* 220-4
  - Serbia's alleged responsibility as an "insurrectional or other movement" which establishes a new State in part of the territory (ILC(SR) 10(2)) 263-5
  - standing (ICJ 34(1)/ICJ 35) (access to the Court) 207-12
  - unilateral undertaking/intention 233-7
- Owada J (separate opinion) 119-40
  - date of filing of Application as date of establishment of jurisdiction 119-24
  - ICJ judgment, binding force (ICJ 59)/*res judicata* 119-24

- Ranjeva J (dissenting) 106-19  
 date of filing of Application as date of establishment of jurisdiction 116-17
- Ranjeva, Shi, Koroma and Parra-Aranguren JJ (joint declaration)  
 date of filing of Application as date of establishment of jurisdiction 102  
 existence of GC IX reservation 102, 104, 115-16  
 ICJ judgment, binding force, limitation to parties and particular case (ICJ 59)/*res judicata* 104-5  
*Mavrommatis* principle 98-104  
 rejection of FRY's claim to continuator status, effect 105-6  
 standing/access to the Court (ICJ 35) (treaty succession) 96-106
- Skotnikov J (dissenting) 172-4  
 admissibility and jurisdiction distinguished 173-4  
 date of filing of Application as date of establishment of jurisdiction 172-3  
*Mavrommatis* principle 172-3
- Tomka P (separate opinion) 140-9  
 continuous applicability of GC in the territory of the SFRY/successor States  
 throughout the period of conflict 144-5  
 "exclusively preliminary character", need for (ROC 79(7)) 141-9  
 GC IX jurisdiction (succession issues) 145-8  
 responsibility for breach of international law and acceptance of jurisdiction  
 distinguished 148-9
- Vukas, Judge ad hoc (separate opinion) 175-82  
 compliance of Serbia with ICJ 35(1) 175-6  
 existence of GC IX reservation 176-8  
 jurisdiction *ratione temporis*  
 application of GC IX to Serbia [as CIL] 179-80  
 continuing nature of acts complained of 181
- Brioni Transcript (31 July 1995)** 422-3, 460-6
- compétence de la compétence (including ICJ 36(6))***  
 seizure of the Court by party not fulfilling ICJ 35 requirements 65-8, 220-4
- Corfu Channel (judgment)***  
 State responsibility for mine-laying  
 knowledge of minelaying, burden/standard of proof 105
- Croatia (1991-)**  
 Ustasha ideology as alleged State policy 818-38
- Croatia/Serbia relations (1991-5) in date order:** *see also Application of the Genocide Convention (Croatia v. Serbia)*  
 ethnic make-up (1991 statistics) 303  
 formation of the "Union of Municipalities of the Northern Dalmatia and Lika" (1 July 1990) 303  
 amendment of Constitution (25 July 1990) 303  
 establishment of Serb assembly and National Council (25 July 1990) 303  
 referendum on autonomy of Serbs in Croatia (19 August-2 September 1990) 303-4  
 adoption of a new Croatian Constitution (20 December 1990) 304  
 proclamation of SAO Krajina (21 December 1990) 304  
 proclamation of SAO SWBS (21 December 1990) 304  
 SAO Krajina established its own internal affairs secretariat and police and State security  
 service (4 January 1991) 304  
 clashes in SAO Krajina/intervention of JNA (spring 1991) 304

**Croatia/Serbia relations (1991-5) in date order:** (cont.)

- SAO Krajina referendum in favour of staying in the SFRY (12 May 1991) 304
- Croatian referendum calling for independence from SFRY (19 May 1991) 304
- Croatia's declaration of independence from SFRY (25 June 1991), taking effect 8 October 1991 304
- armed conflict with intervention from JNA and Serb forces/occupation of much of Croatian territory (1991) 304
- SAO Western Slavonia and SAO SBWS joined the RSK (November 1991) 305
- Vance Plan (23 November 1991) 305
- proclamation of the RSK (19 December 1991) 304-5
- reintegration of most of RSK into Croatia (1995) 309

**erga omnes obligations**

- genocide 114, 313
- jurisprudence
  - Armed Activities (Congo v. Rwanda)* 813
  - East Timor* 313

**ethnic cleansing, as evidence of genocide 339-40****evidence (ICJ/PCIJ)**

- burden/standard of proof
  - jurisprudence
    - Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* 342-3
    - Application of the Genocide Convention (Croatia v. Serbia)* 341-8, 515-32, 676-81
    - Corfu Channel* 342
    - Diallo* 341-2
    - Pulp Mills* 342
  - obligation to prove a negative 341-2
- evaluation by Court
  - affidavit, treatment with caution 346-7
  - criticism of 672-6
  - reports from official or independent bodies 345-8
  - statement neither signed nor confirmed 347
- ICTY/ICTR jurisprudence 786-807
  - probative value of decision by ICTY prosecutor not to include genocide in the indictment 344, 682, 686-9
  - relevance/importance 343-4, 352-3, 356, 370-1, 372-3, 376, 379, 383-5, 393-4, 397, 406-7, 408-12, 416-18, 689-90, 697-713
- jurisprudence
  - Application of the Genocide Convention (Croatia v. Serbia)* 341-8, 672-6
  - Corfu Channel* 105, 347
  - Military and Paramilitary Activities* 347, 673
  - Territorial and Maritime Dispute (Nicaragua v. Honduras)* 347, 673
- witnesses
  - decision not to cross-examine, effect 406

**forum prorogatum (ICJ) (ROC 38(5))**

- Application of the Genocide Convention (Croatia v. Serbia)* 107-8, 116
- Mutual Assistance in Criminal Matters* 116



**Genocide Convention (1948), dispute settlement (GC IX)**

- “dispute relating to the interpretation, application or fulfilment” 145-6, 266, 308, 310-25, 432-9, 451-2, 468-71
- limitation to/exclusion of CIL including *jus cogens* and *erga omnes* obligations 312-14
- retroactive, whether 82-4, 244, 262-5, 314-18, 322-3, 447-8, 664-5, 669-70, 684-6, 748, 758-60, 761
- compatibility with VCLT 28/*travaux préparatoires* 315-17
- linkage of GC IX temporal scope to temporal scope of other provisions 315
- obligation to prevent and obligation to punish distinguished 316
- as sole source of jurisdiction/exclusion of CIL 146, 310-11

**Genocide Convention (1948), interpretation**

- applicable law
  - GC provisions 327
  - rules of international law relating to State responsibility 327
  - VCLT 31/VCLT 32 327
  - general rule (VCLT 31(1)) 331-2
- travaux préparatoires*
  - GC II(b) (serious bodily or mental harm) 330-1, 337
  - GC IX (“relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III”) 434-6

**Genocide Convention (1948), obligations/State responsibility:** *see also Application of the Genocide Convention (Croatia v. Serbia)*

- “dispute relating to the responsibility of a State” (GC IX)
  - determination of State’s responsibility for genocide 511-14
  - customary international law [vs direct responsibility under GC I] as basis 514-15
- duality of State/individual responsibilities
  - jurisdiction (ICJ/ICC division) 328-9, 473-5
- erga omnes* nature 114, 313
- as *jus cogens*/peremptory norm 244-5
- obligation to prevent and punish (GC I)
  - travaux préparatoires* 433, 511-14
- retroactive effect, whether 82-4, 244, 262-5, 314-18, 322-3, 447-8, 664-5, 669-70, 684-6, 748, 758-60, 761

**Genocide Convention (1948) (procedural aspects)**

- accession (GC XI) 76-80
  - notification of succession, effect/requirements 76-80
- customary international law (codification/law-making treaty) 312-14
- treaty succession and 487-99: *see also* treaty succession (including VCSST), human rights treaties
  - gap, avoidance of/continuous application 244-5, 658, 671-2, 685-99, 759-60

**Genocide Convention (1948), reservations including in particular to GC IX (dispute settlement) 68-70, 72, 78-80, 95-6, 171-2, 252-62**

**genocide, definition/requirements/classification as (GC II)/non-GC sources**

- actus reus*
  - acts listed in GC II as 335
  - lawfulness under IHL, effect 335-6
- complicity (GC III(e))
  - intent (*dolus specialis*)/*mens rea* requirement 31, 638-42
- cultural genocide
  - Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* 90

- genocide, definition/requirements/classification as (GC II)/non-GC sources** (*cont.*)
- Application of the Genocide Convention (Croatia v. Serbia)* 90
  - deliberate infliction on the group of conditions of life calculated to bring about its
    - physical destruction (GC II(c)) 381-9
    - deprivation of food 382
    - deprivation of medical care 382-3
    - destruction and looting of the cultural heritage 387-8
    - ethnic cleansing distinguished/as evidence of 339-40, 425
    - forced labour 388
    - forced wearing of insignia of ethnicity 386, 457
    - looting of property 386-7
    - rape 381-2
    - restrictions on movement 385-6
    - scale of destruction 331-2
    - systematic expulsion from homes and forced displacement 383-5, 412-14
  - destruction of the group “in part”, criteria
    - intention to destroy a substantial part of the particular group 332-3
    - multiplicity of criteria 332-3
    - “substantial part” of the protected group 545-8, 696-7, 713-20
    - “substantiality criterion” vs “quantitative test” 696-7
  - destruction of the group “in part”, criteria, jurisprudence
    - Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* 333-4, 694-6
    - Application of the Genocide Convention (Croatia v. Serbia)* 333, 693-720
    - Kirstić* 333
  - forcible transfer of children (GC II(e)) 331
  - intent (*mens rea dolus specialis*) 329-35
    - evidence of/relevant factors
      - factors listed by Croatia (2015 case) 392-3, 401, 452-3, 460, 693, 719-20
      - pattern of conduct from which the only reasonable inference to be drawn is an
        - intent to destroy part of the group 332-5, 391-8, 421-6, 453
      - political doctrine 392, 454-5, 525, 640, 720
      - scale of destruction/number of victims 331-2
      - State plan 333-4
    - “intended”/“deliberately” (GC II(c) and (d)) 338-40
    - jurisprudence: *see also Application of the Genocide Convention*
      - Application of the Genocide Convention (Croatia v. Serbia)* 329-35, 421-6, 676-81, 690-722: *see also Application of the Genocide Convention (Croatia v. Serbia)*
      - Hategekimana* 710-11
      - Nizeyimana* 707-10
      - Popović* 705-7, 721-2
      - Tolimir* 334-5
    - other motivation distinguished 721-2
    - specific intent to destroy protected group in whole or in part 331-2
    - standard of proof
      - “beyond all reasonable doubt”, appropriateness 679-81
      - ICJ and international criminal tribunals distinguished 677-81
      - State responsibility and individual criminal responsibility distinguished 676-81
  - killing members of a group (GC II(a)) 350-70, 414-18
    - “intent” requirement 404-12
  - measures to prevent births (GC II(d)) 340-1, 389-90
    - classification as, criteria 340-1
    - rape and acts of sexual violence as 340-1

- physical or biological destruction of the group
  - limitation to 330-1
  - scale of destruction 331-2
- serious bodily or mental harm (GC II(b)/ICTY 4(2)(b)) 370-81
- rape and sexual violence as 338
- “serious mental harm”
  - limitation to acts carried out with the intent of achieving the physical or biological destruction of the group 330-1
  - psychological harm, dependence on 337-8
- ICC Elements of Crimes (EOC)**, exclusion as “subsequent agreement between the parties regarding the interpretation” (VCLT 31(3)(a)) 677-8
- ICJ judgment, binding force, limitation to parties and particular case (ICJ 59)/res judicata**
  - Application of the Genocide Convention (Croatia v. Serbia)* 50-2, 57, 58, 60, 73, 83, 90, 104-5, 119-24
  - Land and Maritime Boundary* 51
- ICJ jurisdiction (general)**
  - date of filing of Application as date of establishment of jurisdiction
  - jurisprudence
    - Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* 61-2
    - Application of the Genocide Convention (Croatia v. Serbia)* 61-2, 69-70, 101-2, 116-17, 139-40, 172-3
    - Lockerbie* 61, 101-2
    - Military and Paramilitary Activities* 69-70
    - Nottebohm* 69-70
- ICJ Rules of Court (1978 as variously amended) by rule**
  - 43 (construction of a convention to which States not party to proceedings are party: Court’s directions to Registrar) 36, 277
  - 53(1) (copies of pleadings to State entitled to appear) 37
  - 53(2) (availability of documents to the public) 38, 283
  - 56(1) (admissibility of supplementary documents) 38, 281
  - 56(4) (reference to document not submitted to the Court) 281
  - 57 (notification of evidence to be submitted and information relating to witnesses and experts to be called) 280-1
  - 61(4) (Court’s indication of points to be addressed by parties: timing of replies) 39
  - 62(1) (Court’s right to call on parties for evidence/explanations) (disclosure) 38, 278
  - 64 (witnesses’/experts’ oath) 83
  - 69(3) (observations by international organization) 37, 277, 279
  - 70(2) (oral proceedings in language other than English or French: interpretation) 283
  - 72 (oral proceedings: written reply to question/evidence or explanation) 39
  - 79(1) (preliminary objections: time limits for lodging objection to jurisdiction/admissibility) 37, 277
  - 79(5) (preliminary objections: suspension of proceedings on the merits and time limits for written observations) 37
  - 79(7) (preliminary objections: statements of law and facts: limitation to matters relevant to objection) 442-52
    - 62(5) (1946 Rules) distinguished 443-6
    - Court’s alternatives 86
  - 79(8) (preliminary objections: exclusively preliminary character requirement): *see* preliminary objections (ICJ/PCIJ) (ICJ 79(9)), joinder with merits

**ICJ Rules of Court (1978 as variously amended) by rule** (cont.)

80 (counterclaims): *see Application of the Genocide Convention (Croatia v. Serbia)*

**ICJ/PCIJ, consent to jurisdiction requirement (general)**

jurisprudence

*Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* 45

*Application of the Genocide Convention (Croatia v. Serbia)* 45, 81, 103-4, 105-6, 107-8, 468-73

*Certain Phosphate Lands in Nauru* 45

*East Timor* 324-5

*Legality of Use of Force (Yugoslavia v. Belgium)* 103

*Monetary Gold* 324-5, 440-2

responsibility for breach of international law and acceptance of jurisdiction/existence of a remedy distinguished 148-9, 466-7

**ICJ/PCIJ procedural issues**

documentation/disclosure obligation (ICJ 49/ROC 62(1) [54]) 38

redacted documents 89, 285-8

formalism, need to avoid/substance over form (*Mavrommatis* principle), jurisprudence

*Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* 100-1, 131-3

*Application of the Genocide Convention (Croatia v. Serbia)* 96-106, 124-38, 166-9, 171-3, 213-20

*Armed Activities (Congo v. Rwanda)* 134-5

*Barcelona Traction* 135-6

*Certain German Interests in Polish Upper Silesia* 101, 129-30, 131, 132

*Certain Phosphate Lands in Nauru* 134

*Gabčíkovo–Nagyymaros Project* 133-4

*Mavrommatis Palestine Concessions* 124-8

*Military and Paramilitary Activities* 130-1

*Northern Cameroons* 130

norm or rule of international law distinguished 664

seisin

effective and valid seisin distinguished 222-4

jurisdiction distinguished 222

**IHL (international humanitarian law) (*ius in bello*)**

Genocide Convention, relationship with 335-6

**judge ad hoc (ICJ 31(2) and ICJ 31(3)), appointment** 37, 277***ius cogens*/peremptory norm (VCLT 53)**

*Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* 311

*Application of the Genocide Convention (Croatia v. Serbia)* 312-14

*Armed Activities (Congo v. Rwanda)* 313

**Montenegro (2006-)**

secession from Serbia and Montenegro (3 June 2006) 42-5

**preliminary objections (ICJ/PCIJ) (ICJ 79(9)), joinder with merits**

amendment of Rule (1972) 442-9

as exceptional step/good cause requirement

- circumstances justifying 86
  - inseparable admixture of issues 85
  - jurisprudence
    - Application of the Genocide Convention (Croatia v. Serbia)* 81-2, 85, 86, 92, 141-9, 264, 270, 276
    - Barcelona Traction* 442-3
    - Lockerbie* 85
    - Military and Paramilitary Activities* 85, 86, 444
    - Panevezys–Saldutiskis Railway* 444-5
  
- rape in time of war**
  - Stakić* 338
- retroactivity of treaties (VCLT 28)**
  - jurisprudence
    - Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)* 315
    - Application of the Genocide Convention (Croatia v. Serbia)* 82-4, 244, 262-5, 314-18, 322-3, 447-8, 664-5, 669-70, 684-6, 748, 758-60, 761
    - Obligation to Prosecute or Extradite* 317
  - non-retroactivity as general principle of international law
    - specific provision for 317
  - travaux préparatoires* 315-17
  - treaty codifying customary international law 315-16
  
- seisin:** *see* ICJ/PCIJ procedural issues, seisin
- Serbia (2006-) (Republic of), as successor to/continuator of State Union of Serbia and Montenegro**
  - Application of the Genocide Convention (Croatia v. Serbia)* (Preliminary Objections): *see* *Application of the Genocide Convention (Croatia v. Serbia)*
  - President's letter to UN Secretary-General (3 June 2006) 37, 42-3, 277, 302-3
  - standing (ICJ) 46-7, 48-80
  - treaty succession (VCSST 35) 45
    - Foreign Minister's letters to UN Secretary-General (16 June/30 June 2006) 43
- Serbia and Montenegro, State Union of (2003–6)**
  - change of name from "FRY" 37, 277-8, 302-3
  - Constitutional Charter by article
    - 60 (changes in status/right to secede) 277-8, 302-3
- standing (ICJ 34(1) and ICJ 35/PCIJ 34/ROC 73(1)(ii)) (access to the Court)**
  - Croatia (ICJ 34(1)) 52-3
  - determination of
    - Court's obligation to examine *ex proprio motu* 56-8, 140
    - as issue relating to jurisdiction *ratione personae* vs issue preliminary to the examination of jurisdiction, relevance 55
    - order of determination 55-6, 58-9
  - equal applicability to both applicants and respondents 64-5, 138-9, 149-69
  - Serbia (ICJ 34(1)) 52-3
  - States, limitation to (ICJ 34/PCIJ 34) 52-3
  - terminology 207-9
  - "treaties in force" (ICJ 35(2))
    - jurisprudence
      - Application of the Genocide Convention (Croatia v. Serbia)* 53-5, 58-9, 61-2, 63, 96-106, 152-3, 173

**standing (ICJ 34(1) and ICJ 35/PCIJ 34/ROC 73(1)(ii) (access to the Court) (cont.)**

*Application for Revision of the Judgment on the Application of the Genocide Convention of 11 July 1996* 59-60

*Certain German Interests in Polish Upper Silesia* 62-3

*Legality of Use of Force (Yugoslavia v. Belgium)* 55-6, 64, 65, 66-7, 97-9

*Legality of Use of Force (Yugoslavia/Serbia and Montenegro v. Netherlands)* 55-6, 64, 65, 97-9

*Mavrommatis Palestine Concessions* 54, 62, 64-5, 66

*Northern Cameroon* 63

*travaux préparatoires* 155-6

Yugoslavia (FRY) 46-7

**State responsibility**

for acts of revolutionary forces/revolutionaries becoming new government (ILC(SR) 10(1))

conduct of an “insurrectional or other movement” which establishes a new State in part of the territory (ILC(SR) 10(2)) 84-5, 263-5, 446-8, 450-2

customary international law, whether 319, 774-9

limitation of responsibility to acts in respect of which the State had a binding obligation 318-19

applicable law (ILR(SR) 3) (international law) 328

limitation to international obligation binding on the State concerned at the time for the State (ILC(SR) 13) 664, 669-70

non-retroactivity (ILC(SR) 13, Commentary) 664, 669-70

procedural aspects

absence of [ICJ] jurisdiction, effect on liability 312

criminal responsibility of individual distinguished 473-5

succession to responsibility of predecessor government, whether a rule of general/customary international law 768-86

**State succession**

continuity of State (Serbia after breakup of Serbia and Montenegro) 43-5, 50-2

extinction of predecessor State, effect 489-90, 672

separation of parts of State and (VCSST 34) 238-40

**“subject of the dispute”, obligation to indicate in Application (ICJ 40(1)/ROC 38(2))**

new claim/claim introduced during proceedings (ICJ 40(1) and ROC 38(2), 49(1) and 79), jurisprudence

*Application of the Genocide Convention (Croatia v. Serbia)* 320-1, 665, 668

*Territorial and Maritime Dispute (Nicaragua v. Honduras)* 321

***travaux préparatoires* as supplementary means of interpretation (VCLT 32)**

GC IX 433, 511-14

ICJ 35 155-6

Genocide Convention (1948): *see* Genocide Convention (1948), interpretation

VCLT 28 315-17

**treaty interpretation**

VCLT 31(2) (context), text of other articles in same treaty, intended differences 155

VCLT 31(3) (subsequent agreement between the parties regarding interpretation or application of treaty (VCLT 31(3)(a))), exclusion of ICTY Elements of Crimes (EOC) 677-8

**treaty succession (including VCSST)**

accession/ratification and succession distinguished (VCSST 2(g)) 75, 237-48, 748-9

continuity of State administration and officials 489-90

human rights treaties

- automaticity of succession 487-99, 658
- special nature of human rights treaties (*Reservations to the Genocide Convention*) 490-2
- UN practice 496-9
- notification of succession (VCSST 23), requirements 74-6
- separation of parts of a State (VCSST 34) 70-80

**unilateral declaration/undertaking (including validity and legal effects)**

- intention to be bound/create international legal obligations, need for 76, 233-7
- jurisprudence
  - Application of the Genocide Convention (Croatia v. Serbia)* 233-7
  - Nuclear Tests* 233-4

**Yugoslavia, Federal Republic (FRY) (1992-2003)**

*Note:* in 2003 renamed “State Union of Serbia and Montenegro”. (See *Application of the Genocide Convention (Croatia v. Serbia)*; *Legality of Use of Force (Yugoslavia v. Belgium)* (*Preliminary Objections*); *Serbia and Montenegro, State Union of (2003-6)*)

- establishment
  - declaration of (27 April 1992) 48-9, 70-5, 79-80, 228-52, 301-2, 494-6
  - intention 233-6
  - text of declaration 228-9
  - unilateral act/legal effect 231-3
  - notification to UN Secretary General (27 April 1992) 49-50, 71-5, 232-3
  - text of Note 232 n8
- Genocide Convention (1948) (GC)
  - as party to 68-80
  - nature of succession to 68-80, 92, 96-102, 145-8, 176-8, 228-62, 431-9, 487-99
- succession to SFRY 48-50
  - as continuator 74, 76, 95-6, 105-6, 200-2, 234, 253, 258, 665-8, 685, 773
  - rejection of continuator status, effect 105-6, 684
- treaty succession
  - Genocide Convention (1948): *see Yugoslavia, Federal Republic (FRY) (1992-2003)*
  - separation of parts of a State (VCSST 34), applicability 70-80, 238-40, 243-4
  - statement of intention to be bound by (declaration of 27 April 1992/Note to UN) 48-50, 74-80, 228-52, 307-8, 493-4, 665-8
  - UNGA Resolution 47/1 50
  - UNGA Resolution 55/12 50
- UN membership 48-50, 302-3
  - UNGA 55/12 (admission)
    - consequences 104-5
    - relevance to status prior to (“retroactivity”) 104-6, 186-7, 198-9, 256
- Yugoslavia, Socialist Federal Republic (SFRY) (1946-91)**
  - history (1943-92) 731-45
  - succession issues (ASI (2001)): *see also Application of the Genocide Convention (Croatia v. Serbia)*
  - sovereign equality of former Republics as successor States 684