

International Court of Justice

Legality of Use of Force (Serbia and Montenegro V United Kingdom)



Forum	ICJ
Issue:	Legality of Use of Force (Serbia and Montenegro V United Kingdom)
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Introduction

The International Court of Justice (ICJ), located in the Hague in the Netherlands, is one of the six main organs of the United Nations, which was established in 1945 by the UN charters. Its primary function is to settle disputes between states using international law. The court consists of 15 judges which are elected by the UN General Assembly and Security Council. The judges have to be from different countries, and they serve nine-year terms. Unlike other courts like the International Criminal Court (ICC), the ICJ does not prosecute individuals.

The ICJ Case entitled Legality of Use of Force (Serbia and Montenegro v. United Kingdom) arose from the institution of proceedings by the Federal Republic of Yugoslavia- of which Serbia and Montenegro were the integral applicant parties. The case was one of various cases filed by these applicants, categorically against the United Kingdom, whilst others were against other nations. However, the commonality was the fact that the precedent for these proceedings revolved around the accused violation of obligations by these respondents (the UK in this case) to not use force against Yugoslavia. The case, through which an advisory opinion will be formulated, shall be expanded upon and extensively discussed within the contents of this co-written report.

Definition of Key Terms

Jurisdiction

The extent of a Court's power and ability to make legal decisions, such as issuing orders of adjudicating cases. An example of this within this case could be Yugoslavia's submission of Article 36 of the Statue of the Court as a means of evaluating and determining jurisdiction.



Provisional Measures

The issuing of an official order by the ICJ, towards a nation. For example, Yugoslavia applied for the indication of provisional measures toward the respondent party.

Use of Force

Power and authority wielded by states to take action as they deem fit in protection and guarding of personal interest. Within the case, critically, the applicant party felt that the respondent had employed this, when in fact they were under an obligation not to.

Prima Facie Jurisdiction

An expression used to describe the test of First Impression, specifically in International Adjudication.

Preliminary Objection

The formal procedure in which the respondent raises a question which it argues should be addressed separately before any proceedings.

Admissibility

A measure scrutinizing the character and nature of a categoric pleading or evidence to be inspected by the respective authority it has been submitted to.

Genocide Convention

An international treaty which sought to firstly criminalize genocide, and secondly significantly urge state parties in the enforcement of this prohibition.

Permanent Court of International Justice (PCIJ)

The International Court of Justice's predecessor- otherwise regarded as the world court, which pertained from 1922 to 1946 in attachment to the League of Nations, as an international court upholding international law.

Rules of the Court



An official document containing the legitimate stipulations and rules of procedure of the International Court of Justice, which was adopted on April 14, 1978, coming into force on July 1 1978.

Treaty in Force

A treaty where force is conditional, contingent to the provided consent of the states which comprise it. However, force might be based upon particular conditions and terms proclaimed by the treaty.

Ethnic Cleansing

The mass, systematic murder of a certain group of people, based concretely on their religious beliefs and values or their inherent ethnicity. Categorically, this applies to the Ethnic Cleansing of Albanian Muslims in 1999.

Ethnic Tensions

Socio-political animosities and hostility between differing religious or ethnic communities on the basis that they have conflicting ideological or geopolitical beliefs. Categorically, this applies to the Serb-Albanian Muslim Tensions within Kosovo.

General Overview

History and Geography

The Baltic state of Serbia and Montenegro was situated in Southeast Europe, from 1992 to 2006. It bordered Hungary to the north, Romania to the northeast, Bulgaria to the southeast, North Macedonia to the south, Croatia and Bosnia and Herzegovina to the west, and Albania to the southwest. Montenegro sits on the coastline of the Adriatic Sea, while Serbia is entirely landlocked.

After the Second World War, Yugoslavia was composed of six republics. While these republics shared the Serbo-Croatian language, they had distinct histories, distinct beliefs, and distinct identities that led to infighting and tensions in Yugoslavia. A key unifying individual was Josip Broz Tito, who being the key architect of the Socialist Federal Republic of Yugoslavia, briefly held the state together and fostered unity as president from 1944 to 1963. After his death in 1963, Yugoslavia



unravelling into intense internal conflict as the ethnic divisions became increasingly apparent. Following this intense internal conflict and ethnic tension, the Socialist Federal Republic of Yugoslavia dissolved into its constituent states by January 1992.

Serbia and Montenegro, being two Serb majority republics, agreed to being Yugoslavia's successor states after the dissolution. The new state, The Federal Republic of Yugoslavia (FRY), was established with a constitution in 1992. Attempts were made to include Bosnia and Herzegovina into the state; however, negotiations were later terminated after violence between ethnic Serbs and Bosnians soon broke out.

On 4th February 2003, the Federal Assembly of Yugoslavia established the State Union of Serbia and Montenegro, which discontinued the Yugoslavian name. After a referendum on Sunday, 21 May 2006, 55.5% of voters supported independence. The Montenegrin proclamation of independence on 3rd June 2006 was followed by the Serbian proclamation on 5th June, which formally ended the confederation of Serbia and Montenegro and thus the last remnants of Yugoslavia.

Application to the ICJ

In the Kosovo region, ethnic tensions between Serbs and Albanian Muslims bred ongoing conflict. A key turning point in this conflict was the Račak Massacre in 1999, where Serbian special police killed 45 ethnic Albanians. The ethnic cleansing of Albanian Muslims drew international attention, and a controversial 77-day air campaign from NATO on Serbia where civilians were killed. The Kosovo Force (KFOR) was also deployed by NATO.

Following this, on 29 April 1999 the Federal Republic of Yugoslavia filed in the Registry of the Court applications to institute proceedings against Belgium, Canada, France, Germany, Italy, Netherlands, Portugal, Spain, United Kingdom, and United States of America for alleged violations of their obligation not to use force against another State.

Jurisdiction

Most of the discussion and ambiguity surrounding this case stems from the question of the ICJ's jurisdiction in this case. With its initial application, the Federal Republic of Yugoslavia presented



Article 36, paragraph 2, of the Statute of the Court as basis for jurisdiction. It also presented Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted on 9th December 1948 by the United Nations General Assembly. The Federal Republic of Yugoslavia also applied for the indication of provisional measures to ensure that the respondent State concerned ‘cease immediately its acts of use of force and... refrain from an act of threat or use of force’ against Yugoslavia.

To determine the eligibility of the case, the pre-requisites laid out by Articles 34 and 35 of the ICJ Statutes needed to be considered before articles 36 and 37 were discussed. Article 34 stipulates that ‘The Court shall be open to the states parties to the present Statute’, while Article 35 adds on that ‘The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court’.

Therefore, the question of whether Serbia and Montenegro were a State party to the Statute of the Court at the time of the institution of the proceedings was especially crucial. Due to the complicated history and ambiguous identity of Serbia and Montenegro (as detailed in the section on Geography and History), further deliberations were needed on whether it was a state for the purpose of the articles. Yugoslavia was an original member of the United Nations, having signed the Charter on 26th June 1945. However, Serbia and Montenegro’s position was less clear. After the breakup of the Socialist Federal Republic of Yugoslavia in 1992, The Federal Republic of Yugoslavia status remained ‘ambiguous and open to different assessments’ according to the court. It was only on 2nd October 2000 that the Federal Republic of Yugoslavia requested its admission into the United Nations, and on 1st November that it was formally admitted by General Assembly resolution 55/12. However, the court deducted that as membership was only applied for after the 1999 application, it was not valid and therefore the Court was not open to it under Article 35, Paragraph 1 of the Statute.

As Article 35, Paragraph 1 was insufficient to justify jurisdiction and admissibility, Article 35, Paragraph 2 was then considered. The applicant party had presented the Genocide Convention as one of the ‘treaties in force’ which could grant it admissibility, however the court deliberated that ‘in force’ indicated that the treaty had to be in force before the ICJ statute itself came into force. The Genocide Convention was only entered into force on 12th January 1951, which was after the entry of the Statute into force. This elucidated that Article IX of the Genocide Convention did not provide



basis for access to the International Court of Justice, and therefore the court failed to find grounds for the admissibility of the case.

Major Parties Involved

Federal Republic of Yugoslavia:

A Monarchical Republic comprising of modern-day Montenegro and Serbia, which essentially encompasses the applicant or plaintiff parties within this case. Fundamentally, this is because Yugoslavia officially instituted proceedings against Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom for (allegedly) violating their national obligations to restrain from use of force. This was enacted through filing within the Registry of the Court Applications. However, due to the dissolution of Yugoslavia within the early 1990s, this placed a legislative aspect of doubt into the legitimacy of Serbia and Montenegro within this application.

Serbia:

An applicant party within this case, which used to be a component of Yugoslavia prior to its dissolution. Modern day Serbia was situated within the East of Yugoslavia.

Montenegro:

An applicant party within this case, which used to also be a component of Yugoslavia prior to dissolution. Modern day Montenegro was situated within Southwestern Yugoslavia.

The United Kingdom:

The United Kingdom functions as the critical Respondent Party within this case. Along with various other parties where the applicants' prima facie jurisdiction was deemed sufficient, the UK's concrete legal argumentation revolves around the core principles of jurisdiction and admissibility (arguing Serbia and Montenegro are insufficient within both regards). This is what their filed preliminary objections featured.

Canada, Netherlands, Portugal, Spain:



Other state parties which Yugoslavia filed proceedings against, proclaiming the violation of anti-force obligations.

Timeline of Key Events

Date	Description of event
29th April 1999	Applicant party (Yugoslavia) institutes proceedings to the Court against the UK and N. Ireland. Applicant party also submits a request for the indication of Provisional Measures
5th January 2000	Memorial of the Federal Republic of Yugoslavia submitted by the Applicant Party.
4th July 2000	Preliminary Objections filed by the Respondent Party
2 nd December 2002	Written Statement of the observations and submissions of the Federal Republic of Yugoslavia submitted on the Preliminary Objections filed by the Respondent Party (the United Kingdom and Ireland)

Relevant Resolutions

- General Assembly resolution 55/12, 1st November 2000
- Reports of judgments, advisory opinions and orders, 1999
- Reports of judgments, advisory opinions and orders, 2000
- Reports of judgments, advisory opinions and orders, 2001
- Reports of judgments, advisory opinions and orders, 2002



- Reports of judgments, advisory opinions and orders, 2004

Possible Solutions

The key question in this case is of jurisdiction, and to determine that the ICJ statutes must be interpreted, as well as the status of Kosovo as a party state must be deciphered. The Applicant party can gain admissibility through any of the statutes/ conventions mentioned in the General Overview, as well as any they find independently that are applicable to the ICJ. The respondent party will have to disprove admissibility and jurisdiction in each of these cases.

Bibliography

Case Concerning Legality of Use of Force (Yugoslavia v. United Kingdom ..., www.icj-cij.org/sites/default/files/case-related/113/14131.pdf

“Former Yugoslavia 101: The Balkans Breakup.” *NPR*, 18 Feb. 2008, www.npr.org/2008/02/18/19148459/former-yugoslavia-101-the-balkans-breakup.

“A History of Tension: Serbia-Kosovo Relations Explained.” *Euronews*, www.euronews.com/2019/05/28/a-history-of-tension-serbia-kosovo-relations-explained

Mundi, Jus. “Wiki Note: Prima Facie Jurisdiction (Provisional Measures).” *Jus Mundi*,

“Rules of Court (1978) Adopted on 14 April 1978 and Entered into Force on 1 July 1978 1.” *RULES OF COURT (1978) | INTERNATIONAL COURT OF JUSTICE*, www.icj-cij.org/rules

Appendix or Appendices

I: Statute of the ICJ, particularly (Articles 34 - 38) on the Competence of the Court
<https://www.icj-cij.org/statute>

II: Article IX, the Convention on the Prevention and Punishment of the Crime of Genocide

I)



CHAPTER II

COMPETENCE OF THE COURT

Article 34

1. Only states may be parties in cases before the Court.
2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.
3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the states parties to the present Statute.
2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.
3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
 - a. the interpretation of a treaty;
 - b. any question of international law;
 - c. the existence of any fact which, if established, would constitute a breach of an international obligation;
 - d. the nature or extent of the reparation to be made for the breach of an international obligation.
3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.
6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.



Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

II)

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

